

## STREET LAW SMARTS #9

### IMMIGRATION

#### Status

Individuals present in Canada often have an immigration “status”. For example, someone may be a Canadian Citizen, a Permanent Resident, a Foreign National (meaning they are in Canada on a temporary visa like a Work Permit or Visitor’s Visa), or they could be a Protected Person.

There are also individuals without status. This means they have no legal right to stay in Canada. These people could be detained by the Canada Border Services Agency (CBSA) and removed from Canada against their will.

If you have questions about your status, or are unsure what your status is, you should talk to a lawyer for assistance: See **Street Law Smarts #1**

#### How to Get Status

There may be several options available to you if you do not have status. One such option could be what is called a Humanitarian and Compassionate (H&C) application. This is when you can ask Citizenship and Immigration Canada (CIC) for Permanent Residence based on humanitarian and compassionate reasons. Such reasons may include: your establishment in Canada (i.e. you have been present in Canada for a long time, or you have family or many friends here), your activities in Canada, or your volunteer work. You may also include information about the hardship that you will face should you have to go back to your home country.

Completing a well-done H&C application requires a lot of work and is time consuming. There are some Legal Aid Clinics where you can receive assistance completing your application. It is best to call Legal Aid Ontario at 1-800-668-8258 to find a Clinic near you that can help. See also **Street Law Smarts #1**.

#### Is it possible to lose your status?

Yes, unless you were born in Canada, it is possible to lose your status.

You could lose your status if you or your sponsor/family member lied about any fact on your immigration application (even if you have already received your Canadian Citizenship).

You could also lose your status if you are a Permanent Resident or Foreign National **and** you have received a criminal conviction.

The law regarding immigration status and criminal convictions is very complicated. If you are a Permanent Resident or Foreign National and you have been charged with a criminal offence you should talk to a lawyer right away. A lawyer may help you negotiate in court so that you are able to safely stay in Canada.

For how to find a lawyer see **Street Law Smarts #1.**

## **Sponsorship breakdown**

One of the many ways a new immigrant receives permanent residence in Canada is through sponsorship by a family member. It is important for a sponsored person to know what it means to be sponsored to Canada and what rights a sponsored person holds.

### **What does it mean to be sponsored?**

Sponsorship is a legally binding promise that a sponsor will “provide for the essential needs” of the sponsored person and their dependents for a specific period of time. If you have been granted permanent residence status in Canada, the sponsorship promise cannot be taken back and you can only lose your permanent residence status in exceptional circumstances.

### **Sponsored individuals have many rights in Canada:**

Once a sponsorship application is accepted, sponsored people are considered Permanent Residents. If you have been sponsored by a spouse, your permanent residency may be “conditional” for two years. As a Permanent Resident or Conditional Permanent Resident you enjoy the following rights:

- a)** Access to health care insurance coverage (OHIP);
- b)** Ability to live/work/study anywhere in Canada;
- c)** Ability to leave and re-enter Canada;
- d)** Protection under Canadian law and the *Charter of Rights and Freedoms*; and
- e)** Ability to apply for citizenship if/when you meet the requirements.

It is important for a sponsored person to know that they have every right to notify the police of any threat to their safety from anyone including their sponsor and it should not impact their status in Canada.

## How long does the sponsorship promise last?

The period of time is dependent on the age of the sponsored person and their relationship to the sponsor.

If sponsoring:	Sponsorship agreements signed on or after June 28, 2002
Spouse, common-law partner or conjugal partner	Sponsor must provide financial support for <b>3 years</b> from the date that person became a Permanent Resident  <u><b>AFTER OCTOBER 2012</b></u>  Change in the law - <b>If the person was sponsored as a spouse and became a permanent resident after October 2012, then they may have “Conditional Permanent Residence” for two years.</b> If they leave their sponsor, they will lose their Permanent Resident status and face removal from Canada. There are exceptions if a person leaves their sponsor due to violence, but they will have to prove that they left because of violence (police, medical, shelter report).**See below for more information
Dependent child who is less than <b>19 years</b> of age on the date they received their permanent Residency	Sponsor must provide financial support for <b>10 years</b> from the date that person became a Permanent Resident <u>OR</u> until the child turns <b>22 years</b> of age, whichever comes first
Dependent child who is <b>19 years</b> of age or older on the date they received their Permanent Residency	Sponsor must provide financial support for <b>3 years</b> from the date that person became a Permanent Resident
Any person not mentioned above	Sponsor must provide financial support for <b>10 years</b> from the date that person became a Permanent Resident

The sponsor's obligation to provide for the basic requirements of the sponsored person continues for the full sponsorship period even if the sponsored person becomes a Canadian Citizen.

## What does it mean for a sponsor to provide for the sponsored person's essential needs?

The sponsor is required to care for the basic needs of the sponsored person for the duration of their promise.

## **What happens to a sponsored person if they are unable to maintain a relationship with their sponsor?**

Sometimes a sponsorship relationship breaks down and/or the sponsor stops financially supporting the sponsored person. This leaves the sponsored person feeling vulnerable and unsure of what their rights are within Canada.

## **What are a sponsored person's rights if their sponsor does not financially support them?**

A sponsor is required to care for the people they sponsor for the duration of their promise regardless of whether a sponsorship relationship breaks down. If, however, a sponsorship relationship breaks down and a sponsor does not financially support the sponsored person, then the sponsored person can apply for social assistance. A sponsored person always has to disclose that they have been sponsored.

If a sponsored person goes on social assistance during the period of their sponsor's promise, then the government will ask the sponsor to pay back all money the sponsored person receives from social assistance.

The government will notify a sponsor if a sponsored person is seeking social assistance. The government may hold off on notifying a sponsor that someone is seeking social assistance in certain limited circumstances, namely if the sponsor was abusive, is eligible for social assistance themselves, is incarcerated, or their whereabouts are unknown. In any case, however, the debt will be kept on record and cannot be erased.

## **What are a sponsored person's rights if their relationship with their sponsor breaks down due to violence or abuse?**

If a sponsored person has left their sponsor due to abuse and applies for Ontario Works because they are unable to financially support themselves, they must indicate on their application that:

- a)** they were sponsored, and;
- b)** they have been subjected to physical, emotional, or verbal abuse. The applicant will be asked to provide proof of the violence or abuse such as a police report or a letter from a third party (e.g. a lawyer, community worker, or health care professional).

If the sponsored person tells the Ontario Works office that they were in an abusive relationship, the government WILL NOT inform the sponsor that they have broken their sponsorship promise and are in debt.

Every dollar a sponsored person receives during the sponsorship undertaking is considered a debt of the sponsor. The sponsor will be registered with immigration as

failing to fulfill their promise to provide for the basic needs of the people they sponsored and will be barred from future sponsorships until any debt is paid off.

It is important to know, however, that a sponsor can contact the Ministry of Community and Social Services (responsible for social assistance) to ask whether they are in debt and the Ministry is obligated to answer truthfully.

If there has been abuse, the Ministry of Community and Social Services will wait to collect their debt. The length of time the Ministry waits to collect the debt depends on whether there is evidence provided to the sponsored person's social assistance worker to suggest there is an ongoing risk of violence or abuse. It is therefore important that a sponsored person express any concerns they may have for their safety to their social assistance worker, both when they first apply, annually while receiving social assistance, and when they stop receiving social assistance.

A sponsored person has the right to seek financial support from their sponsor by applying for spousal or child support in Family Court. Ontario Works, however, should not force a sponsored person to apply for support if they were a victim of abuse.

### **Can a sponsored person lose their permanent residence?**

The risk of losing permanent residence because of a sponsorship breakdown is dependent on whether the sponsored person was given Conditional Permanent Residence. Conditional Permanent Residence only occurs in cases of Spousal, Common-Law or Conjugal Partner Sponsorships.

If a spouse, common-law or conjugal partner was sponsored before October 20<sup>th</sup>, 2012, they cannot lose their permanent residence status due to a sponsorship breakdown.

If an individual was sponsored as a spouse, common-law or conjugal partner after October 2012, they could lose their permanent residence in the first two years after receiving it in limited circumstances.

If a spousal, common-law or conjugal partner sponsorship breaks down and the sponsored person has been a permanent resident for less than two years, they should contact a lawyer immediately to get information about whether or not they are at risk of losing their permanent residency.

If an individual with Conditional Permanent Residency was a victim of abuse/neglect or their sponsor has died, they must show evidence of this to Citizenship and Immigration Canada in order to protect their status.

**NOTE:** This area of law is complicated, it is best that you consult a lawyer with questions you may have about your specific situation. Lawyers cannot notify immigration of the details of your situation without your permission.