SPouse and Partner Immigration to Canada

History and Current Issues in Canadian Immigration Policy

By
Andréanne Thibault
Camille Bonenfant
Salima Djerroud
Linda Guerry
Alla Lebedeva
Rainer Ricardo
Victor Alexandre Reyes Bruneau

Under the supervision of
Anne-Marie D’Aoust, PhD
Professeure régulière
Département de science politique
Université du Québec à Montréal

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SPOUSE AND PARTNER IMMIGRATION TO CANADA: History and Current Issues in Canadian Immigration Policy

Research Report

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Centre de recherche en immigration, ethnicité et citoyenneté (CRIEC)
Département de sociologie, UQAM
C.P. 8888, Succursale Centre-ville
Montréal (Québec) H3C 3P8
Téléphone : (514) 987-3000 poste 3318
Télécopieur : (514) 987-4638
Courriel : criec@uqam.ca
Page web : www.criec.uqam.ca

Editing
Andréeanne Thibault
Camille Ranger
Victor Alexandre Reyes Bruneau
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The study

This summary report is part of a study on spouse and partner immigration through the regulation of family reunification in Canada, the US, the UK, France and the Netherlands. The study covers the decade from 1995 to 2015, a period of more intense political and media scrutiny of immigration and more stringent immigration restrictions.

The project examines two key issues:

- What underlies current concerns about spousal immigration through family reunification, and what effect do these concerns have on immigration policies?

- How can the apparent incompatibility between the rationale behind bureaucratic regulations be reconciled with the assessment of emotions (such as love) by government officers?

More specifically, this project is intended to provide a comparative empirical analysis and theoretical explanations of the subject. As the first transatlantic study of regulations governing immigration marriage, this investigation aims to:

- Summarize and analyze the legislation, policies and institutions developed by five nations to regulate spousal immigration through the family reunification process;

- Document and explain how Canada, the US, the UK, France, and the Netherlands view immigration marriage as a security issue requiring action;

- Analyze and compare the impact of institutional regulations and modifications respecting immigrant mobility, admission and access to citizenship. The effect of laws and policies in the above five countries on same-sex and queer couples is also examined;

- Explain how the fact that marriage has become a political and a security issue derails or reinforces the theorization of rights and citizenship in Western liberal democracies.
Background

Although Canada was an immigration destination from as early as the colonial period, it did not enact its first immigration laws until the 19th century. After the British North America Act (1867)\(^1\) granted the country dominion status and a constitution, immigration was encouraged to increase Canada’s population and develop the economy, especially the agriculture sector\(^2\). At that time, shipping and railway companies, as well as other private enterprises, played an important part in immigration policy. By the 1880s, racial theories developed in the 19th century had contributed to the exclusion of some immigrants, notably through the Chinese Immigration Act of 1885\(^3\) (amended several times and then tightened in 1923). In the period of massive immigration between 1896 and 1914, nearly three million immigrants entered Canada.

In the early 1900s, as the Western world began regulating immigration flows, immigrants clearly became a focus of public policy. Underpinning these policies was the concept of selecting and sorting "good immigrants" from "the undesirables," a process aimed at excluding those considered likely to become a burden to the State. The Immigration Acts of 1906\(^4\) and 1910\(^5\) marked the government’s tightening of control over immigration through selective immigration policies. The executive branch selected who would be allowed to enter the country and created categories of unauthorized persons. The selection process was also implemented in the country of departure.

World War I (1914-1918) made it possible to reinforce immigration selection and controls, while, in contrast, the booming economy and labour needs in the mid-1920s fostered openness to immigrants, especially the relatives (i.e. children and unmarried siblings) of certain Canadian residents. The Depression in the 1930s closed the doors to immigration and ushered in government xenophobia, racism and anti-Semitism. In the 1940s and 1950s, immigration from Europe and the United States was promoted although restrictions in relation to racialized immigrants were continued, and considerable discretionary power was maintained.

At the end of World War II, family reunification was encouraged for demographic and economic reasons although restrictions continued to apply as to country of origin. The Immigration Act\(^6\) of 1952 codified existing practices and maintained the discretionary power of the executive and officials with regard to selection, admission and deportation. The right to family reunification was extended to relatives outside the nuclear family, leading to increased immigration from Eastern Europe and developing countries, which in turn triggered certain objections. In March 1959, the government placed limits on admission of family members, particularly to curb the reunification of

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Italian families. In the wake of protests against this policy, it subsequently revoked this decision.

In the 1960s, political and economic developments led to significant changes. In 1962, criteria respecting race and nationality were abolished, and selection was focused instead on educational, professional and technical qualifications. However, sponsorship restrictions were maintained for immigrants from African and Asian countries. The following two categories of immigrants were created: independent and sponsored. With the introduction of immigration regulations in 1967, any immigrant could be admitted under a points system based on education, skills and family ties. The "sponsored" category applied only to family members deemed "dependent" (i.e. exempt from the points system), and a third category, "nominated," was added to designate family members subject to the points system but benefiting from extra points due to their family ties.

After Canada adopted multiculturalism as an official policy in 1971, thereby making population diversity a key component of Canadian identity, a new law, passed by broad consensus in 1976, replaced the nominated class with the assisted relatives class, introduced the refugee class and maintained the family class. Family reunification, a principle advocated by liberal regimes, was gaining traction and acceptance, as evidenced in the preamble of the 1976 Immigration Act affirming the priority granted to family immigration. The Act organized immigration according to annual plans stipulating numbers distributed among three categories: independent, family (sponsored/assisted) and humanitarian (refugees).

In the mid-1970s, the proportion of independent immigrants steadily declined while that of family class immigrants grew. Conservatives again challenged the assisted relatives class but bowed to pressures from ethnic and other organizations advocating for a concept of family that was broader than the Western view of the nuclear unit. Although the 1976 Act represented a sweeping change in Canadian immigration policy, the executive branch still exercised considerable power and was able to adjust selection conditions according to political and economic conditions, which resulted in a decline in admission opportunities for independent immigrants in the 1980s. As Canada strongly restricted independent immigration in response to the economic crisis in the early 1980s, the percentage of family class immigrants climbed from 35.6% in 1980 to nearly 50% in 1984, while independent immigrants accounted for less than 30% of new arrivals.

Following a 1988 regulation allowing sponsorship of unmarried children regardless of age (whereas only children under age 21 had formerly been eligible), in 1992, sponsorship of children was restricted to those under age 19 or dependent children. As of the early 1990s, government policy largely rejected family-sponsored and refugee immigration, and the Conservative government began to limit family reunification (by way of amendments). Accordingly, a 1993 regulation abolished the "assisted relative" class and reduced the number of points attributed to immigrants in this category. Family reunification was no longer considered a priority. The Liberal Party would continue this policy, with the result that the independent class would account for
more than 50% of immigrants in 1995. The points system instituted for the selection of immigrants began to be superseded by the “human capital model,” which highlighted qualifications and employment potential in Canada.

In 2002, the Immigration and Refugee Protection Act (IRPA)\(^7\) replaced the Act of 1976 and today remains the centerpiece of immigration legislation in Canada. With family reunification again falling out of favour, fiancées are no longer admitted under the family class, yet common-law and conjugal partners, including same-sex partners, are now admissible. In August 2011, the Minister of Immigration explicitly stated that measures would be taken to counter marriage fraud, considered from a security standpoint as an obstacle to the “integrity of Canada’s citizenship and immigration programs.” Restrictions were enacted as of 2012 and a campaign against marriage fraud was launched in 2013. Since the Conservative party came to power, it has emphasized the security aspect of sponsorship and family reunification. A press review reveals that immigration marriage is now viewed increasingly negatively and perceived as a national security issue since it is being linked to fraud.

1- Canadian immigration policy and family reunification from the 19th century to the 1990s

Canadian immigration policy is characterized by a tap-on, tap-off approach (according to economic cycles) and strong control by the executive branch. Family immigration is not new in Canada, and despite the ups and downs reported in the literature, selection criteria based on family connections to Canadian residents date back to the early 20th century. After World War II, immigration through family reunification became an immigration category separate from economic immigration. Shortly after race-based selection criteria were abolished, the points system was adopted in 1967 to encourage the immigration of skilled labour in a context of growing numbers of unskilled new immigrants. Given that Canada focuses on the economic contribution of immigration, family class immigration is regularly restricted.

A- Canada’s first immigration laws (1830-1900)

Taxes on immigrants

In 1832 (Kelley and Trebilcock, 2010), Lower Canada levied a tax on immigrants\(^8\) to fund various immigration-related services. The tax was regularly increased, and this trend led to the adoption in September 1841 of the Act to create a Fund for defraying the expense of enabling Indigent Emigrants to proceed to their place of destination, and of supporting them until they can procure employment. Under this Act, amended regularly thereafter, immigrants were to support their family members, who were required to be registered on a list. In 1848, the law stated the following:

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\(^7\) Immigration and Refugee Protection Act, SC 2001, c 27.

\(^8\) The tax system would later be used to limit Chinese immigration.
“And be it enacted, That in addition to the particulars heretofore required in the list of passengers to be delivered on each voyage by the Master of any ship carrying passengers and arriving in either of the Ports of Quebec or Montreal, to the Collector or Chief Officer of Her Majesty’s Customs at such Port, the Master shall report in writing to the said Collector or Chief Officer, the name and age of all Passengers embarked on board of such ship on such voyage, and shall designate all such passengers as shall be lunatic, idiotic, deaf and dumb, blind or infirm, stating also whether they are accompanied by relatives likely to be able to support them; and shall also designate all such passengers as shall be children not members of any Emigrant family on board, or widows having families, with names and ages of their children; and in case any Master shall omit or neglect to report the particulars herein specified or shall make any false report in any of such particulars, he shall incur a penalty of five pounds [...]”

The Act of 1869

After Canada became a dominion with a constitution (1867), the Immigration Act (Act Respecting Immigration and Immigrants of 1869) and subsequent amendments established immigration offices. Immigration agents were appointment in departure countries and in the provinces to assist immigrants. The Act also addressed the safety of immigrants on board ships and established the following categories for those barred entry to Canada, i.e. the “idiotic, deaf or dumb, blind or infirm,” for whom ship captains could be fined. Immigration agents were authorized to send these individuals back to their port of departure.

Race-based laws

Between 1881 and 1884, 15,000 Chinese immigrants were recruited to work on the construction of the Canadian Pacific Railway in British Columbia (Ember, Ember et Skoggard, 2005). In 1885, as racist sentiments took hold, the Canadian government gave way to pressure from groups in that province that were hostile to the Chinese and established a royal commission to examine the possibility of limiting Chinese immigration. The Act to restrict and regulate Chinese immigration into Canada, adopted in 1885, imposed a duty of $50 on each member of a Chinese family entering Canada. Only diplomats, government representatives, scientists, students and tourists were exempted from the fee. The law also denied entry to Chinese immigrants with leprosy or an infectious disease, as well as any Chinese woman known to be a prostitute (Kelley and Trebilcock, 2010).

Anti-Chinese immigration laws were also adopted by each of the provinces. Despite these restrictive measures, the slowdown in Chinese immigration to Canada was only temporary. Economic growth in British Columbia triggered a demand for labour, resulting in floods of Chinese immigrants in the 1890s. In 1902, the government of Prime Minister Wilfrid Laurier, responding to calls for stricter regulations on Chinese immigrants, raised the entrance duty to $100 per person (Tan and Roy, 1985). When the

9 Our emphasis.
10 An Act to make better provision with respect to Emigrants, and for defraying the expenses of supporting Indigent Emigrants, and of forwarding them to their place of destination and to amend the Act therein mentioned, S Prov C 1848 (3 Vict), c 1.
11 An Act respecting Immigration and Immigrants, (1869) S.C. 32-33 Victoria, c. 10.
expected results failed to materialize, in 1903 the entrance duty was raised to $500, the equivalent of a worker’s average annual salary. This measure accomplished its intended impact on Chinese immigration. Faced with a labour shortage, some Canadian employers resorted to advancing the sum to Chinese employees to persuade them to work for them (Tan and Roy, 1985). In 1923, the *Act respecting Chinese immigration (or the Chinese Immigration Act)*\(^\text{12}\) barred entry to persons identified as Chinese. Chinese immigrants already in Canada were required to register and were authorized to travel to and from China, but not to bring in family members. Although the Act of 1923 was abolished in 1947, family reunification for Chinese immigrants, as for other immigrants from Asia and Africa, continued to be limited until 1967. This policy stood in stark contrast to the rules for Europeans.

**B- Immigration policy in the first half of the 20th century: Strengthening of Government authority over an increasingly selective process**

As the Western world began regulating the tide of immigration in the early 1900s, immigrants clearly became a focus of public policy. Underpinning these policies was the concept of selecting and sorting "good immigrants" from "the undesirables", a process aimed at excluding those considered likely to become a burden to the State. In the period of massive immigration between 1896 and 1914, nearly three million immigrants entered Canada (see Graphs 1 and 2, page 10). Despite the Canadian government’s propaganda efforts to attract agriculturalists from the UK and the US, nearly 50% of immigrants settled in cities to work in industry. In 1914, British immigrants accounted for 38% of new arrivals, while 34% came from the US and 25% from Europe (mainly the centre, east and south) (Kelley and Trebilcock, 2010).

**The Acts of 1906 and 1910**

*The Immigration Act of 1906*\(^\text{13}\) *(or an Act respecting Immigration and Immigrants)* introduced a selective immigration policy, broadening categories of ineligible immigrants, formalizing a deportation process and granting the government discretionary powers over admission procedures and decisions. Developed under the direction of Frank Oliver (Minister of the Interior from 1905 to 1911), the new law fostered policies focused on immigrants’ cultural and ethnic origins rather than their economic potential (Hollihan, 1992). Denial of entry to sick immigrants, a concept already included in the first immigration laws, was maintained. Although the Act tightened restrictions by reducing the number of immigration categories, it nonetheless extended eligibility to immigrants with a mental illness, epilepsy or physical disability if they belonged to an immigrant family capable of providing sufficient support. Despite implementation of a more selective immigration policy, immigrants from so-called undesirable countries such as Italy, Ukraine, Poland and Russia arrived in Canada in growing numbers. At that time, labour demands in industrial sectors required unskilled workers from non-preferred countries (Hollihan, 1992).

\(^{12}\) This law also applied to citizens of Hong Kong who were citizens of the United Kingdom.

\(^{13}\) *An Act Respecting Immigration and Immigrants, 1906*, S.C. 6 Edward VII, c 19.
Building on the previous law, the *Immigration Act of 1910*\(^\text{14}\) (or an *Act respecting Immigration*) gave Cabinet almost full power to issue orders-in-council to regulate the flow, ethnic origin and occupational qualifications of immigrants. Cabinet could stipulate exclusionary and deportation criteria without interference from the government’s legislative and judicial arms (Daniel, 2003). Whereas the Act of 1906 did not bar entry to individuals with a mental illness as long as a family member could support them, this option was withdrawn in 1910 and reserved for the “dumb, blind, or otherwise physically defective” (an *Act respecting Immigration* of 1910, ch. 27, 208) Undesirable immigrants included prostitutes, pimps, vagrants and inmates of jails, hospitals and insane asylums (Kelley and Trebilcock, 2010). The Act of 1910 introduced the concept of status linked to length of residence (obtained after three years of residence in Canada), which protected immigrants from deportation. Women outside the country who were married to naturalized immigrants were not considered Canadian and were required to meet the legal requirements to be admitted to Canada (Girard, 2013).

**An Act respecting British Nationality, Naturalization and Aliens**

Canada adopted its first Naturalization Act in 1881. This law was fairly open as it did not require any language or literacy test. After living in Canada for three years, an immigrant could submit an application to a court and receive a certificate of naturalization if he or she were deemed to be of good character. When a man was naturalized as a British subject in Canada (which granted no other rights in the rest of the Empire), his wife and children automatically received the same status. Mirroring current legislation in the UK (and in most other countries), this law granted wives the same nationality as their husbands, even if they were already British subjects in Canada (Girard, 2013). *An Act respecting British Nationality, Naturalization and Aliens of 1914* introduced more stringent requirements than the Act of 1881; although naturalized residents of Canada were granted a status recognized throughout the British Empire, dominions were allowed to continue discriminating against non-white British subjects on the basis of race.

To obtain a certificate of naturalization, residents were required to live in Canada for five years before submitting an application. Candidates were judged on their moral character and had to have adequate knowledge of English or French. Naturalization was not considered a right; the decision was left to the good will of the government, which had discretionary powers to determine which permanent residents would benefit. Any person who received a certificate of naturalization would be entitled to the same rights, privileges and responsibilities as British subjects in Canada, including the right to vote in federal elections and protection from deportation. The Act of 1914 retained the stipulation that married women take their husband’s nationality (and therefore lose their own).

In the US, in a climate of xenophobia and the victory of women’s suffrage, the argument that naturalization through marriage was too easy for foreign women to acquire was put forward to disconnect marriage and the acquisition of nationality. The same

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argument was made in Canada by some women’s groups. *An Act to amend the Immigration Act* of 1919\(^\text{15}\) authorized immigrant wives to request naturalization independently, while the an other one imposed new stipulations for the spouses of naturalized men who wished to exercise their right to vote. Both provisions were quickly withdrawn. In the Act of 1931, foreign wives were required to declare (within six months) whether they wished to be become British subjects or retain their foreign nationality. Marriage and nationality were subsequently decoupled in *an Act respecting Citizenship, Nationality, Naturalization and Status of Aliens (the Canadian Citizenship Act of 1947)*\(^\text{16}\) (Girard, 2013).

### The 1920s

Major changes occurred after the Department of Immigration and Colonization was established in 1917. The law was amended in 1919, broadening the list of undesirable immigrants and creating a conflict between needs arising from economic interests and immigration policies aimed at preserving the British character of the Canadian population. The 1919 *Act to Amend the Immigration Act* expanded the categories of prohibited immigrants and the restricted category of political dissidents. The executive branch was empowered to prohibit or limit “in number […] immigrants belonging to any nationality or race of […] immigrants of any specified class or occupation, by reason of any economic, industrial or other condition temporarily existing in Canada […]” (an Act to Amend the Immigration Act, 97). Any immigrant considered unsuitable could also be excluded, and those likely to become public burdens would not be admitted (Anderson, 2012). Exceptions would be made for those immigrating under the family class. Eligible individuals would be able to bring to Canada the following family members: father or grandfather over age 55, spouse, grandmother, and any widowed or unmarried daughter who would have been otherwise excluded due to illiteracy.

The required period of residence to become a permanent resident was increased to five years, and any inadmissible person could be deported during that period, including those who had become a public burden. In June 1919, an order-in-council denied entry to Doukhobors, Mennonites and Hutterites (although the order would be abolished in 1922 for the latter two groups). Policies in the 1920s therefore considered racial issues (such as the *Chinese Immigration Act*\(^\text{17}\) of 1923) as well as the economic and labour needs of various industries (Daniel, 2003).

In 1920, Canadian women’s organizations (Cohen and Guerry, 2013) won the establishment of a women’s division within the Department of Immigration and Colonization (Mancuso, 2005). The division’s main purpose was to fill positions for women in certain sectors, such as the gaping need for female domestics, and to raise or preserve the morals of immigrant women, who were preferably to be British. As preference for British immigrants persisted, *A Bill to Make Better Provisions for further...* 

\(^{15}\) *An Act to Amend the Immigration Act, 1919*, S.C. 9-10 George V, c. 25.

\(^{16}\) *An Act respecting Citizenship, Nationality, Naturalization and Status of Aliens, 1947*, S.C. 10 George VI, c 16.

British Settlement in His Majestys Oversea Dominions\(^\text{18}\) (or the Empire Settlement Act) of 1922 was established to attract immigrants from the Empire to meet labour shortages (Constantine, 1990).

The Depression and wartime: Years of closure

During the 1930s and wartime, immigration plummeted to almost nil (see Graphs 1 and 2 below).

Graph 1 Permanent Residents in Canada, 1860 to 2014

![Graph 1](https://example.com/graph1.png)

(Source: CIC, 2014a)

Graph 2 Permanent Residents in Canada (% of population), 1860 to 2014

![Graph 2](https://example.com/graph2.png)

(Source: CIC, 2014a)

Immigration offices in Europe and the US closed and medical examinations of immigrants became more stringent as a way to limit entry. The Department of Immigration and Colonization was dismantled and immigration became a branch of the Department of Mines and Resources (Haince, 2010).

In March 1931, the recently elected Conservative government led by Richard Bedford Bennett adopted an *Order-in-council* restricting immigration to agriculturalists with financial resources, wives and children of Canadian residents and British subjects and American citizens with sufficient means to provide for their own needs until they found employment (Petryshyn, 1974).

Deportations rose sharply in the 1930s (Roberts, 1988). During that period, in an effort to preserve the British character of the population, the Canadian government, under the influence of strong anti-Semitic sentiments in society, opposed entry to Jewish refugees fleeing the Nazi regime. Canada admitted only 5,000 refugees during the war, while the UK welcomed nearly 70,000, and the US, more than 200,000 (Abella and Troper, 2012). After many unsuccessful attempts, community organizations finally succeeded in swaying government policy and Jewish refugees were admitted as of 1948.

C. The 1950s: Family reunification of selected immigrants

The postwar period is central to understanding the foundation of the current immigration system (Haince, 2010). Preference for immigration from the UK, the US and certain European countries continued, while immigration from Asia and Africa was restricted (Haince, 2010).

Around 1946, public opinion and some politicians opposed expanding immigration, but labour needs were considerable. Although Prime Minister William Lyon Mackenzie King was reluctant to increase immigration levels, two years after the end of the war he introduced immigration policies that reflected a compromise (Atkey, 1990). Pro-immigration lobbies and the agricultural, mining and forestry industries influenced the expansion of immigration so that labour needs could be met (Troper, 1993). The Prime Minister’s address on May 1, 1947 outlined the direction of the new immigration policy, while emphasizing the rationale behind its selective nature:

20 One year after the end of the war, a survey revealed that a majority of Canadians would rather grant entry to the recently defeated Germans than to Jews (Troper, 1993).
“The policy of the government is to foster the growth of the population of Canada by the encouragement of immigration. The government will seek by legislation, regulation and vigorous administration to ensure the careful selection and permanent settlement of such numbers of immigrants as can advantageously be absorbed in our national economy… With regard to the selection of immigrants, much has been said about discrimination. I wish to make quite clear that Canada is perfectly within her rights in selecting the persons whom we regard as desirable future citizens. It is not a “fundamental human right” of any alien to enter Canada. It is a privilege. It is a matter of domestic policy… There will, I am sure, be general agreement with the view that the people of Canada do not wish, as a result of mass immigration, to make a fundamental alteration in the character of our population. Large scale immigration from the Orient would change the fundamental composition of the Canadian population. Any considerable Oriental immigration would, moreover, be certain to give rise to social and economic problems of a character that might lead to serious difficulties in the field of international relations” (House of Commons, 1947: 2644-2646, cited in Triadafilopoulos, 2007, 1).

“It is of the utmost importance to relate immigration to absorptive capacity […]. The objective of the government is to secure whatever new population we can absorb, but not to exceed that number. The figure that represents our absorptive capacity will clearly vary from year to year in response to economic conditions. At the present stage, when Canada is returning to a normal situation after wartime disruption, it is impossible, with any degree of accuracy, to make forecasts as to our future power of absorption” (Dominion of Canada, 1947: 2645-2646, cited in Haince, 2010, 119).

In 1950, the Department of Citizenship and Immigration was established and a temporary immigration program was created to allow contract workers to come to Canada to work for an employer for a pre-determined period.

The Immigration Act of 1952

An Act respecting Immigration21 (or the Immigration Act of 1952) codified existing practices and maintained the discretionary power of the executive branch and government officials with regard to selection, admission and deportation. The federal cabinet was authorized to prohibit immigrants on the basis of nationality, ethnicity, occupation, peculiar customs, inability to adapt to the climate and probable inability to become assimilated. Regarding deportations, Section 37 states that “Where a deportation order is made against the head of a family, all dependent members of the family may be included in such order and deported under it.” The law maintained a list of preferred countries and instituted immigration appeal boards. It also facilitated family reunification and expansion beyond the nuclear family. From 1952 to 1957, as admissions increased (1.7 million from 1946 to 1957) (See Graphs 1 and 2 on page 10), the Liberal government’s immigration policy, especially the granting of absolute power to a single Minister, was attacked by legal experts defending the rights of immigrants and by the Conservative opposition in Parliament (Daniel, 2003).

In 1956, a regulation22 was issued to define categories of admissible immigrants. For the first time, the list of family members eligible for family reunification was expanded to include relatives of South and Central American citizens. All Canadian

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22 Immigration Regulations : Modifications, SOR/1956-171, art. 2.
citizens or permanent residents, regardless of country of origin, would be allowed to sponsor a parent, grandparent, spouse, fiancée, or unmarried son or daughter under the age of 21 (Knowles, 2007).

After the defeat of the Liberal Party in the 1957 general election, efforts to establish a long-term immigration program clashed with the traditional tap-on, tap-off practices, which limited the horizon to the very short term. Meanwhile, sponsorship applications proliferated, particularly those filed by applicants from Eastern and Southern Europe (Italy) (Daniel, 2003). The issue of “non-selected” family immigration led the Conservative government to adopt an order-in-council in 1959 restricting automatic admission of non-dependent family members. Eligible family members would no longer include married sons and daughters and their spouses and children, or brothers and sisters. This provision caused such an uproar in the press and in Parliament that it was rescinded barely a month after coming into effect (Knowles, 2007).

D- The watershed of the 1960s: Selection of skilled labour and increased control over the sponsorship procedure

1962 immigration regulations

Political and economic developments led to significant changes in the 1960s. In 1962, race and nationality criteria were revoked in favour of educational, occupational and skills qualifications. However, sponsorship restrictions were maintained for immigrants from some African and Asian nations.

The White Paper on Immigration and the regulations of 1967

Commissioned by Prime Minister Lester B. Pearson’s Liberal government, the White Paper on Immigration was intended to review immigration legislation and make recommendations for reorganization. This 42-page document, which was not considered extensive enough by most observers, was tabled in Parliament in 1966 by Jean Marchand, then minister responsible for the newly created Department of Manpower and Immigration (Kelley and Trebilcock, 2010). The report maintained that Canada should focus on the recruitment of qualified immigrants and tighten control over the sponsorship system.

The proposed system would allow Canadian citizens to sponsor a wider range of dependent and non-dependent relatives, but landed immigrants would be permitted to sponsor only their dependents. Non-dependent relatives of Canadian citizens were required to be literate in their own language, at a minimum, and have some educational or occupational qualifications. The White Paper drew criticism from some ethnic, union and religious groups that lobbied for expansion of the sponsored class (Troper, 1993).
The debate surrounding the *White Paper* led to the adoption of the 1967\(^{23}\) order-in-council setting out a points system for immigration. The sponsored class would include only family members, henceforth called “dependents” (i.e. those exempt from the points system). Another category, called “nominated,” was introduced to designate other family members required to use the points system but benefiting from additional points by virtue of their family ties. The purpose of the regulations was to control family immigration by a procedure wherein an individual, called a sponsor, initiates an application on behalf of another individual, called the sponsored dependent, for entry into Canada. Dependent family members were defined as follows:

- A husband or wife, or a fiancé or fiancée and accompanying unmarried children under the age of 21;
- An unmarried son or daughter under the age of 21;
- A father, mother, grandfather and grandmother age 60 or older, or under 60 years of age if widowed or incapable of gainful employment, and any accompanying immediate family of the foregoing;
- Any brother, sister, nephew, niece, grandson, or granddaughter who is an orphan and under 18 years of age, and any son or daughter of that person who was adopted before the age of 18 and who is under 21 years of age and unmarried;
- Any child under the age of 13 years whom the sponsor intends to adopt;
- Where the sponsor has none of the foregoing persons to sponsor, or has already sponsored such persons, one person from among his or her next closest relatives.\(^{24}\)

As for nominated relatives, Section 33(1) of the order-in-council indicates that legal residents of Canada may nominate for admission one of the following persons as well as one of his or her immediate family members: son or daughter age 21 years or older; married son or daughter under 21 years of age; brother or sister, parents or grandparents under 60 years of age, nephew and niece, uncle and aunt, and grandson and granddaughter. Just as for independent applicants, the points system is used to determine the eligibility of nominated family members, but their admissibility is judged on only five of the nine criteria provided. The nominating sponsor undertakes to provide for a period of five years any necessary care and maintenance in regard to the nominated family member and his or her immediate family.

The points system adopted by order-in-council was developed to equip immigration officials with “objective” assessment criteria (Daniel, 2003). This system for assessing independent applicants and their immediate family members for entry into Canada is still in use today. Points, up to a maximum of 100, are awarded to candidates according to level of education, language proficiency, and occupational sector. Only applicants with the minimum number of points required (50) are admitted (Daniel, 2003). It should be noted, however, that considerable discretionary power was maintained in the evaluation of applications. A candidate could still be refused even if he or she accrued the necessary points (Haince, 2010). In addition, no specific provision was made as to the demand for


\(^{24}\) *Ibid,* art. 31(h).
occupations or skills, which made it difficult for immigration officers to assess applications (Green and Green, 2004).

The Act of 1976

After Canada adopted multiculturalism as an official policy in 1971, thereby making population diversity a key component of Canadian identity, a new law, passed by broad consensus in 1976 (and further to public debate sparked by the Green Paper), introduced major changes to Canadian immigration policy. Although the family class was maintained, the nominated class was changed to the assisted relatives class and the refugee class was introduced.

Family reunification, a principle advocated by liberal regimes, was gaining traction and acceptance, as evidenced in the preamble of the 1976 Immigration Act affirming the priority granted to family immigration. The Act organized immigration according to annual plans stipulating numbers and distributed among three categories: independent, family class (sponsored/assisted) and humanitarian (refugees). In the mid-1970s, the percentage of independent immigrants steadily declined while that of family class immigrants grew. Conservatives again challenged the assisted relatives class but bowed to pressures from ethnic and other organizations advocating for a concept of the family that was broader than the Western view of the nuclear unit.

Although the 1976 Act (or an Act respecting immigration to Canada)\(^{25}\) represented a sweeping change in Canadian immigration policy, the executive branch still exercised considerable power and was able to adjust selection conditions according to political and economic conditions, which led to a decline in admission opportunities for independent immigrants in the 1980s. As Canada strongly restricted independent immigration in response to the economic crisis of the early 1980s, the percentage of family class immigrants rose from 35.6% in 1980 to nearly 50% in 1984, while independent immigrants accounted for less than 30% of new arrivals (see Table 1, next page).

The Act permitted the executive branch to determine, through regulatory means, members of the family class who could be sponsored by a permanent resident or a Canadian citizen. Section 4 limited the members of this class to spouses, fiancées, unmarried children under the age of 21, parents and grandparents 60 years or older or under the age of 60 if these persons and their spouses were incapable of gainful employment or if widowed, brothers and sisters, nieces and nephews, unmarried orphaned grandchildren under 18 years of age, and children under the age of 13 whom the sponsor intended to adopt. Regarding fiancées, the Act provides that there should be no impediments to the marriage and that the marriage be performed within 90 days. There were also exceptions to these provisions. For example, persons without family class members to sponsor could sponsor another family member not mentioned in the regulations.

In addition, the sponsoring relative was expressly required to be 18 years of age or older. This provision was aimed at preventing foreign parents who have an unplanned birth in Canada from acquiring legal status via that child (Grey, 1984). A sponsor could initiate a sponsorship without being physically present in Canada but was required to have his or her legal residence there.

Since the concept of family was interpreted according the traditional Canadian view, some family relationships in other cultures risked not being recognized by Canadian authorities (Wydrzynski, 1983). By that time, the issue of marriage fraud had...
already become a cause for concern. Although not expressly prohibited by law, fake marriages were nonetheless considered to be contrary to the spirit and letter of the law (Wydrzynski, 1983). Evidence was the main challenge, since the burden of proof rested with the Immigration Appeal Board to demonstrate fraud in a context where Canadian marriages were presumed to be valid.

That is not to say that the presumption could not be disputed. Once the Board had solid evidence against a marriage, the burden of proof would then rest with the sponsor, who was required to produce further evidence of the validity of the marriage for his or her application to succeed. A marriage could be contracted for a number of reasons, which varied according to culture: love, social considerations, parental pressure, religion, and so forth (Grey, 1984). However, if immigration was the sole purpose of a marriage and the parties did not intend to live together, consent to such a relationship no longer falls within the definition of marriage.

The law did not yet provide for sponsorship of common-law or conjugal partners, only spouses or fiancéés (who were required to marry within 90 days of arrival) were considered. These provisions stood in contrast to the growing numbers of common-law unions in Canadian society, as well as the upsurge in divorce (Grey, 1984). Change was precipitated by public pressure and the publication of Walter Gherardi Robinson’s report of 1983, known as « A report to the Honorable Lloyd Axworthy, Minister of Employment and Immigration, on illegal migrants in Canada », W. G. Robinson’s report (Illegal Migrants in Canada) in 1983, which put forward a number of relevant recommendations.

For 10 years, political discussions had centered mainly on the refugee question. In 1976, acrimonious debates marked the end of a period of consensus (Daniel, 2003). Increasing international and internal conflicts caused many to flee their native countries and seek asylum. Between 1979 and 1987, Canada welcomed some 17,000 to 20,000 refugees a year, mainly from Indochina, Poland and Central America (Daniel, 2003). The 1976 Act established two classes of refugees, one corresponding to the definition set out in the United Nations Convention, and an expanded class that included individuals who did not fulfill the UN criteria but were experiencing the same level of danger as UN refugees. During this period, 75% of refugees admitted to Canada belonged to the latter class (Daniel, 2003). In 1987, the Mulroney government proposed a reform aimed at reducing the delay between asylum requests and subsequent decisions on refugee status (Haince, 2010). In 1989, Bill C-55 amended the Immigration Act of 1976 and established the Immigration and Refugee Board (IAB) and the Refugee Division (Haince, 2010).

E- Fiancée visas

The fiancée visa system, which was an option for 20 years, was governed by the Act of 1976 and abolished in 2002, shortly after adoption of the Immigration and Refugee Protection Regulations (IRPR) of 2001 (Belleau, 2003). This type of visa was issued to couples consisting of a Canadian citizen or permanent resident and a foreigner (Langevin and Belleau, 2000). The Act of 1976, which came into force in 1978, stated that:
“…where a member of the family class makes an application for an immigrant visa, a visa officer may issue an immigrant visa to the member, and the member’s accompanying dependants if […] (d) in the case of a fiancée, […] (i) the sponsor and the fiancée intend to reside together permanently after being married and have not become engaged primarily for the purpose of the fiancée gaining admission to Canada as a member of the family class[…]”26.

Between 1978 and 2002, fiancée visas were issued only for marriages that would be performed in Canada, on the condition that the marriage take place within 90 days of the fiancée’s arrival date (Langevin and Belleau, 2000). Failure to marry within the prescribed timeframe was considered to be indefensible (Gabriel v. Canada (Minister of Citizenship and Immigration)). In this respect, the Federal Court of Appeal ruled that “factors making it impossible for the marriage to [take] place should not be considered” (as cited in Langevin and Belleau, 2000, 152). It also stipulated that the “inability to marry [amounts] to failure to comply with the condition attached to the visa.” (Langevin and Belleau, 2000, 152)

Although the feminine form fiancée is used (which is not the case with other terms) in the Act of 1976, the provisions state that it denotes the masculine form as well. The following conditions were necessary for obtaining a fiancée visa:

- A Canadian citizen wishing to sponsor a fiancée must undertake to support her financially (Langevin and Belleau, 2000).

- The couple must persuade the administration that the intended marriage is one of good faith and is not aimed primarily at providing the bride with permanent resident status. The following information could be included in the application: “the length of the relationship, correspondence, telephone calls, gifts exchanged by the parties, the number of times they met, their ability to communicate with each other, their meetings with each other’s families, engagement celebrations and marriage plans, and the sincerity and credibility of the testimony not only of the engaged couple but also of their friends and family members.” (Langevin and Belleau, 2000, 151). In case of doubt, the agent would conduct a detailed check of the couple’s history.

- The marriage must be recognized by the provincial laws of the couple’s place of residence. (Langevin and Belleau, 2000).

The abolition of fiancée visas means that

“fiancés [were] no longer members of the family class but [could] nevertheless be considered common-law partners or conjugal partners if they [met] the requirements of the applicable definition including, being at the time of the application, in a marriage-like relationship” (Immigration and Refugee Board of Canada 2008, ch. 5, 15).

All applications submitted before the change introduced in 2002 were processed according to the former regulations. In fact,

“if a person referred to in paragraph (f) of the definition “member of the family class” in subsection 2(1) of the former Regulations made an application under those Regulations for a permanent resident visa before the day on which this section comes into force, the application is governed by the former Act.” (Immigration and Refugee Board of Canada 2008, ch. 6, 30).

26 Immigration and Refugee Protection Regulations, DORS/78-172, art. 6(1)d)(i).
2- Canadian immigration system reforms since the 1990s: Tighter restrictions and control over the family reunification process

A- Tighter restrictions in the 1990s

In the 1990s, immigrants were still selected according to a points system, but with a focus on the human capital model. In this model, an applicant’s employment experience in a specialized field weighed heavily in the admission decision (Green and Green, 2004). In May 1991, an occupational classification was established, listing the jobs where demand was greatest in each province. Immigrants who fit the bill would receive extra points and their application would receive priority in the application process (Green and Green, 1999). However, family and refugee immigration in the 1990s gradually engendered distrust and rejection in large urban centres like Vancouver, Toronto and Montreal (Haince, 2010). The visibility of the newcomers and their families and their burgeoning ethnic communities fuelled demands to restrain and control immigration. In 1992, the Conservative government passed Bill C-86 (or An Act to amend the Immigration Act and other Acts in consequence thereof) to reinforce immigration control. Asylum seekers were required to be fingerprinted, detention procedures became more stringent and deportations were carried out more swiftly.

Although these measures ushered in increasingly repressive regulations (Haince, 2010), the Minister of Immigration announced in 2000 that immigration levels would be raised to 300,000 admissions annually. Immigrants were admitted from a greater number of developing countries. And while European immigrants accounted for more than 25% of admissions in the 1980s because of the influx of Polish refugees, these levels fell to less than 20% in 1992 and continued to plummet. More than half the new arrivals would come from Asia, especially Hong Kong, the Philippines, India, China and Taiwan. Immigration from Africa and the Middle East increased steadily as well (Daniel, 2003).

B- New law passed in 2002

The events of September 11, 2001, and the ensuing fight against terrorism led to the tightening of immigration policy, the closing of borders (U.S. – Canada Smart Border/30 Point Action Plan Update) and the criminalization of immigrants. A new law that had been in development since 1996 replaced the Act of 1976, which itself had been frequently amended. The IRPA that entered into force in 2001 still continues to be the centerpiece of immigration legislation in Canada. The IRPR supplements the Act by setting out the technical features of the new immigration policy.

Section 12 of the IRPA lists the members comprising the family class: “A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident”. It is therefore through the IRPA that common-

27 An Act to amend the Immigration Act and other Acts in consequence thereof, 1992, S.C. 40-41 Elizabeth II.
law and conjugal partners, including those in same-sex arrangements, would become legally eligible for family reunification. This provision remains unchanged to this day. Governments would turn to the IRPR in following years to establish the criteria applicable to family reunification.

Shortly after being elected in 2006, the Conservative Party, which had made the economy a cornerstone of its program, announced its intention to make changes to Canada’s immigration policy:

“It is imperative that Canada’s immigration system works in the best interests of newcomers, of our economy and all Canadians. We need to focus on attracting individuals with the relevant skills to help fill current and future labour shortages in regions of the country, to help grow our economy and spur job creation. And we need to ensure they can participate fully in our economy and society upon arrival. […] That is why the Government of Canada is making transformational changes to our immigration system, moving toward a fast and flexible system that attracts the talented and entrepreneurial individuals our economy needs (CIC, 2015a).”

The Budget Implementation Act 2008 (Bill C-50)28 dramatically changed the rules of immigration, substantially modifying the immigration system, and, according to some sources, imperiling the primacy of law over arbitrary action (Ligue des droits et libertés [Quebec civil liberties association], 2008). The amendments to the IRPA gave Citizenship and Immigration Canada discretionary power, as of 2008, to refuse an immigration application even if the applicant fulfills the program criteria (Ligue des droits et libertés, 2008).

The second important feature of the 2008 reform is the increase in the Minister’s power, henceforth enabling him or her to issue instructions on the processing of applications to ensure that it is conducted in a manner that “best support[s] the attainment of the immigration goals established by the Government of Canada”.29 Applications would likely be processed according to a priority favouring skilled workers over other types of applicants, such as those with fewer qualifications (Haince, 2010), or family class applicants. Applications could be refused even if the applicant fulfilled all the criteria. Furthermore, not all applications were likely to be analyzed. Several provisions state that the immigration officer “may” examine an application, but is not formally required to do so. As a result, no decision would be issued, and applicants would be left with no opportunity to appeal (Haince, 2010).

To accelerate the process for selected immigrants, the government opened a Case Processing Centre (CPC) in Sydney, Nova Scotia. The office was responsible for priority processing applications in the skilled workers category only (Haince, 2010). The new measures and means implemented reflected the government’s emphasis on putting in place an immigration system that would prioritize immigrants considered to be “useful” to the country. The tightening of immigration policy led to a number of violations of

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28 Bill C-50, « An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget », (2008) C.C. 56-57 Elizabeth II.
29 Ibid, art. 87.3(2).
basic rights such as detention (in a growing number of detention sites)\textsuperscript{30} and restrictions on freedoms and family reunification rights. While the proportion of economic immigrants grew since 2008, numbers in the refugee class shrunk (see Graph 3 and Table 2 below).

As well, the number of temporary foreign workers (see Box 1 below) has risen, while family class immigrants and their acquisition of permanent residency have been increasingly restricted.

\textbf{Graph 3 – Permanent residents by Category, 1990 to 2014}

![Graph 3](Reference: CIC 2014e)

\textbf{Table 2 – Permanent residents by category (number and %) in 2012}

<table>
<thead>
<tr>
<th>Category</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family class</td>
<td>27,541</td>
<td>37,467</td>
</tr>
<tr>
<td>Economic immigrants</td>
<td>82,765</td>
<td>78,054</td>
</tr>
<tr>
<td>Refugees</td>
<td>11,540</td>
<td>11,554</td>
</tr>
<tr>
<td>Other immigrants</td>
<td>4,606</td>
<td>4,355</td>
</tr>
<tr>
<td>Category not stated</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>126,457</strong></td>
<td><strong>131,430</strong></td>
</tr>
</tbody>
</table>

(Reference: CIC 2012h)

\textsuperscript{30} To find out more on this subject, please visit Global Detention Project « Canada »: http://www.globaldetentionproject.org/countries/americas/canada/introduction.html.
Sidebar 1 – Temporary and student immigrants in 2012

There were 300,000 admissions (including 100,000 students) in 2012. Migrant workers were comprised of 143,000 men and 70,000 women, working under the following programs:

- International mobility program: 137,000 (NAFTA, various agreements)
- Temporary foreign worker program: 83,000 in 2013.

This program’s categories of occupations are as follows:

* Highly skilled, about 27,000;

* Lower skilled: -live-in caregivers, about 4,000; -Seasonal agricultural workers, about 25,000 (SAWP agreements with Mexico and Jamaica since 1966); -Other lower-skilled programs (TFWP-LSO) (agriculture, food service, construction and mining), about 25,000.

(Reference: CIC 2012h)

Since the Conservative Party’s accession to power, fraud has been a crucial issue, becoming the focus of a new law passed in June 2011 initially entitled the Cracking Down on Crooked Consultants Act. The purpose of the Act was to regulate third-party activities (immigration consultants) in the immigration process (CIC, 2011a). Bill C-31, the Protecting Canada’s Immigration System Act, was introduced in 2012 (CIC, 2012d).

In fall 2010, the Conservative government took a special interest in marriages of convenience. Jason Kenney, then Minister of Citizenship and Immigration, held a series of town halls across Canada on this topic. During these forums, he regularly stated that the current system was not working and that major reforms would be coming to combat immigrant fraud through marriages of convenience. An online survey was posted to ask respondents whether they thought that marriages of convenience were a problem, and, if so, how they should be dealt with (Meurrens, 2011).

A new regulation replaced section 4 of the IRPR respecting marriages of convenience. This amendment introduces the concept of “bad faith,” which had not until then been included in the Act. The amendment reads as follows:

“Bad faith 4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or (b) is not genuine” (IRPR, 8) (CIC, 2010b).
Including the concept of “bad faith” in the regulations as a method of countering marriages of convenience complemented the addition of the following two provisions regulating family sponsorship:

1) The sponsor must sign a financial agreement by which he or she undertakes to reimburse the government (federal or provincial) for all social assistance benefits given to the sponsored relative\textsuperscript{31} for a period of three years after the sponsorship;

Note: This provision was the subject of a declaratory judgment in the Supreme Court of Canada’s decision on the Mavi\textsuperscript{32} case. In this case, the applicants alleged that the wording contained in section 145 (2) of IRPA, i.e. “may be recovered by Her Majesty in either […] of those rights,” implies the existence of discretionary power. The Court clarified this power, specifying criteria that included the duty of procedural fairness.

2) A permanent resident or a foreign national is inadmissible for misrepresentation.\textsuperscript{33}

In October 2012, another amendment to the IRPA was introduced, stipulating that a sponsored person is required to wait five years, even if he or she gains citizenship, before sponsoring a spouse. If a couple has no children at the time of the sponsorship application, the sponsored person must live with the sponsor for two years, on penalty of having his or her conditional permanent resident status revoked. A sponsor may withdraw a sponsorship application before permanent residence has been granted. If the sponsorship application has been accepted but the couple separates, the sponsor’s undertakings remain in force for three years. In addition, there is a risk of deportation for a period of two years. However, if the separation is due to violence or neglect on the part of the sponsor or a member of his or her family, the sponsored person may apply for an exemption from the rule but must prove that the mistreatment occurred and led to the breakdown of the relationship.

C- Quebec’s role in the selection of immigrants

The first Quebec law on immigration, entitled the An Act respecting the Ministère de l’Immigration et des Communautés culturelles, (or an Act respecting immigration to Quebec)\textsuperscript{34}, came into force in 1968 pursuant to a report released in 1967 by the interministerial committee on language instruction for new Canadians. Section 3 of the Act enables the Minister to promote the establishment in Quebec of immigrants likely to contribute to its development and participate in its progress and to foster the adaptation of immigrants to the Quebec environment. It also required potential immigrants to learn about Quebec.

\begin{itemize}
\item \textsuperscript{31} IRPR, Section 132.
\item \textsuperscript{33} IRPR, Section 40 b).
\item \textsuperscript{34} Act respecting the Ministère de l’Immigration et des Communautés culturelles, LRQ 1968, c. 68.
\end{itemize}
The 1971 Lang-Cloutier agreement, the first federal-provincial agreement on immigration, was established to encourage immigration of French-speaking applicants and their establishment in Quebec (Béchard, 2011). The province also received authorization to assign Quebec officers to federal immigration missions abroad.

In 1975, the Andras-Bienvenue agreement replaced the 1971 agreement in order to increase Quebec’s involvement in selecting new immigrants by requiring that all immigrants intending to settle in Quebec meet with provincial representatives assigned to missions abroad.

The Cullen-Couture agreement, signed in 1978, clearly affirms a transfer of powers to the province. This agreement establishes immigrant selection as a joint responsibility of both levels of government. It gives Quebec a veto right on economic immigrants and refugees and authorizes the province to establish the financial requirements applicable to sponsorship of immigrants in the relatives and assisted relatives class (Garcea, 1994).

In 1981, the Quebec government sought a wider mandate to enable it to ensure the planning, coordination and implementation of government policies respecting the development of the cultural communities and their participation in the life of the province. The name of the department was then changed to Ministère de l’Immigration et des Communautés culturelles. Quebec’s immigration policy was set out in the Act respecting Immigration to Québec. The Act was the same law that had been in place since 1968, although it had had several names over the years, including the Act respecting the Ministère des Communautés culturelles et de l’immigration.

Lastly, the Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens, which came into force on April 1, 1991, was the first federal/provincial agreement on immigration. This Accord sets forth the division of responsibilities between Quebec and Canada as follows\textsuperscript{35}:

\textsuperscript{35} Family class applicants who reside in Quebec must meet both federal and provincial criteria.
### Sidebar 2 – Quebec’s Undertakings

In matters of permanent immigration, Quebec has the sole responsibility for:
- Determining the numbers of immigrants it intends to admit;
- Selecting candidates who wish to settle on its territory, where selection criteria apply, and establish the criteria to guide that selection. Two classes of foreign nationals are exempt from the selection process: those whose refugee status has been recognized while they were on Quebec soil, and applicants for the family class;
- Managing sponsorship undertakings issued in Quebec, determining their duration, establishing their criteria when federal law requires a sponsor’s financial resources to be taken into account, and following up on these undertakings.

In matters of temporary immigration, Quebec’s consent is required for Canada to:
- Issue a work permit and admit temporary workers when the relevant employment is subject to regulations on availability of Canadian workers (determine effects on the labour market);
- Issue a student visa and admit foreign students, except those taking part in a Canadian government assistance program for developing countries;
- Authorize a visitor to enter Quebec to receive medical treatment.

(Source: Government of Quebec, 2011, p. 3)

### Sidebar 3 – Canada’s Undertakings

The federal government:
- Establishes annually the total number of immigrants for the country as a whole while taking Quebec’s planning process into consideration;
- Determines and applies the criteria to allow a person to enter and stay in the country, particularly:
  - conditions respecting the stay (e.g. duration, right to work or study);
  - inadmissibility criteria (health, security, crime);
  - documents required;
  - removals;
- Determines general processing criteria and general immigration classes;
- Determines, in relation to family sponsorship, members of the family for whom the sponsor will be required to demonstrate his or her financial ability to support;
- Is solely responsible for processing requests for asylum in Canada;
- Determines whether an application for permanent residence can be processed in the country (these requests are usually processed abroad);
- Is solely responsible for admitting immigrants onto Canadian territory.

(Source: Government of Quebec, 2011, p. 4)

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36 Our translation.
37 Our translation.
3- Current issues and debates (2000s)

A- Conservative government’s position on immigration marriage and marriage fraud

Among the 258,953 immigrants admitted as permanent residents in Canada in 2013, 79,684 entered under the family class. Of this number, 43,937 entered as a spouse or partner (CIC, 2014a). Since coming into power in 2006, and until 2015, the Conservative government has amended legislation on family reunification and sponsorship. The changes introduced and the debates surrounding their implementation were part of a program to make the immigration process more secure by addressing the risk of fraud in immigration marriage. It should be noted that security came within the scope of a larger debate on the issue of fraud in general. Fraud became a central theme for the Conservative government, which stressed the importance of preserving the integrity of the Canadian immigration system by protecting it against “bogus refugees” and other fraudulent practices such as human trafficking, fake marriages and fake immigration consultancy services.

In June 2012, there was vigorous debate on the issue of bogus refugees before the passage of Bill C-31, renamed the Act to protect the Canadian Immigration System38. Jason Kenney, one of the most influential immigration ministers of the Conservative government, had previously addressed the security aspect of marriage fraud in 2010:

“We aim to reunite our citizens and permanent residents with family members and we recognize that most individuals who apply for family reunification are in genuine relationships. But we also aim to protect the integrity of our immigration system and uphold our laws by identifying and addressing fraudulent activity. This includes ensuring that fraudulent marriages are discovered and not used to circumvent our laws. Accordingly, if we find evidence during the sponsorship process that individuals are committing marriage fraud, we can and will refuse the application for permanent residence. Our officials at missions here and around the world are trained to assess relationships based on customs, traditions and practices of the specific cultures in which they work. I can assure you that the Government of Canada is working to limit abuse and fraud, and we will not be limiting immigration to Canada or the protection Canada provides to refugees”. (Speaking notes for The Honourable Jason Kenney, P.C., M.P., Minister of Citizenship, Immigration and Multiculturalism at the Chandigarh Golf Club, Chandigarh, India, September 9, 2010) (CIC, 2010a).

That same year, the Department of Citizenship and Immigration held public consultations on marriages of convenience. The purpose of the consultations was to “gather input on the magnitude of the problem, as well as to seek opinions and ideas on how to best address it.” (CIC, 2011b). A summary report on the consultations is available on the CIC website; however it presents only the results of online consultations. In brief, the consultation process consisted in completing an online questionnaire on the Department’s website that was available from September 7 to November 10, 2010. Town hall meetings hosted by Minister Kenney were held in the fall of 2010 in Vancouver (BC), Montreal (QC) and Brampton (ON). In total, 2,300 respondents from the general public and over 80 respondents from community organizations, businesses, unions and NGOs filled out the online questionnaire.

According to CIC, a marriage of convenience or a fraudulent marriage could take two forms:

- A couple claims to be in a genuine relationship so that the sponsored partner can come to or stay in Canada. In some cases, the sponsor may be given a financial or other kind of benefit in exchange for the sponsorship.
- One of the partners enters the relationship in good faith, while the other is using the relationship only to gain permanent status in Canada. In this instance, the sponsor is a victim (CIC, 2011b).

It is worth noting that all the participants were asked to read a backgrounder prepared by CIC before proceeding with the questionnaire. This document indicated that:

“While there are currently no firm numbers on the extent of marriages of convenience, Citizenship and Immigration Canada (CIC) knows that, in 2009, overseas offices received about 49,500 applications for permanent residence for partners and spouses. Of these, just under 20 percent were refused” (CIC, 2010c).

The document presented an overview of the measures Canada was taking to control the problem as well as the strategies employed by other countries such as Australia and the UK to prevent marriages of convenience for immigration purposes. It advised respondents that any additional control mechanisms would inevitably impact on government spending. Although the document was not “required reading” for responding to the survey, its tone provided strong direction to guide participants’ responses, if only implicitly, by couching the issue as a problem for Canada, even though no hard data was presented to support this argument.

The report’s conclusions all advocated for greater control of spousal sponsorship in Canada through the use of preventive measures and punitive sanctions. In this respect, the report states that, “Overall, respondents indicated that fraudulent marriage is a problem or a threat to Canada’s immigration system, with three-quarters (77%) reporting it to be a very serious or serious threat” (our emphasis) (CIC, 2011b). Note that the possible answers were: “Very Serious,” “Serious,” “Not Very Serious,” “Not at All Serious,” or “Do Not Know.” More than three-quarters of participants agreed that it was important to make the public aware of the risk of marriages of convenience. The report affirms, without providing data, that respondents clearly supported the adoption of restrictive measures against fraudulent marriages.

“The most frequently mentioned were measures relating to the punishment of fraudulent applicants and/or sponsors (including stricter enforcement of laws, deportation of fraudulent spouses and the introduction of financial penalties). Comments also called for a form of conditional status/probationary period, tighter screening and follow-up investigations to detect fraud.” (CIC, 2011b).

In 2012, the Conservative government highlighted the security aspect of immigration marriage fraud once again by continuing to present it as a problem requiring the application of new regulations. Then Immigration Minister Jason Kenney stated the following:
“Let me give you some specific examples and concrete actions that our government has taken to reinforce the fairness of our system. One very common example would be immigration marriage fraud [...]. Now, my department actually rejects about two out of every ten applications for spousal sponsorship and regrettably, there is – in some parts of the world – a large and developed industry of immigration marriage fraud. And this is an open secret, in fact a terrible scandal, in some of our immigrant communities. This issue came to my attention, not from my officials, not from our law enforcement agencies, not from the mainstream media, but from the South Asian community in particular who beat down my door saying we need to address this abuse of the privilege of sponsoring spouses into Canada. And I became aware of some egregious situations” (Speaking notes for the Honourable Jason Kenney, P.C. M.P., Minister of Citizenship, Immigration and Multiculturalism; Address to the Empire Club Royal York Hotel Toronto, Ontario, May 25, 2012) (CIC, 2012f).

Based on these statements, immigration marriage regulation was part of a larger discourse on immigration fraud, in which immigration was viewed as a process besieged by criminal elements (reflected in the government’s references to fraud and crooked consultants). CIC stated that it implemented measures in 2012 to eradicate this brand of fraud. These strategies included campaigns highlighting Canadian victims, aimed at making the public aware of marriage fraud; legislative restrictions on the work of immigration consultants; and the development of increasingly sophisticated fraud detection techniques (CIC, 2012c). The following CIC news release presented the issue by stating that Canada was not the only country with widespread immigration fraud. Given this common problem, some countries have started establishing joint strategies to eliminate fraud like marriages of convenience:

“Canada is not the only victim of immigration fraud. Other countries that welcome immigrants are also destinations prized by those who would do anything to immigrate. In June 2012, Canada, the UK and Australia held a press conference in India to warn potential visitors and immigrants against unscrupulous immigration agents who try to trick them. Canada is aware that it is not alone in dealing with this problem and so has united with its partners to expose this criminal activity [our translation]” (CIC, 2012c).

The Canadian government of the time said it had conducted investigations on permanent residence fraud cases in addition to its public consultations. According to a press release dated September 2012, titled “Canadian Citizenship Not for Sale: Minister Kenney Provides Update on Residence Fraud Investigations,” “[...] nearly 11,000 individuals [were] potentially implicated in lying to apply for citizenship or maintain permanent resident status. [...] CIC has begun the process to revoke the citizenship of up to 3,100 citizens who obtained it fraudulently.” (CIC, 2012a). Information on these investigations remains incomplete, and whether and how many of these 3,100 individuals actually ended up being deported or stripped of their citizenship because of fraud remains unknown.

In October 2012, the Canadian government introduced an amendment on obtaining permanent residence through sponsorship. The amendment made permanent residence status for sponsored spouses conditional and required them to live with their sponsoring spouse for a minimum of two years. To justify the new policy, Minister Kenney referred to the need for Canada to adopt measures similar to those applied in other countries:
“These regulations bring Canadian policy in line with that of many other countries including Australia, the United States and the United Kingdom, all of whom use a form of conditional status as a deterrent against marriage fraud. The lack of such a measure increased Canada’s vulnerability to this type of unlawful activity” (CIC, 2012b).

A quick review of publications on family reunification available on the CIC website, and intended mainly for immigration officers, presented the amendments and new measures as necessary in the current context of marriage fraud as viewed by the Harper government. Operational Bulletins reinforce the seriousness of the marriage fraud problem that Canada would have experienced:

“The Government of Canada is concerned about marriage fraud, which can victimize Canadian citizens and permanent residents and undermine the integrity of Canada’s citizenship and immigration programs, and has taken steps to address this problem” (CIC, 2012b).

More recently, in the fall of 2014, under the direction of the new Minister of Immigration and Citizenship, Chris Alexander, the Canadian government tabled a bill against “barbaric cultural practices” (Larouche, 2014; Levitz, 2014; Vastel, 2014). It was known to attack polygamy, honour crimes and forced marriage, practices that the government described as “barbaric”. The concept of forced marriage in the bill could be expanded or construed to include arranged marriages and therefore render any sponsorship application in relation to an arranged marriage inadmissible. This would undermine the concept of good faith that may well exist in an arranged marriage and which must exist in any conjugal relationship if permanent residence is desired. This new draft bill tabled by the Conservative party appears to be consistent with the statements and procedures that since 2010 have turned family class spouses into a security issue and, hence, a problem. The provision that the government was proposing to add reads as follows:

“41.1 (1) A permanent resident or a foreign national is inadmissible on grounds of practising polygamy if they are or will be practising polygamy with a person who is or will be physically present in Canada at the same time as the permanent resident or foreign national”.39

It is noteworthy that at the time of publication, this section was no longer in force. However, this demonstrates the importance that the Conservative government was giving to marriage migration. Marital practices that did not conform to government standards appeared to be particularly targeted and potentially suspect.

B- Immigration marriage in the Canadian media

A study of media articles and investigations of spouses under the family reunification program and marriage fraud shows that the issue has been highly controversial. At the time of writing, marriage fraud appears to be a relatively recent topic in the media, having received coverage only in the last few years. A review of the major

Canadian print media found no related articles or reports prior to 2004. Our French-language print and news media investigation included La Presse, Le Journal de Montréal, Le Journal de Québec and Radio-Canada, while our English-language research covered the Canadian Press, CBC News and major dailies such as the National Post, The Globe and Mail and the Toronto Star. We found that the English-language media has provided more coverage, with 25 sources versus fewer than a dozen in the French-language media. In addition, English-language media coverage can be traced back further in time, the oldest article dating from 2004. There has clearly been a surge of articles and reports in the Canadian media since the Conservative Party came to power, particularly from 2011 on.

The articles on marriage fraud and sponsorship were published prior to the introduction of legislative changes in 2012. We found no fewer than three articles and one report released by the CBC on sponsorship and marriage fraud in 2010 and 2011 and mentioning future legislative amendments (McKe, 2010). The Toronto Star appears to be the most prolific source of articles on immigration marriage and marriage fraud, having published nearly a dozen articles since 2005, primarily written by Nicholas Keung. The Star is followed by CBC News, which released at least seven reports, including one for television and a one-hour special entitled True Love or Marriage Fraud, which aired in September 2011.

The few articles published between 2004 and 2008 address marriage fraud by focusing on immigration consultants. They discuss infractions and violations committed by dishonest consultants who persuade would-be immigrants to enter into marriages of convenience (Keung, 2005, 2008a; Keung and Rankin, 2007). Some investigations tracked criminal networks operating mainly in China and India and offering illegal immigration services (Keung, 2008a).

Several French- and English-language articles relate the stories of Canadian marriage fraud victims (Racine, 2014; Duchaine, 2013; Curry, 2008; Ivison, 2009; Page, 2012; CBC 2011), personalizing the accounts and revealing details of the victims’ lives. We found tales of manipulation, abandonment and betrayal by deceitful immigrants who took advantage of their victims’ genuine feelings of attachment. These perpetrators were both men and women. Canadians are portrayed as generous, open and somewhat naïve. Most of the articles attempt to instill or confirm suspicions by describing Canadians as lacking information about marriage fraud.

True Love or Marriage Fraud, broadcast in September 2011, features several individuals who, claiming that they were victims of a marriage of convenience, implored the Canadian government to adopt measures to protect its citizens. These testimonials are interspersed with excerpts from Jason Kenney’s official speeches and interviews with immigration experts. The tone is generally negative. The story follows two Canadian women in their quest to sponsor their spouses. The viewer cannot help but be skeptical of both relationships because the report does not include any account of immigration marriages carried out in good faith. Most of the articles written since 2010 mention the
amendments to the Immigration and Refugee Protection Act made by the Conservative government in October 2012 (Duchaine, 2013; Radio-Canada, 2012; Ivison, 2009; Bronskill, 2011; McKie 2010; 2011; Keung 2012b, 2014a;b); Mehta 2013). Some of them discussed the amendments before they were tabled, pointing out the need for a reform. The articles reflect their authors’ implicit approval of restrictive measures to combat marriage fraud and their tacit agreement with the official position that marriage fraud is a genuine and major threat to the security of Canadians and the integrity of the immigration system.

In fact, the CBC network stood out in this respect by publishing articles with telling titles such as “Immigrant marriage fraud crackdown urged” in July 2010, and, the following November, “Marriage of convenience problems persist,” in which journalist David McKie reflects on Kenney’s statements and wonders what has been accomplished:

“Three years later, it is unclear what steps have been taken to cut down on the marriages, despite repeated claims by Jason Kenney, the Minister for citizenship and immigration, that he wants to find out the seriousness of the problem and what should be done about it” (McKie, 2010).

The writer intends to demonstrate that the government does not appear to be fully equipped to curb the problem. A television report entitled Fake Marriages aired in November 2010 echoes this sentiment and spotlights several victims. A similar message is delivered in True Love or Marriage Fraud, which appears to demonstrate that lack of coordination among the different levels of government with regard to immigration, coupled with their failure to take responsibility, can somewhat explain the prevalence of marriage fraud in Canada. In addition, the threat of marriage fraud is said to be a burden to Canadian taxpayers, and Canadians are not sufficiently protected. Those featured in the documentary all agree on the need to change Canadian sponsorship laws.

After amendments were implemented to immigration legislation, only a few articles mentioned the negative effects on sponsored women (Douglas, Go and Blackstock, 2012; Keung, 2012; Radio-Canada, 2012). In fact, the enactment of the new regulations that require conjugal cohabitation with the sponsor for a continuous period of two years before conditional permanent residence is granted may place women in abusive situations. According to Loly Rico, President of the Canadian Council for Refugees, “Making permanent residence conditional for sponsored spouses gives power to the sponsors who may use the threat of deportation to manipulate their spouse. In situations of domestic abuse or violence, this measure will be a gift to an abuser” (Radio-Canada, 2012).

C- Election of the Liberal Party and the anticipated modifications to the Immigration and Refugee Protection Act

Although the discourse concerning marriage fraud has not completely changed, it

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40 Immigration and Refugee Protection Act, SC 2001, c 27
seems that Justin Trudeau’s liberal government, elected in October 2015, has the intention to modify the most controversial aspects of the *Immigration and Refugee Protection Act*. First, the most important change that is likely to occur is the amendment of the provisions enforcing the spouses to live with the sponsor for two years in order to obtain the permanent residence. As we explained earlier, this measure, adopted on 25 October 2012 by the Conservators, was severely criticized by the civil society because it made women vulnerable to abuses, and made them dependant on their sponsor. Let’s recall that this provision was added to the Act “do deter fraudulent applications and help identify fraudulent relationships in the family reunification program”.\(^{41}\)

However, in its bill modifying this provision, the actual government considers that “the Department is not able to conclude, based on the available data, whether or not conditional permanent residence has had its intended impact of deterring non-genuine sponsorship applications, as it is not possible to measure directly the number of deterred applications”.\(^{42}\) It also specifies that it was not possible to measure the efficiency of this measure. In return, it was possible to find that because of this rule, many sponsored spouses “suffered abuse and neglect before they were granted an exception to the cohabitation requirement”.\(^{43}\)

In its regulatory impact analysis statement included in the bill published in the Canada Gazette, the government explains his decision and states that eliminating this measure “would facilitate family reunification, remove the potential increased vulnerability faced by abused and neglected spouses and partners, and support the Government’s commitment to combatting gender-based violence”.\(^{44}\) Nevertheless, it has to be noted that despite the abrogation of the two-year cohabitation requirement, the Government explains that it will continue to “monitor application approval rates […] and work with Public Safety Canada to identify emerging fraud trends” and that either way, “there are a number of other legislative and regulatory provisions and tools in place to support program integrity objectives and to identify non-genuine relationships”.\(^{45}\)

At the moment of publishing this report, the *Bill* was published in the Canada Gazette, but it still had to be approved. If it is approved, the modifications will enter into force in the spring 2017.

The next main change that is likely to occur in the Immigration and Refugee Protection Act concerns the definition of the “dependant child”.\(^{46}\) Stephen Harper

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\(^{42}\) *Ibid* at p 3261.

\(^{43}\) *Ibid*.

\(^{44}\) *Ibid* at p 3262.

\(^{45}\) *Ibid* at p 3260.

\(^{46}\) “The definition of “dependant child” in the Regulations is used to determine whether a child may be eligible to immigrate as a family member of a principal applicant in all immigration classes (economic, family and refugee/humanitarian), as well as a principal applicant who may be sponsored in the family
Government had modified this provision to reduce to 19 years old, instead of 22 years, the limit of age under which a child may be eligible to immigrate as a family member of a principal applicant or as a principal applicant who can be sponsored.\textsuperscript{47} Since the actual Government wants to “enhance family unity and reunification by enabling Canadians and permanent residents to bring their young adult children […]”, it proposes to raise again to 22 years old the age under which a child may immigrate with his family. If this modification is adopted, it would enter into force in the fall 2017.

Two more measures were adopted, measures that were making part of the Liberal Government electoral promises and that show a certain will to put a particular emphasis on family reunification. The Government states that it would already have reduced the backlog of spouses applications and increased the number of “spaces allowed for spouses, partners and dependant children” (CIC, 2016d).

Finally, it would have fulfil his promise to ensure and accept 10 000 sponsorship applications of parents and grandparents if immigrants, permanent residents or Canadians (CIC, 2016e).

\textsuperscript{47} Ibid at p 3265.
APPENDIX

The appendices to this document were developed to inform the reader of the procedures for the sponsorship of a spouse or child in Canada. Under no circumstances can the information contained in these appendices replace the information available online⁴⁸.

⁴⁸ For updates on sponsorship of a family member, see the following: http://www.cic.gc.ca/english/information/applications/guides/5289ETOC.asp.
APPENDIX 1

Current sponsorship application procedures

As of December 2016, a new application process was implemented to accelerate and simplify the processing of applications. Here is an overview of the new application process:

(CIC, 2016c)
### APPENDIX 2

Before December 2016, the application procedures could be summarized as:

- **Within Canada**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Current Procedures</th>
<th>Advantages and Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Be a citizen or a permanent resident;</td>
<td>Both applicants complete the appropriate form. The sponsor must submit a sponsorship application and send it to a Case Processing Centre (CPC).</td>
<td>The sponsored person who becomes a new permanent resident has the same rights as a citizen but may not vote and must be present in Canada two out of five years to retain these benefits.</td>
</tr>
<tr>
<td>Be 18 years or older;</td>
<td>The sponsored person must submit an application for permanent residence. Both applications must be sent to the CPC at the same time.</td>
<td>A pilot project launched on December 22, 2014, allows sponsored persons living in Canada to receive an open work permit while awaiting the decision on their application (CIC, 2014c).</td>
</tr>
<tr>
<td>Must not carry certain types of debt;</td>
<td>Application processing time is 26 months (18 and 8 months for the sponsor’s and sponsored person’s files respectively).</td>
<td>If the permanent resident was previously sponsored, he or she must wait five years after receiving permanent resident status before sponsoring a new partner. This rule applies even if the permanent resident receives Canadian citizenship during the five-year period.</td>
</tr>
<tr>
<td>Must prove that he or she can provide for the future spouse’s basic requirements for three years and that the spouse will not require financial aid from the government;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Must not have been convicted of a violent crime (will be investigated);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The sponsored person must provide criminal and security clearances and undergo a medical examination.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Source: CIC, 2014b)
### From outside Canada

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Current Procedures</th>
<th>Advantages and restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must be a citizen or permanent resident;</td>
<td>If the sponsor’s application is approved, the CPC (Case Processing Centre) sends the application for permanent residence to the Canadian visa office in the sponsored person’s location for processing.</td>
<td>Permanent resident status is granted upon arrival in Canada. The sponsored person arrives with his or her permanent residence visa and COPR (Confirmation of Permanent Residence). The Permanent Resident Card is then mailed to the applicant.</td>
</tr>
<tr>
<td>Must be 18 years or older;</td>
<td>The sponsored person is required to follow the instructions specific to his or her place of residence when filling out the application. He or she must conform to the user guide for his or her region.</td>
<td>The sponsored person enjoys the same rights as a citizen but may not vote and must be present in Canada two out of five years to retain these benefits.</td>
</tr>
<tr>
<td>Must not carry certain types of debt;</td>
<td>In addition to the sponsorship forms and the application for permanent residence, the applicants must enclose documents pertaining to their identity, union, income, and dependent children, if any. They must also provide photographs and documents to support their claim of a genuine relationship.</td>
<td>Beginning in October 2012, the sponsored persons may receive conditional permanent resident status for two years if they have been in a relationship with the sponsor for two years or less and have no children in common.</td>
</tr>
<tr>
<td>Must prove that he or she can provide for the future spouse’s basic requirements for three years and that the spouse will not require financial aid from the government;</td>
<td>Processing times for sponsorship applications submitted from outside of Canada is currently 60 days for the sponsor’s file. Processing times for the sponsored person’s file varies according to the Canadian visa office abroad.</td>
<td>If the permanent resident was previously sponsored, he or she must wait five years after receiving permanent resident status before sponsoring a new partner. This rule applies even if the permanent resident receives Canadian citizenship during the five-year period.</td>
</tr>
<tr>
<td>Must not have been convicted of a violent crime (will be investigated);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The sponsored person must provide criminal and security clearances and undergo a medical examination.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Source: CIC, 2014c)
FURTHER DETAILS:

**Common-law partners, spouses and domestic partners:**

**Spouses:** Individuals who are legally married. If the marriage was performed outside of Canada, they must possess a marriage certificate issued by the proper authorities.

**Common-law partner:** A person who is living in a conjugal relationship with another person and has done so continuously for a period of at least one year (short absences are allowed for business trips or family matters). The couple must submit documents (bank statement, joint lease) to prove that they have combined their affairs and set up their household together in one dwelling.

**Conjugal partner:** Individuals who are not eligible as common-law partners or spouses due to circumstances beyond their control that have prevented them from qualifying as common-law partners. A conjugal relationship is more than a physical relationship. It is a relationship of dependence with a degree of permanency that requires the same level of commitment as a marriage or a common-law union. The individuals are required to demonstrate the impediment to their cohabitation.

**Refugees in Canada and sponsorship**

A different procedure applies to refugees. Those recognized as refugees (protected persons) in Canada include their family members (spouses, children and parents) in their application for permanent residence (Becklumb, 2008). Refugees have one year to submit an application for permanent residence for themselves and the family members they wish to include.
APPENDIX 2

Steps for submitting a sponsorship application

Step 1: Determining sponsor eligibility

The sponsor must be a citizen or permanent resident of Canada and be 18 years or older. To apply, the sponsor must fulfill certain income criteria such as proving that he or she can provide financial support and meet the sponsored person’s basic requirements or those of his or her family, if applicable (e.g. food, clothing and housing). In addition, the sponsor must prove that the sponsored person will not need government aid; in other words, he or she becomes responsible for that person. The sponsor must not have been convicted of a violent or sexual crime, and must commit to the aforementioned responsibilities for three years as of the date on which the person sponsored becomes a permanent resident. This commitment remains in effect even if Canadian citizenship is obtained, or the couple separates, divorces or moves to another province, or the sponsor experiences financial difficulties.

Further to amendments to Canadian immigration law, the sponsored person cannot sponsor a new spouse or common-law or conjugal partner for five years after receiving permanent residence. This rule applies even if the sponsored person becomes a Canadian citizen during that five-year period: “You may not [be a] sponsor […] if you were previously sponsored as a spouse, common-law or conjugal partner and became a permanent resident of Canada less than 5 years ago.”

The sponsored person must also meet a series of conditions. Whether the application is made from within Canada or abroad, the sponsored person must undergo a medical examination and provide security and criminal clearances (police certificate).

Some definitions:

**Spouse**

According to the Act, a spouse is married to the sponsor and the marriage is legal. If the marriage was performed in Canada, the couple must have a marriage certificate issued by the province or territory where the marriage took place. If the marriage was performed outside of Canada, it must be legal according to the laws of the country where it occurred and the laws of Canada. If the marriage was performed in an embassy or a consulate, it must be considered legal in the country in which it occurred and not in the country represented by the embassy or consulate.

**Common-law spouse**

A common-law spouse must be in a conjugal relationship for at least one year. This year of cohabitation must consist of 12 consecutive months (short absences are permitted for business or family reasons). Both individuals must provide documents (bank statement, joint lease) demonstrating that they have combined their resources and set up their household together in one dwelling.

**Conjugal partner**

Conjugal partners are not eligible as common-law partners or spouses due to circumstances beyond their control that have prevented them from qualifying as common-law partners. A conjugal relationship is more than a physical relationship. It is a relationship of dependence with a degree of permanency that requires the same level of commitment as a marriage or a common-law union. The individuals are required to demonstrate the impediment to their cohabitation.
**Sponsoring a same-sex partner as a spouse**

If a same-sex couple is married outside of Canada, one of the partners may apply to sponsor his or her same-sex partner provided that the marriage is legally recognized according to both the law of the place where the marriage occurred and under Canadian law.

The couple must provide CIC the information confirming that their same-sex marriage was legally recognized at the time and in the place where it was celebrated.

If the marriage occurred in Canada, the sponsor must be a Canadian citizen or permanent resident and a marriage certificate must have been delivered by a province or territory listed below, and within the period of time indicated:

- British Columbia (July 8, 2003, or later);
- Manitoba (September 16, 2004, or later);
- Nova Scotia (September 24, 2004, or later);
- New-Brunswick (July 4, 2005, or later);
- Ontario (June 10, 2003, or later);
- Quebec (March 19, 2004, or later);
- Saskatchewan (November 5, 2004, or later);
- Newfoundland and Labrador (December 21, 2004, or later);
- Yukon (July 14, 2004, or later);
- Other provinces or territories (July 20, 2005 or later).
Step 2: Submit an application

There are two parts to this process. A Canadian citizen or resident who wants to sponsor a spouse or partner must submit an application. A Case Processing Centre (CPC) in Canada processes the application, after which it notifies the sponsor in writing of CIC’s decision regarding the application. The sponsored person must complete an application for permanent residence that the sponsor sends in along with the sponsorship application.

1) How to obtain a sponsorship package:

There are two scenarios in the sponsorship process: either the sponsor and the sponsored person are already in Canada, or the sponsor is in Canada and the sponsored person is outside of the country.

First scenario: The sponsored person already lives in Canada.

If the sponsored person is living with the sponsor in Canada, they must use the form entitled Application for Permanent Residence From Within Canada – Spouse or Common-Law Partner in Canada Class

The application package includes:

- Document Checklist [IMM 5443] (PDF, 707.50 KB) August 2015
- Application to Sponsor, Sponsorship Agreement and Undertaking (IMM 1344) (PDF, 552.22 KB) August 2014
- Sponsorship Evaluation [IMM 5481] (PDF, 598.76 KB) April 2012
- Generic Application Form for Canada [IMM 0008] (PDF, 492.72 KB) April 2015
- Additional Dependents/Declaration [IMM 0008DEP] (PDF, 434.37 KB) August 2014
- Additional Family Information [IMM 5406] (PDF, 583.68 KB) September 2013
- Schedule A – Background/Declaration [IMM 5669] (PDF, 252.27 KB) December 2012
- Spouse/Common-law Partner Questionnaire [IMM 5285] (PDF, 646.49 KB) August 2013
- Use of a Representative [IMM 5476] (PDF, 663.51 KB) June 2015
- Instruction Guide [IMM 5289]

The instruction guide provides information on completing, validating, signing and dating the application forms. This package is only for persons living in Canada and situations in which the sponsored person wishes to become a permanent resident.

Fee payment can be online or in a financial institution in Canada, which will send the original receipt by mail. The application must be filled out in its entirety and sent to the CPC in Mississauga, Ontario.

Second scenario: The sponsor lives outside of Canada.

The following form must be used: Sponsor a Member of the Family Class

This application package is comprised of several sections:
Part 1: Sponsorship forms

**Guide 3900 - Sponsorship**

Forms

- Document Checklist [IMM 5491] (PDF, 788.57 KB) January 2013
- Application to Sponsor, Sponsorship Agreement and Undertaking [IMM 1344] (PDF, 552.22 KB) August 2014
- Sponsorship Evaluation [IMM 5481] (PDF, 598.76 KB) April 2012
- Statutory Declaration of Common-Law Union [IMM 5409] (PDF, 651.79 KB) April 2015
- Sponsor Questionnaire [IMM 5540] (PDF, 1.12 MB) April 2008
- Use of a Representative [IMM 5476] (PDF, 663.51 KB) June 2015

Part 2: Immigration forms

**Guide 3999 - Sponsorship of a spouse, common-law partner, conjugal partner or dependent child living outside Canada**

Forms:

- Generic Application Form for Canada (IMM 0008) (PDF, 492.72 KB)
- Additional Dependants/Declaration (PDF, 434.37 KB)
- Schedule A – Background/Declaration (IMM 5669) (PDF, 252.27 KB)
- Additional Family Information (IMM 5406) (PDF, 583.68 KB)
- Sponsored Spouse/Partner Questionnaire (IMM 5490) (PDF, 143.23 KB)
- Use of a Representative (IMM 5476) (PDF, 663.51 KB)
Part 3: Information guide by geographic region

When completing the application, the sponsored person must follow the guidelines specific to his or her place of residence and consult the relevant user guide. Several guides are available and can all be found on the CIC website. Some of them cover a wide area while others are for a specific country.

The following guides are available:

- Western Europe: IMM3901
- Eastern Europe: IMM3902
- China: IMM3903
- India, Bhutan and Nepal: IMM3904
- Philippines: IMM3905
- Southeast Asia and Pacific: IMM3906
- General Asia: IMM3907
- Latin America: IMM3908
- Caribbean: IMM3909
- United States, Bermuda, Puerto Rico, St-Pierre et Miquelon: IMM3910
- Middle East and Central Asia: IMM3911
- Africa: IMM3912
- Japan: IMM3913

In addition to sponsorship forms and applications for permanent residence, the applicants must provide documents in regard to their identity, union, income and any dependent children. They must also provide photos and documents to show that their relationship is genuine.

After the sponsor’s application is approved, the CPC sends the application for permanent residence to the relevant Canadian visa office for processing.

To complete the application, the applicant follows an instruction guide showing how to complete, validate, print, sign and date the forms.

Fees can be paid online or in a financial institution in Canada, which will mail the original receipt. The completed application can then be sent to the CPC in Mississauga, Ontario.

Step 3: Processing times

As processing times for sponsorship applications can change, the new times are updated on CIC’s website. Sponsorship applications for persons living outside of Canada had a processing time of 60 days, as of February 15, 2016 (CIC, 2016b). Processing times for Step 2 (application by the sponsored person), vary according to the Canadian visa office involved.

Regarding spouses and common-law partners living in Canada, Step 1 (initial analysis of the sponsor and sponsored person) takes about 18 months. Step 2 (medical evaluation, security clearance, criminal and other checks of sponsored persons) can take up to 10 months. In total, the entire process currently takes 26 months. Application status can be checked online.

If the processing time is not followed, the applicants can contact the call centre for any question relative to Step 1. For delays in regard to Step 2, they should contact the relevant visa office.
Step 4: After submitting the application

If the sponsorship application is approved, the application for permanent residence is transmitted to the visa office serving the sponsored person’s region. The sponsor will receive a written notification of the approval indicating which visa office will process the sponsored person’s application for permanent residence.

If the sponsorship application is denied, the sponsored person can still apply for permanent residence under another immigration class at the visa office for his or her region.

If the sponsorship application is approved but the application for permanent residence is denied, a letter is sent to the sponsor giving the reason for the denial and explaining his or her right to appeal.

The sponsor may withdraw the sponsorship application at any time during the process provided this is done before the sponsored person becomes a permanent resident of Canada. Fees for both applications may be reimbursed if the processing has not begun. The sponsor must contact Citizenship and Immigration Canada (CIC) to withdraw an application.

Step 5: Preparing for arrival

Upon arriving in Canada, the sponsored person must present his or her Confirmation of Permanent Residence (COPR) and permanent resident visa to the CIC officer at a Canadian port of entry. The officer will examine the person’s travel and immigration documents to ensure they are valid.

If all is in order, the CIC officer will authorize the sponsored person to enter Canada as a permanent resident. Since CIC will use the address indicated on the COPR to mail the permanent resident card, the person must be sure to provide the correct address in Canada. A permanent resident card is given to holders to confirm their status in Canada.

Details on refugees in Canada and sponsorship

A different process applies to refugees. Those recognized as refugees (protected persons) in Canada may include their family members (spouses, children and parents) in their application for permanent residence. Refugees have one year to submit an application for permanent residence.

New legislative provisions

A permanent resident who was previously sponsored cannot sponsor a spouse or common-law or conjugal partner for five years after he or she becomes a permanent resident. This rule applies even if the permanent resident becomes a Canadian citizen during that five-year period.

In October 2012, Citizenship and Immigration Canada (CIC) introduced a two-year conditional permanent residence period for certain sponsored spouses or partners. This conditional period applies 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. If the sponsored spouse or partner does not remain in a conjugal relationship and cohabit with their sponsor during the conditional period, their permanent residence could be revoked, and they could be deported.”

APPENDIX 3

Sponsorship procedures in Quebec

In Quebec, jurisdiction over immigration is a shared responsibility. The Department of immigration, or Ministère de l’Immigration, de la Diversité et de l’inclusion (MIDI), working in cooperation with the federal government, is responsible for family reunification procedures. See www.immigration-quebec.gouv.qc.ca

Applicants are required to fulfill the same responsibilities and obligations whether they apply to Quebec or any other Canadian province. However, for a sponsorship application in Quebec, the sponsor and the sponsored person must follow other procedures in addition to those explained above. The sponsor submits an “undertaking application” for approval by MIDI, and the sponsored person is required to obtain a CSQ (Quebec selection certificate) as well as permanent resident status.

Step 1: Sponsoring a spouse or partner

Jurisdiction over immigration to Quebec is a responsibility shared by the Québec and Canadian governments. To sponsor a family member (close relative), the sponsor must meet the requirements of both governments. See https://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/refugees-other/humanitarian-immigration/sharing-responsibilities.html, or read the French report entitled L’immigration au Québec : Partage des responsabilités Québec-Canada (PDF, 230 kB).

A sponsor residing in Québec must first submit a sponsorship application to Citizenship and Immigration Canada (CIC). If the application is approved, the sponsor continues the process with MIDI by submitting an undertaking application, which is a binding contract between the sponsor, the person sponsored and the Quebec government.

* The sponsor must also transmit confirmation of his or her sponsorship eligibility (by letter or email) to MIDI when submitting the undertaking application, along with the necessary payment and required forms.

The Quebec government establishes the scale for determining the sponsor’s “financial capacity” and the duration of the undertaking. The government also ensures that the undertaking is enforced. Unlike sponsors in other provinces, sponsors residing in Quebec send their proof of income to MIDI instead of CIC.

Regarding the undertaking application, there are several packages available to sponsors according to the type of sponsorship involved. For sponsorship of de facto partners, conjugal partners or spouses, sponsors require Kit A for the undertaking application, available online. They must fill out the application and send the completed forms to MIDI.

Step 2: Application for a Quebec selection certificate

Before the undertaking application is submitted to the Quebec government, the sponsored person must fill out an Application for Selection Certificate – Family Class and return the signed and completed form to the sponsor so the application can be appended to the undertaking application. For further information, sponsored persons can read the Guide for Sponsored Persons (PDF, 61 kB).
Also see Application for Selection Certificate – Family Class.

If the undertaking application is approved, a CSQ is issued to the person sponsored. After the government’s decision is transmitted to the appropriate Canadian visa office, the sponsored person can submit an application for permanent residence.

**Step 3: Application for permanent residence**
Canada is responsible for making the final decision about admitting an applicant. At this stage, the procedure is the same as outlined previously.

**Fees**
In addition to the fees of $550 required by the Government of Canada for processing an application for permanent residence, the Quebec government also charges for processing an undertaking application. Processing fees are updated in January of each year. The current fee for spousal or partner sponsorship is $269. These fees are not refundable even if the application is denied.
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Acts and Regulations

- An Act to make better provision with respect to Emigrants, and for defraying the expenses of supporting Indigent Emigrants, and of forwarding them to their place of destination and to amend the Act therein mentioned, S Prov C 1848 (3 Vict), c 1.
- An Act Respecting Immigration and Immigrants, (1869) S.C. 32-33 Victoria, c. 10.
- Act respecting the Ministère de l’Immigration et des Communautés culturelles, LRQ 1968, c. 68.
- An Act Respecting Immigration and Immigrants, 1869, S.C. 32-33 Victoria, c. 10.
- Bill C-50, « An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget », (2008) C.C. 56-57 Elizabeth II.
- Immigration Act, (1952) S.C. 1 Elizabeth II, c. 42.
- Immigration and Refugee Protection Act, SC 2001, c 27.
- Immigration Regulations : Modifications, SOR/1956-171, art. 2.
- Immigration and Refugee Protection Regulations, DORS/78-172
- Immigration and Refugee Protection Act, SC 2001, c 27