

Chapter Five

Spouses, Common-Law Partners and Conjugal Partners

Introduction

The *Immigration and Refugee Protection Act* (“IRPA”)¹ and the *Immigration and Refugee Protection Regulations* (“IRP Regulations”)² expanded the family class to include common-law partners and conjugal partners as well as spouses.³ In addition, common-law partners are family members of members of the family class.⁴ These changes, brought about by the implementation of the IRPA in 2002, are part of a legislative framework which sets out, for the first time, specific rules concerning the sponsorship of common-law partners and conjugal partners of the same or opposite sex as the sponsor.⁵

Modifications were also brought to the definition of “marriage.”⁶ The IRP Regulations now require that a foreign marriage be valid under Canadian law. Furthermore, contrary to the former *Immigration Regulations, 1978*, the IRPA and IRP Regulations do not define “spouse.”

The discussion that follows addresses the definitions of “common-law partner,” “conjugal partner,” and “marriage.” It also deals with excluded and bad faith relationships which disqualify

¹ S.C. 2001, c. 27, entered into force on June 28, 2002 as amended.

² SOR/202-227, June 11, 2002 as amended.

³ S. 12(1) of the IRPA and s. 116 and s. 117(1)(a) of the *Immigration and Refugee Protection Regulations* (“IRP Regulations”). “Common-law partner” is defined at s. 1(1) of the IRP Regulations as: “...in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.” “Conjugal partner” is defined at s. 2 of the IRP Regulations as: “...in relation to a sponsor, a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year.”

⁴ S. 1(3)(a) of the IRP Regulations states:

For the purposes of the Act, other than s. 12 and paragraph 38(2)(d), and these Regulations, “family member” in respect of a person means

(a) the spouse or common-law partner of the person;

⁵ Prior to the coming into force of the IRPA, common-law partners of Canadian citizens or permanent residents who wished to apply for permanent resident status to reunite with their partner were considered on humanitarian and compassionate grounds under s. 114(2) of the former *Immigration Act, R.S.C. 1985, c. I-2..*

⁶ S. 2 of the IRP Regulations defines “marriage” as:

...in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law.

a foreign national from being considered a spouse, common-law partner, conjugal partner or member of the family class.

Background to the Legislative Changes concerning Common-law Partners and Conjugal Partners

Under the IRPA, common-law partners have a status equal to that of spouses. The relevant provisions of the IRPA and the IRP Regulations are intended to grant common-law partners the same benefits and obligations granted to spouses.⁷ The provisions of the IRPA as they relate to common-law partners take into account case law such as *Miron v. Trudel*⁸ and *M. v. H.*⁹ in which the Supreme Court found that legislative provisions excluding same and opposite sex common-law partners from benefits afforded to married partners were discriminatory and violated the right to equality guaranteed by s. 15 of the *Charter of Rights and Freedoms*.¹⁰ In addition, the provisions of the IRPA keep in step with the *Modernization of Benefits and Obligations Act*,¹¹ which amended other federal acts following the decision in *M. v. H.*¹² in order to extend to same-sex partners the benefits and obligations afforded married and opposite-sex partners.

Conjugal partners have a different status than that of spouses and common-law partners under the IRPA. The definition of “conjugal partner” is found in the IRP Regulations. The recognition of conjugal partners under the IRPA was meant to acknowledge the particular circumstances of the sponsorship context that are generally not present where partners reside in the same country. Hence, “conjugal partner” refers only to a person in a conjugal relationship with the sponsor for a period of at least one year. Whereas spouses and common-law partners are eligible for permanent residence by virtue of their relationship with the sponsor (qualifying them as members of the family class) or by virtue of their relationship with a member of the family class (qualifying them as a family members of a member of the family class), conjugal partners are only eligible for permanent residence by virtue of their relationship with the sponsor (qualifying them as a member of the family class) and not with any other person. A conjugal partner is therefore not a family member of a member of the family class.¹³

⁷ See to this effect the comments concerning the changes to the family class in the Regulatory Impact and Analysis Statement (“RIAS”) published with the IRP Regulations.

⁸ [1995] 2 S.C.R. 418.

⁹ [1999] 2 S.C.R. 3.

¹⁰ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹¹ S.C. 2000, c.12, as amended. The definition of “common-law partner” in the *Modernization of Benefits and Obligations Act* is essentially the same as that in the IRP Regulations. It states: “common-law partner,” in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year.”

¹² *Supra*, footnote 9. See to this effect the comments on the changes to the family class in the RIAS.

¹³ See the definition of “conjugal partner” at s. 2 of the IRP Regulations as well as s. 117(1)(a) and the definition of “family member” at s. 1(3) of the IRP Regulations.

Relevant Legislative Provisions

The relevant provisions are:

- Section 11(1) of the IRPA provides that before entering Canada, a foreign national must apply for a visa which shall be issued if the officer is satisfied that the foreign national is not inadmissible and meets the requirement of the IRPA;
- Section 6 of the IRP Regulations indicates that a foreign national may not enter and remain in Canada on a permanent basis without first obtaining a permanent resident visa;
- Section 70 of the IRP Regulations sets out the requirements that must be met for a permanent resident visa to be issued to a member of an eligible class and to the accompanying family member of such a member;
- Section 12(1) of the IRPA provides that a foreign national may be selected as a member of the family class on the basis of their relationship with a Canadian citizen or a permanent resident as a spouse, a common-law partner or other prescribed family member;¹⁴
- Section 13(1) of the IRPA provides that a Canadian citizen or permanent resident may sponsor a member of the family class;
- Section 116 of the IRP Regulations prescribes the family class as a class of persons that may become permanent residents;
- Section 117(1)(a) of the IRP Regulations indicates that a foreign national who is the sponsor's spouse, common-law partner or conjugal partner is a member of the family class;
- Sections 1(1) and 1(2) of the IRP Regulations set out respectively the definition of "common-law partner" and the exception to the requirement of cohabitation;
- Section 2 of the IRP Regulations provides the definition for "marriage" and "conjugal partner;"
- Section 1(3) of the IRP Regulations defines "family member," other than for the purposes of s. 12 and s. 38(2)(d) of the IRPA;
- Sections 5(a) and 5(b) of the IRP Regulations list circumstances in which a foreign national is not considered a "spouse" or "common-law partner;"
- Sections 117(9)(a) to (d) of the IRP Regulations list circumstances in which a spouse, common-law partner or conjugal partner are not considered members of the family class. Sections 117(10) and (11), read together, create an exception to the exclusionary provision of section 117(9)(d).
- Section 4 of the IRP Regulations indicates that a foreign national shall not be considered a spouse, common-law partner or conjugal partner if the marriage, common-law partnership or conjugal partnership is a bad faith relationship – that is,

¹⁴ The expression "prescribed family member" in s. 12 of the IRPA appears to refer to the members of the family class that are prescribed in s. 117(1) of the IRP Regulations. The definition of "family member" at s. 1(3) of the IRP Regulations specifically states that it is not applicable to s. 12 of the IRPA.

the relationship is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the IRPA or IRP Regulations;

- Section 4.1 of the IRP Regulations indicates that a foreign national shall not be considered a spouse, common-law partner or conjugal partner of a person if the foreign national has begun a new conjugal relationship with that person after a previous marriage, common-law partnership or conjugal relationship with that person was dissolved primarily so that the foreign national, another foreign national or the sponsor could acquire any status or privilege under the Act.
- Section 121 of the IRP Regulations requires a member of the family class or family member of a member of the family class to be a family member of the applicant or sponsor at the time the application is made, and without taking into account whether the person has attained the age of 22 years, at the time of the determination of the application.
- Section 122 of the IRP Regulations states that a foreign national who is an accompanying family member of a member of the family class shall become a permanent resident if the person who made the application becomes a permanent resident and the accompanying family member is not inadmissible.

REQUIREMENTS FOR THE ISSUANCE OF A PERMANENT RESIDENT VISA TO A SPOUSE, COMMON-LAW PARTNER AND A CONJUGAL PARTNER IN THE CONTEXT OF FAMILY CLASS SPONSORSHIPS

A foreign national is issued a permanent resident visa if he or she meets the requirements of the IRPA including those pertaining to a member of the family class and is not inadmissible.¹⁵ A spouse, common-law partner or conjugal partner of a Canadian citizen or permanent resident is a member of the family class.¹⁶

Similarly, a foreign national accompanying a member of the family class who is issued a permanent resident visa shall in turn be issued a permanent resident visa where he or she meets the definition of “family member” and is not inadmissible.¹⁷ A spouse or common-law partner of a member of the family class is a “family member.” Note, however, that a conjugal partner is not a “family member.”¹⁸

Spouse

¹⁵ S. 11 of the IRPA and s. 70(1) and (2) of the IRP Regulations.

¹⁶ S. 12(1) of the IRPA and s. 116 and s. 117(1)(a) of the IRP Regulations.

¹⁷ S. 11 of the IRPA and s. 122 and s. 70(4) and (5) of the IRP Regulations.

¹⁸ S. 1(3)(a) of the IRP Regulations.

In order for a foreign national applying as a “spouse” to be considered a member of the family class or a family member, the foreign national’s marriage must meet the definition of marriage set out in s. 2 of the IRP Regulations and the marital relationship must not be excluded by virtue of s. 4, s. 4.1, or s. 5 of the IRP Regulations. In addition, a foreign national applying as a spouse and member of the family class must not be in an excluded relationship mentioned in s. 117(9) of the IRP Regulations.

The term spouse is not defined in the IRPA or the IRP Regulations. While in common usage, the term spouse may sometimes refer to common-law or conjugal partners, under the IRPA, it refers exclusively to individuals who are married. “Common-law partner” and “conjugal partner” are defined separately.

Definition of Marriage

The definition of marriage set out in s. 2¹⁹ of the IRP Regulations requires that a foreign marriage be valid both under the law of the jurisdiction where it took place and under Canadian law.

Prior to 2005, the definition of marriage was recognized as “the voluntary union for life of one man and one woman to the exclusion of all others.”²⁰ This created some debate regarding whether same-sex couples who were legally married could be recognized as a spouse for the purpose of family class sponsorship. This question was settled with the passage of the *Civil Marriage Act*.²¹ Section 2 of that Act defines marriage, for civil purposes, as “the lawful union of two persons to the exclusion of all others.” This definition is gender neutral and is further clarified by section 4 which stipulates that “for greater certainty, a marriage is not void or voidable by reason only that the spouses are of the same sex.” Presently the number of jurisdictions that allow same-sex marriage is small,²² so the issue has not arisen before the IAD; however, it can be expected that over time the number of jurisdictions where same-sex couples can legally marry will increase as will the number of sponsorship applications from same-sex, married couples.

Validity of the Marriage in the Jurisdiction Where it Took Place

¹⁹ S.2 “marriage”, in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law. (“marriage”)

²⁰ Payne, M. A., *Canadian Family Law (2001)*, Ch. 2; *Modernization of Benefits Act*, S.C. 2000, c. 12, s. 1.1 [this section repealed S.C. 2005, c. 33, s. 15].

²¹ S.C. 2005, c. 33.

²² For example, as at January 1, 2008, the Citizenship and Immigration Canada website lists five jurisdictions outside of Canada where same-sex partners can legally marry: Belgium, the Netherlands, South Africa, Spain, and the State of Massachusetts.

The validity of a marriage in the jurisdiction where it took place is established by demonstrating that the formal and essential requirements of marriage have been respected. The formal validity refers to the formal requirements of the ceremony while essential validity refers to the state of being married and is concerned with such things as prohibited degrees of relationships as prescribed by law, fraud, duress, and capacity.²³

Formal Validity

In general, formal validity includes the nature of, and prerequisites for, a ceremony.²⁴ Formal validity is determined in accordance with the law of the place where the marriage was celebrated. Where the law of the place is foreign law, it must be proved as any other fact by the party who is relying on it.²⁵ Therefore, when it is alleged, for example, that a marriage has not been duly solemnized, local marriage law applies and it must be decided whether the marriage in question complies with the formal requirements of that law. If it does not, then the effect of this defect must also be decided in accordance with that same law.²⁶ In the absence of evidence to the contrary, it must be presumed that the foreign law purports to be exhaustive as to the defects that invalidate a marriage.²⁷ Depending on the applicable law, as proved, the absence of a ceremony may²⁸ or may not invalidate the marriage.²⁹ If it is not proven that the marriage is valid, the applicant is not a “spouse” for purposes of the IRPA and therefore not a member of the family class.

There are situations where what the appellant tries to establish is that a marriage is not valid. For example, an appellant may argue that a sibling who is included in the parents' sponsorship application is not married (even though the person appears to have gone through a marriage ceremony) and still a dependant, or an appellant in an appeal involving

²³ *Virk, Sukhpal Kaur v. M.E.I.* (IAD V91-01246), Wlodyka, Gillanders, Verma, February 9, 1993.

²⁴ McLeod, James G., *The Conflict of Laws* (Calgary: Carswell, 1983), at 253.

²⁵ *Lit, Jaswant Singh v. M.E.I.* (I.A.B. 76-6003), Scott, Benedetti, Legaré, May 30, 1978. For example, in *El Salfiti, Dina Khalil Abdel Karim v. M.E.I.* (IAD M93-08586), Durand, January 24, 1994, the Appeal Division found that the “marriage contract” was in fact a “preliminary” engagement contract under Kuwati law. For a discussion of whether marriages by telephone are valid, see *Shaheen, Shahnaz v. M.C.I.* (IAD T95-00090), Wright, February 20, 1997; *Sobhan, Rumana v. M.C.I.* (IAD T95-07352), Boire, February 3, 1998; *Patel, Allarakha v. M.C.I.* (IAD TA3-24341), Sangmuah, May 5, 2005; *Mahamat, Ali Saleh v. M.C.I.* (IAD TA4-04059), Sangmuah, April 13, 2005; *Akhtar, Waseem v. M.C.I.* (IAD VA6-00938), Ostrowski, June 5, 2007; and *Sasani, Sam v. M.C.I.* (IAD VA6-00727), Shahriari, September 5, 2007.

²⁶ *Grewal, Ravinder v. M.C.I.* (IAD MA3-00637), Beauchemin, May 4, 2004.

²⁷ *Mann, Harnek Singh v. M.E.I.* (I.A.B. 85-6199), Wlodyka, June 5, 1987.

²⁸ See, for example, *Mann, ibid.*; and *Chiem, My Lien v. M.C.I.* (F.C.T.D., no. IMM-838-98), Rothstein, January 11, 1999.

²⁹ *Mann, Kirpal Singh v. M.E.I.* (I.A.B. 86-6008), Mawani, Gillanders, Wlodyka, April 14, 1987; *Oucherif, Ichrak v. M.C.I.* (IAD MA4-03183), Barazi, October 27, 2005.

misrepresentation may argue that he or she was not married at the time of landing as a single dependant.³⁰

Essential Validity

Essential validity includes matters relating to consent to marry, existing prior marriage,³¹ prohibited degrees of relationship,³² non-consummation of the marriage,³³ fraud, and duress.

In cases that raise an issue of essential validity, there is conflicting authority regarding the law that governs the circumstances; that is, whether it is the foreign law (the law of prenuptial domicile of the purported spouses) or Canadian domestic law (the law of their intended matrimonial home).

While the Federal Court of Appeal sanctioned the application of the law of the intended matrimonial home in *Narwal*,³⁴ it subsequently clarified that decision in *Kaur*,³⁵ indicating that the law of the intended matrimonial home is to be applied exceptionally, only in “very special circumstances” such as those that existed in *Narwal*, that is, where the marriage had been celebrated in a third country, there was no doubt about the good faith of the spouses, and the spouses had a “clear and infeasible” intention “to live in Canada immediately and definitely.” The Court in *Kaur* was not prepared to apply the law of the intended matrimonial home where the marriage had been celebrated in India, the visa officer did not believe the marriage was *bona fide*, and no effect could be given to the intention of the spouses to live in Canada because the applicant had been previously deported and was prohibited from coming into Canada without a Minister’s permit. The law of the prenuptial domicile was the proper law to apply to such facts.³⁶

³⁰ *Ramdai, Miss v. M.C.I.* (IAD T95-01280), Townshend, October 22, 1997 (sponsored application of son); *Li, Bing Qian v. M.C.I.* (F.C.T.D., no. IMM-4138-96), Reed, January 8, 1998 (misrepresentation); and *Tran, My Ha v. M.C.I.* (IAD V95-01139), Singh, March 9, 1998 (misrepresentation).

³¹ For example, see *Savehilaghi, Hasan v. M.C.I.* (IAD T97-02047), Kalvin, June 4, 1998, which dealt with the issue of whether a Mullah in Iran is authorized to effect a divorce; *Ratnasabapathy, Jeyarajan v. M.C.I.* (F.C.T.D., no. IMM-382-98), Blais, September 27, 1999, where the Court noted that if the IAD concludes that the first marriage is still valid, it should not go on to consider the validity of a second marriage; and *Nadesapillai, Sriharan v. M.C.I.* (IAD T99-11883), Hoare, August 1, 2001, where the panel did not accept as credible the evidence regarding the applicant’s alleged belief that her first husband was dead. The applicant failed to establish that her first marriage was either invalid or dissolved.

³² For example, see *Grewal, Inderpal Singh v. M.C.I.* (IAD T91-04831), Muzzi, Aterman, Leousis, February 23, 1995; *Badhan, Lyle Kishori v. M.C.I.* (IAD V95-00432), Boscariol, September 3, 1997; and *Saini, Jaswinder Kaur v. M.C.I.* (IAD T89-07659), D’Ignazio, August 26, 1999. These cases dealt with the issue of whether a woman can marry her husband’s brother under the *Hindu Marriage Act, 1955*.

³³ *McLeod, supra*, footnote 24, at 256.

³⁴ *M.E.I. v. Narwal, Surinder Kaur* (F.C.A., no. A-63-89), Stone, Marceau, MacGuigan, April 6, 1990.

³⁵ *Kaur, Narinder v. M.E.I.* (F.C.A., no. A-405-89), Marceau, Desjardins, Linden, October 11, 1990, at 5. Reported: *Kaur v. Canada (Minister of Employment and Immigration)* (1990), 12 Imm. L.R. (2d) 1 (F.C.A.).

The Immigration Appeal Division has generally applied the reasoning of *Kaur* to questions of the legality of a marriage,³⁷ although at least one decision has applied the reasoning in *Narwal*.³⁸

Evidentiary Issues – foreign marriages

Where the validity of a marriage is in issue and the marriage has been registered, it must be determined what effect registration has on the validity of the marriage. Registration creates a presumption that a marriage has met the requirements for formal validity.³⁹ In other words, registration constitutes *prima facie* evidence of the marriage and of the validity of the marriage⁴⁰ until a court of competent jurisdiction rules otherwise⁴¹ or “until compelling evidence is adduced to show that the marriage was not duly solemnized prior to its registration.”⁴² Therefore, even if a marriage has been registered and a certificate presented, if other evidence on the record indicates that the persons are not validly married, it may be found that the sponsor has failed to prove that a valid marriage took place.⁴³

³⁶ *Ibid.* See also *Donoso Palma, Sergio v. M.C.I.* (IAD MA1-03349), di Pietro, July 9, 2002 where the panel applied the law of the country in which the first marriage was contracted (Chile) and held that there was “no proof” that the first marriage had been dissolved in accordance with Chilean laws, notwithstanding that it had been dissolved by a Canadian judgment.

³⁷ In *Virk, supra*, footnote 23, the appellant married her first husband’s brother in India, which was prohibited by Indian law but was not one of the prohibited relationships in Canadian law. The panel determined that the proper law to be applied was Indian law since the marriage took place in India. It rejected the submission that the essential validity of the marriage should be determined only based on Canadian law, as the definition of marriage as found in the former *Immigration Act* was clear that it applied to the place of marriage. The panel noted that this definition had not been considered in either *Narwal* or *Kaur*. In *Khan v. M.C.I.* (IAD) V93-02590), Lam, July 4, 1995, the panel distinguished *Narwal* on the basis that in *Narwal* the couple had been married in a third country. In *Brar, Karen Kaur v. M.C.I.* (IAD VA0-02573), Workun, December 4, 2001, the panel applied the law of the prenuptial domicile. It found that the circumstances were distinguishable from those in *Narwal* as the parties in this case married in India notwithstanding that, as first cousins, the relationship came within the degrees of prohibited relationship under the *Hindu Marriage Act, 1955*. In *Singh, Harpreet v. M.C.I.* (IAD TA4-01365), Stein, May 10, 2006 the panel examined the law of the place of marriage, India.

³⁸ In *Xu, Yuan Fei v. M.C.I.* (IAD M99-04636), Sivak, June 5, 2000 the panel applied the law of the parties’ intended matrimonial home (Canada). The sponsor and his wife were first cousins and the Chinese marriage law prohibited marriage between collateral relatives by blood up to the third degree of kinship. Therefore, the marriage was not valid in China. The panel allowed the appeal finding that the degrees of consanguinity which were a bar to the lawful solemnization of marriage in Ontario did not include first cousins.

³⁹ In *Tran, supra*, footnote 30, the evidence showed that in Vietnam, the recognition and recording of a marriage by the People’s Committee is required for the marriage to be legally binding.

⁴⁰ *Parmar, Ramesh Kumar v. M.E.I.* (I.A.B. 85-9772), Eglington, Weisdorf, Ahara, September 12, 1986.

⁴¹ *Kaur, Gurmit v. C.E.I.C.* (F.C.T.D., no. T-2490-84), Jerome, May 8, 1985.

⁴² *Parmar, supra*, footnote 40; *Pye, Helen Leona v. M.C.I.* (IAD MA5-00247), Beauchemin, September 21, 2006.

⁴³ *Lotay, Harjit Kaur v. M.E.I.* (I.A.D. T89-03205), Ariemma, Townshend, Bell, April 18, 1990; *Bakridi, Faizal Abbas v. M.C.I.* (IAD V99-03930), Baker, January 9, 2001.

Little weight may be given to an *ex parte* judgment *in personam*⁴⁴ purporting to establish the marriage in question where the record shows that the evidence before the issuing court was incomplete and where the evidence on appeal indicates that the sponsor was married to another person and therefore lacked the capacity to marry his purported wife.⁴⁵

Little weight may also be given to a declaratory judgment by a court where the judgment fails to refer to the date and place of the marriage in question and where the judgment is obtained after the applicant has received the letter of refusal.⁴⁶

However, caution must be exercised in concluding that a marriage is not valid in the face of what appears to be a valid Court order.⁴⁷

The appellant has the duty of providing objective evidence of a customary law of marriage. International, national or even customary law are not within the general knowledge of the Appeal Division. It is not the sort of information that the Appeal Division can be expected to know or take judicial notice of.⁴⁸

In cases involving the application of foreign law such as the *Hindu Marriage Act, 1955*, it may be alleged that custom or usage exempts the purported spouses, who fall within the prohibited degrees of relationship, from strict compliance with that *Act*. However, where the sponsor claims to be the spouse of the applicant by reason of an exemption to the law based on custom or usage, the sponsor has the onus of clearly proving its existence.⁴⁹ A declaratory *in personam* judgment, which rules on the existence of the custom or usage in issue, may be considered to be evidence of its existence.⁵⁰ The testimony of an expert witness,⁵¹ even a transcript of the testimony of an expert witness in another hearing,⁵² may be accepted as establishing the existence of a custom.

Validity of the Marriage under Canadian Law

⁴⁴ An *in personam* judgment is one that binds only the two persons to an action.

⁴⁵ *Gill, Sakinder Singh v. M.E.I.* (IAD V89-01124), Gillanders, Verma, Wlodyka, July 16, 1990.

⁴⁶ *Burmi, Joginder Singh v. M.E.I.* (I.A.B. 88-35,651), Sherman, Arkin, Weisdorf, February 14, 1989.

⁴⁷ *Sinniah, Sinnathamby v. M.C.I.* (F.C.T.D., no. IMM-5954-00), Dawson, July 25, 2002; 2002 FCT 822.

⁴⁸ *Quao, Daniel Essel v. M.C.I.* (F.C.T.D., no. IMM-5240-99), Blais, August 15, 2000.

⁴⁹ *Canada (Minister of Employment and Immigration) v. Taggar*, [1989] 3 F.C. 576 (C.A.); *Buttar, Amrit Kaur v. M.C.I.* (F.C. no. IMM-1669-06), Blais, October 25, 2006; 2006 FC 1281; *Patel, Sunil Jayantibhai v. M.C.I.* (IAD TA3-19443), Band, September 28, 2006. For an in-depth analysis regarding the proof of the validity of a marriage between a Christian and a Hindu in India, see *Pye, supra*, footnote 42.

⁵⁰ *Taggar, Ibid.*

⁵¹ *Atwal, Jaswinder Kaur v. M.E.I.* (I.A.B. 85-4204), Petryshyn, Wright, Rayburn, January 30, 1989.

⁵² *Bhullar, Sawarnjit Kaur v. M.E.I.* (IAD W89-00375), Goodspeed, Rayburn, Arpin (concurring), November 19, 1991.

The validity of the marriage “under Canadian law” is established by demonstrating that the foreign marriage is valid under the applicable Canadian law. The expression “Canadian law” may refer to Canadian rules pertaining to the conflict of laws⁵³ applicable to foreign marriages, to rules concerning the formal and essential validity of a marriage concluded in Canada and to federal legislation regulating certain aspects of marriage, namely the *Marriage (Prohibited Degrees) Act*⁵⁴ which prohibits marriage between certain individuals and the *Criminal Code*⁵⁵ which criminalizes bigamy and polygamy.

The issue that arises is whether all three sets of rules (common-law rules concerning conflict of laws, provincial rules pertaining to formal validity of marriage and the federal rules concerning essential validity of a marriage and those regulating certain aspects of marriage) should be applied when determining if a foreign marriage is valid “under Canadian law.” It would seem that only rules respecting essential aspects of marriage and federal legislation regulating certain aspects of marriage were intended to be applicable.

The rules concerning conflict of laws in cases of foreign marriages applicable in Canada refer back to the rules of the place where the marriage was celebrated for questions of formal validity and to the rules of the spouses’ domicile prior to marriage for questions of essential validity. If these rules are applied, the result is the same as that obtained in applying the first part of the definition of “marriage”⁵⁶ thus making the second part of the definition of marriage in IRPA redundant.

In Canada, the rules concerning the formal validity of marriage are a matter under provincial jurisdiction and vary from province to province. It is suggested that these rules were not intended to be applied in the context of the validity of a foreign “marriage” under the IRPA. It is difficult to see the merit, for immigration purposes, in requiring that foreign marriages accord with provincial rules concerning the solemnization of marriages.⁵⁷

On the other hand, rules concerning the essential validity of marriage in Canada fall under federal jurisdiction and are relevant because they govern the substantial aspects of marriage. The same can be said of provisions in the *Marriage (Prohibited Degrees) Act*⁵⁸ and those concerning

⁵³ “Conflict of laws” generally refers to a situation where the laws of more than one jurisdiction may apply to the legal issue to be determined. For instance, in determining the validity of a foreign marriage, the laws of the jurisdiction where the partners celebrated their marriage, of their domicile prior to marriage as well as those of Canada may, at least initially, all appear applicable. In such cases, there are legal rules and common-law principles that assist in sorting out which jurisdiction’s rules actually apply.

⁵⁴ S.C. 1990, c. 46 as amended.

⁵⁵ R.S.C. 1985, c. C-46 as amended.

⁵⁶ Castel, J.-G., *Canadian Conflict of Laws* (Toronto: Butterworths, 1986).

⁵⁷ Note that the age at which a person may contract marriage in Canada is of provincial jurisdiction. This issue is addressed in the immigration context in s. 5(a) and s. 117(9)(a) of the IRP Regulations.

⁵⁸ *Supra*, footnote 54.

bigamy and polygamy in the *Criminal Code*.⁵⁹ These rules are interrelated with the definition of marriage as it is understood and applied in Canada. It is arguable therefore that interpreting the expression “under Canadian law” to refer to both the rules of essential validity of a marriage in Canada and to federal legislation regulating certain aspects of marriage best conforms to the intended purpose of the definition of marriage in the IRP Regulations.

The rules concerning essential validity⁶⁰ of marriage and the provisions of federal legislation concerning certain aspects of marriage are as follows:⁶¹

➤ **The Parties Must have the Capacity to Consent to Marriage**

The parties must have the capacity to consent freely to the marriage, understanding the nature and consequences of the act.

➤ **The Marriage must not be one Prohibited by Degrees of Consanguinity**

An individual may not marry a person to whom he or she is related lineally (for instance, grandfather, father, and daughter) or as the brother, sister, half-brother or half-sister, including by adoption.⁶² Such marriages, if contracted, are void.⁶³

Note that s. 155 of the *Criminal Code*,⁶⁴ concerning the offence of incest closely mirrors s. 2(2) of the *Marriage (Prohibited Degrees) Act*,⁶⁵ except for the specific provision in the latter concerning adoption.

➤ **The Marriage must be Monogamous**

Marriage is defined by the common-law⁶⁶ and by s. 2 of the *Civil Marriage Act*⁶⁷ as an exclusive relationship. In addition, bigamy and polygamy are considered criminal offences.⁶⁸

⁵⁹ *Supra*, footnote 55.

⁶⁰ Conditions of essential validity that may be raised only by the spouses themselves are not considered here given that the sponsorship appeal process does not oppose one spouse against the other.

⁶¹ Davies, C., *Family Law in Canada* (Calgary: Carswell Legal Publications, 1984).

⁶² S. 2(2) of the *Marriage (Prohibited Degrees) Act*, *supra*, footnote 54 states: “no person shall marry another person if they are related lineally, or as the brother or sister or half-brother or half-sister, including by adoption.”

⁶³ S. 3(2) of the *Marriage (Prohibited Degrees) Act*, *supra*, footnote 54.

⁶⁴ S. 155(1) of the *Criminal Code*, *supra*, footnote 55 states:

Every one commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.

S. 155(4) of the *Criminal Code* states: In this section, “brother” and “sister” respectively include half-brother and half-sister.

⁶⁵ *Supra*, footnote 54.

⁶⁶ See introduction.

⁶⁷ *Supra*, footnote 21

A prior marriage is dissolved by divorce, annulment or by the death of one of the parties to the marriage.⁶⁹ The rules concerning the recognition of foreign divorce judgments in Canada are provided by the case law and s. 22 of the *Divorce Act*.

COMMON-LAW PARTNER

In order for a foreign national applying as a common-law partner to be considered a member of the family class or a family member, the foreign national must meet the definition of “common-law partner” set out in s. 1(1) as interpreted by s. 1(2) of the IRP Regulations, and the relationship must not be excluded by virtue of s. 4, s. 4.1, or s. 5 of the IRP Regulations. In addition, a foreign national applying as a common-law partner and member of the family class must not be in an excluded relationship mentioned at s. 117(9) of the IRP Regulations.

Definition of “Common-law Partner”

“Common-law partner” is defined at s. 1(1) of the IRP Regulations as:

... in relation to a person, an individual who is cohabiting with the person, in a conjugal relationship, having so cohabited for a period of at least one year.

Section 1(2) of the IRP Regulations complements the definition. It provides a rule of interpretation which states:

For the purposes of the Act and these Regulations, an individual who has been in a conjugal relationship with a person for at least one year but is unable to cohabit with the person, due to persecution or any form of penal control, shall be considered a common-law partner of the person.

The definition of common-law partner refers to “...in relation to a person, an individual who is cohabiting with the person, in a conjugal relationship...” without limiting the relationship to one between a male partner and a female partner. The definition is therefore gender-neutral⁷⁰ and as such includes relationships between same-sex and opposite-sex partners.

The evidence must establish that all the elements of the definition are met in order for a foreign national to be considered a “common-law partner.” The elements of the definition of “common-law partner” are discussed below.

⁶⁸ S. 290(1) and s. 293 of the *Criminal Code*, *supra* footnote 55, respectively.

⁶⁹ For a more detailed discussion regarding the dissolution of a prior marriage, see the discussion regarding Regulation 117(9)(c)(i) later in this chapter.

⁷⁰ In comparison, the definition of “spouse” in s. 2(1) of the former *Immigration Regulations, 1978* stated:

“...means the party of the opposite sex to whom the person is joined in marriage.”

Conjugal Relationship

As stated above, to be a common-law partner within the definition in IRPA, the couple must be in a conjugal relationship. Although the IRPA and IRP Regulations do not define “conjugal relationship,” the term conjugal is ordinarily defined⁷¹ and interpreted in the case law as referring to a “marriage-like relationship.”⁷² The jurisprudence has established several criteria that are useful in determining whether a conjugal relationship exists. The principal case is *M. v. H.*,⁷³ wherein the Supreme Court of Canada stated the following in relation to a conjugal relationship:

[59] Molodowich v. Penttinen (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognised that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal. While it is true that there may not be any consensus as to the societal perception of same-sex couples, there is agreement that same-sex couples share many other "conjugal" characteristics. In order to come within the definition, neither opposite-sex couples nor same-sex couples are required to fit precisely the traditional marital model to demonstrate that the relationship is "conjugal".

[60] Certainly an opposite-sex couple may, after many years together, be considered to be in a conjugal relationship although they have neither children nor sexual relations. Obviously the weight to be accorded the various elements or factors to be considered in determining whether an opposite-sex couple is in a conjugal relationship will vary widely and almost infinitely. The same must hold true of same-sex couples. Courts have wisely determined that the approach to determining whether a relationship is conjugal must be flexible. This must be so, for the relationships of all couples will vary widely.

In the immigration context, the court has stated that “it is clear that a conjugal relationship is one of some permanence, where individuals are interdependent – financially, socially, emotionally, and physically – where they share household and related responsibilities, and where they have made a serious commitment to one another.”⁷⁴

⁷¹ Conjugal is defined as “consort, spouse, to join together, join in marriage, of or relating to marriage, matrimonial.” *The Oxford Concise Dictionary*, 7th ed. (Oxford: Oxford University Press).

⁷² For instance, *M. v. H.*, *supra*, footnote 9.

⁷³ *Supra*, footnote 9.

⁷⁴ *Siev, Samuth v. M.C.I.* (F.C., no. IMM-2472-04), Rouleau, May 24, 2005; 2005 FC 736.

The criteria enunciated in *M. v. H.*⁷⁵ have been refined and expanded in subsequent case law. The following factors have been considered when examining the issue of the existence of a conjugal relationship in the context of family class sponsorship applications.⁷⁶

- **Shelter:** Whether the partners live together in the same home as a couple and whether there is evidence they intend to co-exist as a single family unit upon reunification in Canada.⁷⁷
- **Sexual and personal behavior:** How the partners met, evidence of the development of their relationship, and whether the partners' relationship is exclusive, committed, loving, intimate and evidenced by emotional, intellectual and physical interaction. Sexual relations are not an absolute requirement⁷⁸ although a conjugal relationship does imply that the couple has met face to face⁷⁹ and has engaged in a physical relationship.⁸⁰ The relationship should also be viewed as long-term and on-going. Note, also, that in *Singh*⁸¹, the court recognized that it is possible to have a valid common-law relationship while being legally married to another person, provided neither one of the legally married spouses continues the marital relationship.
- **Services:** Whether household and other family-type responsibilities are shared and whether there is evidence of mutual assistance especially in time of need.
- **Social activities:** Whether the partners share time together or participate in leisure activity together - Whether they have relationships or interaction with each other's respective family.
- **Economic support:** Whether the partners are financially interdependent or dependent; Whether the partners have joined, to some extent, their financial affairs (for instance, as in

⁷⁵ *Supra*, footnote 9.

⁷⁶ See, for example, *Siev, supra*, footnote 74; *Porteous, Robert William v. M.C.I.* (IAD TA3-22804), Hoare, October 27, 2004; *McCullough, Robert Edmund v. M.C.I.* (IAD WA3-00043), Boscariol, February 5, 2004; *Kumar, Monika v. M.C.I.* (IAD TA4-10172), MacDonald, May 8, 2006; *Dunham Audrey Pearl v. M.C.I.* (IAD TA4-00144), Néron, August 24, 2004; *Stephen, Ferdinand v. M.C.I.* (IAD TA5-09330), MacLean, October 12, 2007.

⁷⁷ This factor is replaced by the requirement to cohabit in the definition of "common-law partner."

⁷⁸ *Stephen, supra*, footnote 76.

⁷⁹ *Dunham, supra* footnote 76; *Naidu, Kamleshni Kanta v. M.C.I.* (IAD VA5-00244), Sealy, February 1, 2006.

⁸⁰ *Ursua, Erlinda Arellano v. M.C.I.* (IAD TA4-08587), Boire, September 12, 2005.

⁸¹ *Singh, Amarjit v. M.C.I.* (F.C., no. IMM-5641-02), Snider, May 4, 2006; 2006 FC 565. In that case the court accepted that a valid common-law relationship could exist even though the appellant was legally married to another woman in his country, but rejected that such a situation existed on the facts because there was evidence that the appellant had been sending money to his wife in India and that, if he returned to India, his wife would expect him to return to her. See also *Cantin, Edmond v. M.C.I.* (IAD MA4-06892), Néron, August 1, 2005 wherein the panel found that the appellant had a genuine conjugal relationship with the applicant despite the fact that the appellant was still married, provided for his wife financially, and occasionally visited her. The appellant's wife had had Alzheimer's disease for several years and was in an advanced vegetative state in a special care facility. The panel was critical of the visa officer's "restrictive definition" of the concept of exclusivity given the unique and unfortunate circumstances of the case.

joint-ownership) or arranged them to reflect their ongoing relationship (for instance, naming the other partner beneficiary in an insurance policy or will).

- **Children:** The existence of children and the partners' attitude and conduct towards children in the context of their relationship.
- **Societal perception:** Whether the partners are treated or perceived by the community as a couple.
- **Capacity to consent:** The partners must be capable of freely consenting to a conjugal relationship as well as understand its nature and consequences.
- **Not prohibited by degrees of consanguinity:** The relationship must not be one which falls within the prohibited degrees of marriage set out in s. 2(2) of the *Marriage (Prohibited Degrees) Act*.⁸²
- **The relationship must not be a “precursor” to a conjugal relationship:** Where the relationship may be described as a precursor to a “marriage-like” relationship, it will not be considered a conjugal relationship. For instance, persons whose marriage has been arranged but who have not met each other or persons who are dating but have not established a marriage-like relationship, are not in a conjugal relationship. Note that fiancés are no longer members of the family class but may nevertheless be considered common-law partners or conjugal partners if they meet the requirements of the applicable definition including, being at the time of the application, in a marriage-like relationship.⁸³

The interplay of these factors in the context of family class sponsorships has been considered in several cases. The jurisprudence clearly indicates that the importance of any of these characteristics will vary with the context and it is not necessary that all of them be present before a conjugal relationship is found to exist. The goal is to determine whether the relationship is conjugal and the criteria must be applied only insofar as they may assist in this determination.⁸⁴

⁸² *Supra*, footnote 54.

⁸³ S. 121(a) of the IRP Regulations. According to the RIAS, *supra*, footnote 7:

The Regulations as pre-published have been modified to remove fiancés and intended common-law partners. The number of people who have been seeking permanent residence as fiancés has been steadily declining. With respect to the “intended common-law partners,” the assessment of the intention of couples to cohabit goes beyond the scope of a normal immigration assessment and would be extremely difficult to administer. The conjugal partner category is a more workable approach to accommodate persons in a conjugal relationship unable to cohabit.

⁸⁴ *Lavoie v. Canada (Minister of National Revenue)*, [2000] F.C.J. No. 2124 (F.C.A.), (QL) at para. 13 (the dissenting reasons of Justice Décarry) wherein it is mentioned:

I would add, for the purposes of the rehearing, that the factors set out in *Milot* [case citing the factors in *Molodowich v. Penttinen*]... do not have absolute value. They are useful to be sure, but they must be adapted to the context in which they are used. If we look too closely at the trees, we may not see the forest. In this case the forest is the conjugal relationship, a concept that

The question is essentially whether the evidence establishes a marriage-like relationship between the partners.

When determining whether a conjugal relationship exists, it is important to consider the cultural realities of the relationship. This is particularly important in the immigration context where one or both of the partners often are coming from a cultural background quite different than the Canadian milieu. In *Siev*, the Federal Court stated that "...the case law indicates to us that the evidence should not be minutely scrutinized and that one should refrain from applying North American reasoning to an applicant's conduct."⁸⁵ Cultural factors are often particularly relevant in same-sex relationships. In *Leroux*,⁸⁶ the court stated that "it seems to me to be important to keep in mind the restrictions which apply because the partners live in different countries, some of which have different moral standards and customs which may have an impact on the degree of tolerance for conjugal relationships, especially where same-sex partners are concerned. Nevertheless, the alleged conjugal relationship must have a sufficient number of features of a marriage to show that it is more than just a means of entering Canada as a member of the family class."⁸⁷

Cohabitation

The definition of common-law partner requires that an individual "... is cohabiting ...in a conjugal relationship, having so cohabited for a period of at least one year." The partners must therefore be cohabiting and have cohabited conjugally and for at least one year. It is necessary, therefore, to determine when the partners were cohabitating.

In addition to being one of the factors indicative of a conjugal relationship, cohabitation is a mandatory requirement of the definition of common-law partner. Hence, for the purposes of the definition of common-law partner, the "shelter" criterion, which serves in the case law to establish whether the relationship is marriage-like, is replaced by the legislative requirement to cohabit in a conjugal relationship for at least one year.

evokes a common life, which presupposes that the couple are involved with each other, together and in a lasting way on the personal, sexual, family, social and financial levels."

For some other cases that have applied the criteria originally listed in *Molodowich v. Penttinen*, see the following: *Baird v. Iaci*, [1997] B.C.J. No. 1789 (S.C.)(QL); *Roberts v. Clough*, [2002] P.E.I.J. No. 37 (S.C. (T.D.)), (QL); *Fraser v. Canadien National*, [1999] J.Q. no. 2286, (S.C.)(QL) and *Spracklin v. Kichton*, [2000] A.J. No. 1329 (Q.B.), (QL). For recent cases from the IAD see: *McCullough*, *supra*, footnote 76; *Macapagal, Rodolfo v. M.C.I.* (IAD TA2-25810), D'Ignazio, February 18, 2004.

⁸⁵ *Siev*, *supra*, footnote 74 at paragraph 16. See also *McCullough*, *supra*, footnote 76.

⁸⁶ *Leroux, Jean-Stéphane v. M.C.I.* (F.C. no. IM-2819-06), Tremblay-Lamer, April 17, 2007; 2007 FC 403 at paragraph 23.

⁸⁷ *Ibid.*

Cohabitation is not defined in the IRPA or the IRP Regulations but has been interpreted in the common law to mean “living together as husband and wife.”⁸⁸ The IAD has adopted this definition as well.⁸⁹ Case law interpreting the term cohabitation in the family law context indicates that it refers to persons living under the same roof in a conjugal relationship and also indicates that partners are not required to be divorced or legally separated from a former partner to cohabit.⁹⁰ Further, the common-law partners do not have to necessarily physically reside at the same location without interruption.⁹¹ In the context of family and estate law, the courts have held that in certain circumstances, usually in cases involving shared custody arrangements or work related obligations, cohabitation is established even though the parties do not physically live together at the “conjugal home” throughout the week or for a period of the year.⁹²

However, it is not clear whether the time the partners spend apart (not cohabiting conjugally) is automatically to be taken into account in calculating the one-year period of cohabitation. For instance, where a partner has cohabited in a conjugal relationship for nine months and, although the relationship is ongoing, he or she spends the remaining three months out of the one-year period in another city (away from his or her partner), will the partner be considered to have cohabited in a conjugal relationship for one year or for nine months? In calculating the period of cohabitation, it appears relevant to consider the reasons for which the partners were not residing together.

Cohabitation does not come to an end if the partners live separately during a “cooling-off period” or during a time of reassessment; it ends when “either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this state of mind is a settled one.”⁹³

Cohabitation alone does not necessarily signify a common-law relationship. There must also be a “mutual commitment to a shared life.”⁹⁴

Exception to the Requirement to Cohabit

⁸⁸ Cohabitation: To live together as husband and wife. The mutual assumption of those marital rights, duties and obligations which are usually manifested by married people, including but not necessarily dependent on sexual relations. *Black’s Law Dictionary*, 6th ed. (St. Paul, West Publishing Co.).

⁸⁹ *Do, Thi Thanh Thuy* (IAD TA3-17390), D’Ignazio, September 3, 2004.

⁹⁰ *Sullivan v. Letnik* (1997), 27 R.F.L. (4th) 79 (Ont. C.A.).

⁹¹ *Do, supra*, footnote 89. In this case, the applicant had been travelling back and forth to Vietnam over a period of 11 years, living with his partner during the times he was in Vietnam, and they had had a child together. The panel found that a common-law relationship existed.

⁹² *Thauvette v. Malyon* [1996] O.J. No. 1356 (Gen. Div.)(QL), mentioned in: *McCrea v. Bain Estate*, [2004] B.C.J. No.290 (QL); See also *Hazlewood v. Kent*, [2000] O.J. No. 5263 (Sup. Ct.)(QL) and *Craddock v. Glover Estate* [2000] O.J. No. 680 (S.C.)(QL).

⁹³ *Sanderson v. Russell* (1979), 24 O.R. (2d) 429, (C.A.) and *Feehan v. Attwells* (1979), 24 O.R. (2d) 248 (Co. Ct).

⁹⁴ *Cai, Changbin v. M.C.I.* (F.C. no. IMM-6729-06), Kelen, August 3, 2007; 2007 FC 816.

Section 1(2) of the IRP Regulations states:

For the purposes of the Act and these Regulations, an individual who has been in a conjugal relationship with a person for at least one year but is unable to cohabit with the person, due to persecution or any form of penal control, shall be considered a common-law partner of the person.

This provision sets out the circumstances under which an individual in a conjugal relationship with another person for at least one year will be considered a common-law partner of that person even though the requirement of cohabitation in the definition of “common-law partner” has not been met.

According to s. 1(2) of the IRP Regulations, a partner is excused from fulfilling the cohabitation requirement where he or she is unable to cohabit with the other due to persecution or any form of penal control. The comments on this provision in the RIAS suggest that the intent of this section is that the persecution or penal control must be due to the partners’ conjugal relationship.⁹⁵

The IRPA and the IRP Regulations do not define persecution or penal control. Persecution has been characterized in Canadian case law pertaining to the Convention refugee definition as referring to repeated or systemic infliction of serious harm⁹⁶ or treatment which compromises or denies basic human rights.⁹⁷ Discrimination is not persecution but cumulative acts of discrimination may amount to persecution.⁹⁸

Penal control is a form of punishment usually inflicted or sanctioned by the state. Given the use of the expression “due to ... any for of penal control” in s. 1(2) of the IRP Regulations, “penal control” is arguably not limited to incarceration or detention but may include corporal punishment, house arrest and other significant measure taken to punish an individual.⁹⁹ Such control may be the result of civil or criminal action and may be extra-judicial.

⁹⁵ See the comments at p. 261 of the RIAS, *supra*, footnote 7:

It was suggested to expand the factors excusing common-law partners from cohabiting to include discrimination in addition to “persecution” and “penal control”. Considering that “persecution” or “any form of penal control” can mean strong social sanctions which result in ostracism, loss of employment, inability to find shelter or other forms of persecution as a result of the relationship, no change has been made to the pre-published provisions.”

⁹⁶ *Rajudeen v. Canada (Minister of Employment and Immigration)*, (1984), 55 N.R. 129 (F.C.A.).

⁹⁷ *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593. For instance, the following mistreatment has been considered to be persecution: torture, beatings, rape, death threats, trumped-up charges, arbitrary detention and denial of the right to work. See in general Chapter 3 entitled “Persecution” of the RPD Interpretation of the Convention Refugee Definition in the Case Law Paper, December 31, 2005.

⁹⁸ See the jurisprudence listed in section 3.1.2. of the Refugee Protection Division, *Interpretation of the Convention Refugee Definition in the Case Law Paper*, December 31, 2005.

⁹⁹ For instance, a same-sex conjugal relationship may be considered illegal and the partners subject to imprisonment or lashings.

The persecution or penal control must be such that an individual is unable to cohabit with another. In cases where an individual may obtain relief from persecution or penal control, it may be relevant to assess whether such relief was sought so as to enable one partner to cohabit with the other.

CONJUGAL PARTNER¹⁰⁰

In order for a foreign national applying as a conjugal partner to be considered a member of the family class, the foreign national must meet the definition of “conjugal partner” at s. 2 of the IRP Regulations and the relationship must not be excluded by virtue of s. 4, s. 4.1 or by s. 117(9) of the IRP Regulations.

Definition of “Conjugal Partner”

Conjugal partner is defined at s. 2 of the IRP Regulations as:

... in relation to a sponsor, a foreign national residing outside of Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year.

The definition of conjugal partner refers to “...in relation to a sponsor, a foreign national ... who is in a conjugal relationship...” without limiting the relationship to one between a male partner and a female partner. The definition is therefore considered gender-neutral and as such includes relationships between same-sex and opposite-sex partners. This has been confirmed by the Federal Court in *Leroux*.¹⁰¹

The elements of the definition of “conjugal partner” are considered below.

Conjugal Relationship

Subject to the following discussion, the comments earlier in this chapter concerning “conjugal relationship” in the context of the definition of “common-law partner” apply to the definition of “conjugal partner” because both definitions require that the partners be in a conjugal relationship. Although cohabitation is not required by the definition of “conjugal partner,” where the partners allege to have cohabited, the comments concerning cohabitation may be helpful. Given that cohabitation is one of the characteristics of a conjugal relationship according to the case law, the applicant and the sponsor may reasonably be required to indicate why they have not cohabited.

¹⁰⁰ Many of the concepts applicable to common-law partners are also applicable to conjugal partnerships, and are not repeated in this section. Please refer to the section on common-law partners.

¹⁰¹ *Leroux, supra*, footnote 86.

The relationship of “conjugal partners” may not be as developed as that of “common-law partners” because they may not have cohabited. The partners may not have the same depth of knowledge of one another. However, this does not change the fact that their relationship is required to be a conjugal one and not simply one that is anticipated to become conjugal. While there is no cohabitation requirement, in one case the IAD stated that in the context of a relationship that developed over the internet over a three-year period of time, it would have been expected that the partners met in person.¹⁰² In another case the IAD panel stated that “persons whose marriage has been arranged but who have not met each other and have not established a marriage-like relationship are not in a conjugal relationship.”¹⁰³ Finally, in *Ursua*¹⁰⁴ the panel dismissed an appeal on the basis that the relationship had not been established within the one-year requirement. In that case, the appellant indicated that the conjugal relationship had started when they had made love on the phone. The panel, however, rejected this argument indicating that a conjugal relationship implies a physical relationship.

Conjugal partners may be reasonably asked to establish whether they intend to marry or live in a common-law relationship once reunited with their sponsor. “Conjugal partner” is not a legally recognized status in Canada. Conjugal partners do not have the same rights and benefits as spouses and common-law partners under Canadian law. It is therefore reasonable to expect that partners will convert their ongoing conjugal relationship to a common-law relationship or they will marry. However, prior to making the sponsorship application, the partners do not have to be married or live in a common-law relationship, even if that would have been possible.¹⁰⁵

Duration of the Conjugal Relationship

As when assessing common-law relationships, it is important to determine when the conjugal relationship began. Partners are required to be and to have been in a conjugal relationship for at least one year.¹⁰⁶ Although it is not necessary to determine the exact date on which the conjugal relationship began, evidence should establish that it began before the one-year requirement.¹⁰⁷ There is no indication that the one-year relationship must necessarily have

¹⁰² *Dunham, supra*, footnote 76.

¹⁰³ *Naidu, supra*, footnote 79.

¹⁰⁴ *Ursua, supra*, footnote 80.

¹⁰⁵ In *Chartrand, Rita Malvina v. M.C.I.* (IAD TA4-18146), Collins, February 20, 2006, the visa officer had rejected the sponsorship application because “if couples can marry or cohabit, they are expected to do so before the immigration process takes place.” The panel rejected this notion, indicating that couples have a right to choose the type of relationship that suits them best as well as the right time to marry. The IAD found that there was no requirement to marry before the immigration process started even if the couple could have done so.

¹⁰⁶ See, for example, *Bui, Binh Cong v. M.C.I.* (IAD TA3-18557), Whist, August 19, 2005 wherein the panel assessed the criteria for the existence of a conjugal relationship and concluded that while the partners may have been in a conjugal relationship at the time they made their sponsorship application, the indicia did not indicate that it had begun one year before the application was made.

¹⁰⁷ See, for example, *Laforge, Robert v. M.C.I.* (IAD MA3-08755), Beauchemin, July 20, 2004 wherein the panel stated that the conjugal relationship started in July or August 2002, but in any event it was within the one-year requirement.

taken place in the year immediately preceding the application for permanent residence. However, the partners are required to be in a conjugal relationship at the time of the application and may be reasonably requested to explain the break in their conjugal relationship. The partnership between the partners may be said to begin when the characteristics of a conjugal relationship were first present and to end when such characteristics are no longer present.¹⁰⁸

EXCLUDED RELATIONSHIPS

Section 5 of the IRP Regulations¹⁰⁹

A foreign national is not considered a spouse or a common-law partner where the foreign national is in an excluded relationship mentioned in s. 5 of the IRP Regulations.

The excluded relationships are described below.

Section 5(a): A foreign national shall not be considered the spouse or the common-law partner of a person if the foreign national is under the age of 16 years; or

A foreign national must be 16 years of age or older to be considered a spouse or common-law partner. The foreign national must meet the age requirement at the time the application for a permanent resident visa is made.¹¹⁰ While this section applies only to spouses and common-law partners, note that IRP Regulation 117(9)(a) contains a similar restriction that applies to spouses, common-law partners, and conjugal partners who are being sponsored.

Section 5(a) of the IRP Regulations does not impede a foreign national from marrying or cohabiting in a conjugal relationship prior to the age of 16 years. Consequently, it appears that a foreign national may cohabit in a conjugal relationship prior to the age of 16 years in order to fulfill the one-year requirement to so cohabit contained in the definition of “common-law partner” and thereby be in a position to apply for a permanent resident visa upon turning 16 years old.

Note, however, that local legislation may regulate or prohibit marriage or common-law relationships where either or both parties are under a certain age. If the act of engaging in sexual activity with a minor under a certain age is considered an offence under local legislation and is

¹⁰⁸ See the case law concerning the duration of cohabitation, *supra*, footnote 93, which applies the same approach in determining the end of cohabitation.

¹⁰⁹ There is substantial overlap between section 5 of the IRP Regulations and section 117(9). Please refer to the discussion later in this chapter regarding regulation 117(9) for further discussion regarding some of these concepts.

¹¹⁰ S. 121(a) of the IRP Regulations requires that the person be a family member (in this case, spouse or common-law partner) of the applicant or of the sponsor at the time the application is made.

also considered an offence under Canadian law, the foreign national may be inadmissible for serious criminality or criminality by virtue of s. 36 of the IRPA.

Section 5(b)(i): A foreign national shall not be considered the spouse of a person if the foreign national or the person was, at the time of their marriage, the spouse of another person; or

The foreign national will not be considered a spouse where, at the time the foreign national and the sponsor or the member of the family class married, either or both, were the spouse of another person.

The effect of this provision is to exclude foreign nationals in bigamous and polygamous relationships from being considered spouses. The marriage will not be considered an excluded relationship if it is a first marriage for both parties or, if it is not their first marriage, at the time they married, all prior marriages had been dissolved.

Section 5(b)(ii): A foreign national shall not be considered the spouse of a person if the person has lived separate and apart from the foreign national for at least one year and is the common-law partner of another person.

The foreign national will not be considered a spouse where the following two elements are present: first, the foreign national and the person have lived separate and apart for at least one year and second, the person is the common-law partner of another person.

- **“Separate and Apart”**: This expression is used in the context of family law and more particularly in s. 8(2)(a) of the *Divorce Act*, to refer to spouses who are no longer in a conjugal relationship and are leading separate lives.¹¹¹ In cases where the spouses continue to live under the same roof, they are considered to be living separate and apart if they are not cohabiting in a conjugal manner.
- **Involvement with a common-law partner**: The sponsor or the member of the family class must be involved in a common-law partnership with another person. In order to meet the definition of common-law partner, the parties must have been cohabiting in a conjugal relationship for at least one year. Where the sponsor or the member of the family class and the spouse have not been living separate and apart for a year, the relationship with the partner will not be considered a common-law relationship. These rules preclude a sponsor from sponsoring his spouse while at the same time having his or her relationship with another person qualify as a common-law partnership. Similarly, a member of the family class will not be able to name his or her spouse as an accompanying family member and have a relationship with another person qualify as a common-law partnership.

¹¹¹ *Supra*, footnote 61.

Section 5(b)(ii) probably does not apply in the following situations because one or more of the elements of the provision is not met and the foreign national is considered a “spouse:”

- The foreign national (spouse) and the person (sponsor or member of the family class) have been living separate and apart and the person is not the common-law partner of another person;¹¹²
- The foreign national (spouse) and the person (sponsor or member of the family class) have been living separate and apart for less than one year and the sponsor or the member of the family class is involved in a relationship of a conjugal nature. The relationship of a conjugal nature would not qualify as a common-law relationship because the partners have not cohabited in an exclusive conjugal relationship for at least one year. The person has lived in a marital relationship with the foreign national for part of the year. Hence, the sponsor or member of the family class is precluded from establishing a common-law relationship if he or she has not been living separate and apart from the foreign national for at least one year.

Section 117(9) of the IRP Regulations

Section 117(9) of the IRP Regulations provides that a foreign national is not considered a member of the family class by virtue of his or her relationship to the sponsor where the relationship is described in one or more of the provisions at s. 117(9)(a) to (d).

The excluded relationships are discussed below.

Section 117(9)(a): The foreign national is the sponsor’s spouse, common-law partner or conjugal partner and is under 16 years of age; or

A foreign national applying for permanent residence as a sponsor’s spouse, common-law partner or conjugal partner must be 16 years of age or older to be considered a member of the family class. The foreign national must meet the age requirement at the time the application for a permanent resident visa is made.¹¹³

Section 117(9)(a) of the IRP Regulations does not impede a foreign national from marrying or entering into a conjugal relationship prior to the age of 16 years. Consequently, it appears that a foreign national may cohabit in a conjugal relationship prior to the age of 16 years in order to fulfill the one-year requirement to so cohabit contained in the definition of “common-law partner” and be in a position to apply for a permanent resident visa upon turning 16 years old. Similarly, a foreign national may enter into a conjugal relationship prior to the age of 16 years in order to fulfill the requirement of being in a conjugal relationship for at least one year contained in the definition of “conjugal partner” and apply for a permanent resident visa at 16 years old.

¹¹² Note, however, that s. 4 of the IRP Regulations (provision concerning bad faith relationships) may apply.

¹¹³ *Supra*, footnote 110.

Note, however, that local legislation may regulate or prohibit marriage, common-law relationships or conjugal relationships where either or both parties are under a certain age. If the act of engaging in sexual activity with a minor under a certain age is considered an offence under local legislation and is also considered an offence under Canadian law, the foreign national may be inadmissible for serious criminality or criminality by virtue of s. 36 of the IRPA.

In addition, a foreign national applying as a sponsor's spouse or common-law partner is not considered a "spouse" or a "common-law partner" prior to age 16 pursuant to s. 5(a) of the IRP Regulations and is consequently not a member of the family class. The purpose served by s. 117(9)(a) in the case of a foreign national applying as a sponsor's spouse or common-law partner is redundant. Section 117(9)(a) may serve to explicitly remove a foreign national applying as a sponsor's spouse or common-law partner from the family class.

Section 117(9)(b): The foreign national is the sponsor's spouse, common-law partner or conjugal partner, the sponsor has an existing sponsorship undertaking in respect of a spouse, common-law partner or conjugal partner and the period referred to in subsection 132(1) in respect of that undertaking has not ended; or

A spouse, common-law partner or conjugal partner is not considered a member of the family class where the sponsor's previous undertaking with respect to a spouse, common-law partner or conjugal partner has not come to an end. In the case of a family class sponsorship, an undertaking begins, in accordance with s. 132(1)(a)(iii) of the IRP Regulations, on the day on which the foreign national becomes a permanent resident and ends pursuant to s. 132(1)(b)(i), on the last day of a period of three (3) years from the first day. Where the sponsor resides in a province which has entered into an agreement referred to in s. 8(1) of the IRPA, s. 132(3) sets the duration of the undertaking at ten (10) years unless a shorter duration¹¹⁴ is provided by provincial legislation. In Quebec, s. 23(a)(i) of the *Regulation respecting the selection of foreign nationals*,¹¹⁵ sets the duration of an undertaking in the case of the sponsorship of a spouse, *de facto* spouse and conjugal partner at three (3) years.

For transitional cases, s. 351(3) of the IRP Regulations specifically provides that the duration of undertakings given under s. 118 the former *Immigration Act*, which include undertakings for sponsorships of members of the family class given before June 28th 2002, is not affected by the IRP Regulations. The duration of an undertaking for the sponsorship of a spouse was ten (10) years pursuant to the definition of undertaking in s. 2(1) and s. 5(2) of the *Immigration Regulations, 1978*. For undertakings given by Quebec residents, s. 23(a)(i) of the *Regulation respecting the selection of foreign nationals*¹¹⁶ provided that in the case of spouses, the duration of the undertaking was three (3) years.

¹¹⁴ S. 132(3) of the IRP Regulations.

¹¹⁵ R.R.Q., 1981, c. M-23.1, r. 2 as amended.

¹¹⁶ *Ibid.*

Section 117(9)(c)(i): The foreign national is the sponsor’s spouse and the sponsor or the foreign national was, at the time of their marriage, the spouse of another person; or

The foreign national will not be considered a member of the family class where at the time the foreign national and the sponsor married, either or both, were the spouse of another person.

There is some overlap between this regulation and s. 5(b)(i) of the IRP Regulations which stipulates that a foreign national is not to be considered the spouse of a person if either the foreign national or the spouse was, at the time of their marriage, the spouse of another person. The marriage will not be considered an excluded relationship if it is a first marriage for both parties or, if it is not their first marriage, at the time they married, all prior marriages had been dissolved. Note that this provision does not apply to common-law partners or conjugal partners.

A prior marriage is dissolved by divorce, annulment or by the death of one of the parties to the marriage. Section 117(9)(c)(i) of the regulations is most commonly at issue when the validity of a previous divorce of either of the spouses is in question.¹¹⁷ The rules concerning the recognition of foreign divorce judgments in Canada are provided by the case law and s. 22 of the *Divorce Act*.¹¹⁸

Section 22(1) of the *Divorce Act* stipulates that for a divorce to be recognized in Canada, one of the spouses must have been “ordinarily resident” in the place where the divorce was granted for at least a year before the divorce was granted. Ordinarily resident has been interpreted to carry “a restricted significance” and to mean “residence in the course of the customary mode of life of the person concerned, and it is contrasted with special or occasional or casual residence. The general mode of life is, therefore, relevant to the question of its application.”¹¹⁹

¹¹⁷ In this regard, the discussion earlier in this chapter regarding evidentiary issues of foreign marriages may be helpful.

¹¹⁸ 22. (1) A divorce granted, on or after the coming into force of this Act [editor’s note: this was July 1, 1986], pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so shall be recognized for all purposes of determining the marital status in Canada of any person, if either former spouse was ordinarily resident in that country or subdivision for at least one year immediately preceding the commencement of proceedings for the divorce.

(2) A divorce granted, after July 1, 1968, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so, on the basis of the domicile of the wife in that country or subdivision determined as if she were unmarried and, if she was a minor, as if she had attained the age of majority, shall be recognized for all purposes of determining the marital status in Canada of any person.

(3) Nothing in this section abrogates or derogates from any other rule of law respecting the recognition of divorces granted otherwise than under this Act.

¹¹⁹ *Thomson v. M.N.R.*, [1946] S.C.R. 209 per Rand J. See also *MacPherson v. MacPherson* (1977), 13 O.R. (2d) 233 (C.A.) at paragraph 8 per Evans J. dissenting in part, but not on this point.

Note also that subsection 22(3) of the *Divorce Act* preserves the common-law with respect to the recognition of divorces. There were several common-law rules developed prior to the adoption of divorce legislation in Canada which are succinctly summarized in *El Qaoud*,¹²⁰ quoting *Payne on Divorce*, 4thed. :

. . . Section 22(3) of the *Divorce Act* expressly preserves pre-existing judge made rules of law pertaining to the recognition of foreign divorces. It may be appropriate to summarize these rules. Canadian courts will recognize a foreign divorce: (i) where jurisdiction was assumed on the basis of the domicile of the spouses; (ii) where the foreign divorce, though granted on a non-domiciliary jurisdictional basis, is recognized by the law of the domicile of the parties; (iii) where the foreign jurisdictional rule corresponds to the Canadian jurisdictional rule in divorce proceedings; (iv) where the circumstances in the foreign jurisdiction would have conferred jurisdiction on a Canadian court had they occurred in Canada; (v) where either the petitioner or respondent had a real and substantial connection with the foreign jurisdiction wherein the divorce was granted; and (vi) where the foreign divorce is recognized in another foreign jurisdiction with which the petitioner or respondent has a real and substantial connection.

Thus, in *Bhatti*,¹²¹ the applicant was refused an immigrant visa and the issue in the appeal was the validity of the appellant's marriage to the applicant. The appellant had obtained a religious divorce in Pakistan. The panel recognized the divorce and allowed the appeal finding that the appellant had a real and substantial connection to Pakistan. However in *Ghosn*,¹²² the panel rejected the argument that the appellant had legally divorced in Canada when he went through a form of religious divorce.

Section 117(9)(c)(ii): The foreign national is the sponsor's spouse and the sponsor has lived separate and apart from the foreign national for at least one year and (A) the sponsor is the common-law partner of another person or the conjugal partner of another foreign national; or (B) the foreign national is the common-law partner of another person or the conjugal partner of another sponsor; or

The foreign national will not be considered a member of the family class where the following two elements are present: first, the sponsor and the foreign national must have been living separate and apart for at least one year and second, the sponsor is involved in a common-law partnership with another person or a conjugal partnership with another foreign national or the

¹²⁰ *Orabi v. Qaoud*, 2005 NSCA 28 at paragraph 14.

¹²¹ *Bhatti, Mukhtar Ahmad* (IAD TA2-11254), MacPherson, July 10, 2003 followed in *Amjad, Ali Saud v. M.C.I.* (IAD TA3-09455), Hoare, February 11, 2005.

¹²² *Ghosn, Kassem Ata v. M.C.I.* (IAD VA4-02673), Rozdilsky, March 27, 2006.

foreign national is involved in a common-law partnership with another person or in a conjugal partnership with another sponsor.

- **“Separate and Apart”**: This expression is used in the context of family law and more particularly in s. 8(2)(a) of the *Divorce Act*, to refer to spouses who are no longer in a conjugal relationship and are leading separate lives.¹²³ In cases where the spouses continue to live under the same roof, they are considered to be living separate and apart if they are not cohabiting in a conjugal manner.
- **Involvement with a common-law partner or conjugal partner**: Where the sponsor and the spouse have not been living separate and apart for a year, the sponsor’s or the foreign national’s relationship with another partner will not be considered a common-law or conjugal relationship because the relationship has not been exclusive and ongoing for one year. These rules preclude a sponsor from sponsoring his spouse and having his or her relationship with another individual, or the spouse’s relationship with another individual, qualify as a common-law partnership or conjugal partnership.

Note that s. 5(b)(ii) of the IRP Regulations may also apply to disqualify a foreign national from being considered a spouse or a common-law partner and hence a member of the family class.

Section 117(9)(d): subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

This provision, which was amended in 2004¹²⁴ to its current form, excludes foreign nationals who, at the time the sponsor applied for permanent residence, were non-accompanying family members of the sponsor and were not examined.

Sections 117(10) and (11) of the regulations were also added in 2004. Section 117(10) creates an exception to the exclusionary rule. It stipulates that regulation 117(9)(d) does not apply when the foreign national was not examined because an officer had determined that they were not required by the Act or the former Act to be examined. This exception is narrowed somewhat in subsection (11) which stipulates that the exception in subsection (10) does not apply if an officer determines that (a) the sponsor was informed that the foreign national could be examined and the sponsor was able to the make the foreign national available for examination but did not do so or the foreign national did not appear for the examination, or (b) the foreign national was the sponsor’s spouse, was living separate and apart from the sponsor and was not examined.

¹²³ *Supra*, footnote 61.

¹²⁴ SOR/2004-167, July 22, 2004.

The constitutionality of s. 117(9)(d) has been confirmed by the Federal Court of Appeal.¹²⁵ Further, the Court of Appeal has interpreted the phrase “at the time of the application” in section 117(9)(d) to mean the life of the application from the time when it is initiated by the filing of the authorized form to the time when permanent resident status is granted at a port of entry.¹²⁶ Therefore, a foreign national who makes an application for permanent residence is under an obligation to disclose all non-accompanying family members at the time they make the application and the obligation continues up to the time they are granted landing at the port of entry. A foreign national will not be considered a member of the family class if they were a non-accompanying family member who was not declared by the sponsor at the time of the application even if the sponsor had not been aware of the foreign national’s existence at that time.¹²⁷

Transitional Issues

For transitional cases, the IRP Regulations provide as follows:

Section 352: A person is not required to include in an application a non-accompanying common-law partner if the application was made under the former *Immigration Act*;

Section 353: Section 70(1)(e) of the IRP Regulations, which requires that non-accompanying family members not be inadmissible in order for a permanent resident visa to be issued to a foreign national, is not applicable where the non-accompanying family member is a common-law partner and the application was made under the former *Immigration Act*;

Section 354: The non-accompanying common-law partner of a person who made an application before June 28th 2002 shall not be considered an inadmissible non-accompanying family member under s. 42(a) of the IRPA, shall not be subject to a medical examination under s. 30(1)(a) of the IRP Regulations and will not be required to establish that they meet the requirements of the IRPA and the IRP Regulations upon examination at the port of entry in accordance with s. 51(b) of the IRP Regulations.

Section 355: If a person who made an application under the former Act before June 28, 2002 sponsors a non-accompanying dependent child, referred to in section 352, who makes an application as a member of the family class or the spouse or common-law partner in Canada class, or sponsors a non-accompanying common-law partner who makes such an application, paragraph 117(9)(d) does not apply in respect of that dependent child or common-law partner.

¹²⁵ *De Guzman, Josephine Soliven v. M.C.I.* (F.C.A., no. A-558-04), Evans, Desjardins, Malone, December 20, 2005; 2005 FCA 436, leave to appeal to the SCC rejected with costs June 22, 2006 (*De Guzman v. M.C.I.*, 2006 S.C.C.A. No. 70 (Q.L.)).

¹²⁶ *M.C.I. v. Fuente, Cleotilde Dela* (F.C.A., no. A-446-05), Noël, Sharlow, Malone, May 18, 2006; 2006 FCA 186.

¹²⁷ *Adjani, Joshua Taiwo v. M.C.I.* (F.C., no. IMM-2033-07), Blanchard, January 10, 2008; 2008 FC 32. [this case included in this paper despite the publishing deadline of January 1, 2008]

Thus, in *Kong*¹²⁸ the IAD allowed an appeal where the appellant had immigrated to Canada with his then spouse and children. At the time, he had a girlfriend with whom he had a son. Neither the girlfriend nor son had been disclosed at the time of his first application. He later attempted to sponsor them after his marriage broke down and he had subsequently married his girlfriend. The IAD found that the transitional provision in section 352 applied to his new wife as there were no provisions to sponsor common-law partners under the former *Immigration Act*. Further, the IAD found that the transitional provision in section 355 applied to the son as he was being sponsored as a dependent child of his wife and not directly by the appellant.

RELATIONSHIPS FOR THE PURPOSE OF ACQUIRING A STATUS OR PRIVILEGE UNDER THE ACT

Bad Faith – Section 4 of the IRP Regulations

Section 4 of the IRP Regulations states:

For the purposes of these Regulations, no foreign national shall be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

In order for a foreign national to be considered a spouse, common-law partner or conjugal partner, the evidence must establish that the relationship in question, namely the marriage, the common-law partnership or the conjugal partnership, is not a bad faith relationship. The burden of establishing the *bona fides* of the marriage is on the appellant at the IAD¹²⁹ but the evidence should not be minutely scrutinized nor should North American reasoning necessarily be applied to partners coming from another culture.¹³⁰ Genuineness of a relationship should be examined through the eyes of the parties themselves against the cultural background in which they have lived.¹³¹

¹²⁸ *Kong, Wai Keung Michael v. M.C.I.* (IAD TA6-08094), Ahlfeld, January 31, 2008.

¹²⁹ *Morris, Lawrence v. M.C.I.* (F.C. no. IMM-5045-04), Pinard, March 18, 2005; 2005 FC 369.

¹³⁰ *Siev, supra*, footnote 74.

¹³¹ Therefore, in *Khan, Mohammad Farid v. M.C.I.* (F.C. no. IMM-2971-06), Hughes, December 13, 2006; 2006 FC 1490 the court allowed an application for judicial review of an IAD decision wherein it had been found that the marriage between the appellant and the sister of his deceased brother was not genuine. Although the evidence indicated that the marriage was entered into to preserve the honour of the family, there was no reason why such a marriage cannot be genuine given the cultural factors. See also *Owusu, Margaret v. M.C.I.* (F.C. no. IMM-1402-06), Harrington, October 6, 2006; 2006 FC 1195.

According to s. 4 of the IRP Regulations, a bad faith relationship is one for which it is established (1) the relationship is not genuine and (2) the relationship was entered into primarily for the purpose of acquiring any status or privilege under the Act.¹³² To succeed in an appeal, the appellant must only demonstrate that one of the two prongs does not apply to the relationship.¹³³ Some of the factors helpful in assessing the intention of and genuineness of the relationship are: the length of the relationship, whether it was an arranged marriage, the age difference, the partners' former marital or civil status, their respective financial situation, their employment, their family background, their knowledge of one another's histories, their language, their respective interests, and their immigration histories.¹³⁴ However, these factors are only useful guidelines that must be adapted to fit the circumstances.¹³⁵

The genuineness branch of the bad faith test in s. 4 uses the present tense; therefore, the focus is on whether there is a continuing genuine relationship at the time of assessment.¹³⁶ Also, a relationship will not be considered genuine if, at the time of the hearing of the appeal, the evidence establishes that the partners do not intend to continue their relationship.¹³⁷ In assessing the genuineness of the relationship, it is not just the intention of the sponsored spouse, common-law partner, or conjugal partner that is relevant. The focus is on the overall genuineness of the relationship and its primary purpose, for which the evidence of both spouses is relevant.¹³⁸ When determining if a marriage is caught by the first prong of the test in section 4 of the IRP Regulations, genuine does not equate to legal. The test in section 4 is only applied to what has already been determined to be a legal marriage under section 2.¹³⁹

A relationship that was entered into primarily for the purpose of acquiring any status or privilege under the IRPA is one that was entered into in order to obtain permanent residence in Canada or some other status or privilege. In the case of a marriage, the time at which the relationship was entered into refers to the date of the marriage. In the case of a common-law partnership, it refers to the date on which the partners began to cohabit in a conjugal relationship and in the case of a conjugal partnership, it refers to the date on which the foreign national and the sponsor began a conjugal relationship. While the focus of this branch of the test is the

¹³² *Sanichara, Omeshwar v. M.C.I.* (F.C. no. IMM-5233-04), Beaudry, July 25, 2005; 2005 FC 1015; *Froment, Danielle Marie v. M.C.I.* (F.C. no. IMM-475-06), Shore, August 24, 2006; 2006 FC 1002.

¹³³ *Ouk, Chanta v. M.C.I.* (F.C. no. IMM-865-07), Mosley, September 7, 2007; 2007 FC 891.

¹³⁴ See, for example, *Khera, Amarjit v. M.C.I.* (F.C. no. IMM-6375-06), Martineau, June 13, 2007; 2007 FC 632 and *Owusu, supra*, footnote 131.

¹³⁵ *Owusu, supra*, footnote 131.

¹³⁶ *Donkor, Sumaila v. M.C.I.* (F.C. no. IMM-654-06), Mosley, September 12, 2006; 2006 FC 1089. The Court also recognized that s. 4 of the IRP Regulations may leave open the possibility that a relationship that was originally entered into for the purpose of acquiring a status or privilege under the Act may become genuine and therefore not be excluded by the regulation.

¹³⁷ *Kang, Randip Singh v. M.C.I.* (IAD VA2-02099), Clark, June 3, 2003.

¹³⁸ *Gavino, Edwin Dorol v. M.C.I.* (F.C. no. IMM-3249-05), Russell, March 9, 2006; 2006 FC 308; *Mann, Jagdeep Kaur v. M.C.I.* (IAD TA3-19094), Stein, August 5, 2005.

¹³⁹ *Ni, Zhi Qi v. M.C.I.*, (F.C. no. IMM-4385-04), Pinard, February 17, 2005; 2005 FC 241.

intention of the partners at the time they entered into the relationship, the IAD is entitled to examine the conduct of the couple after the relationship began in order to determine what their intention was when they entered into the relationship.¹⁴⁰ Only one of the partners in the relationship need have as their primary purpose the acquisition of any status or privilege under the Act.¹⁴¹ Finally, the appeal may be allowed if immigration is a factor in the relationship, provided it is not the primary factor.¹⁴²

The relationship need not be entered into for the purpose of acquiring a status or privilege for the sponsored foreign national. The relationship will be caught by the second prong of section 4 so long as the relationship was entered into primarily to ensure that some privilege under the Act would be conveyed to someone. Therefore, in *Gavino*,¹⁴³ the court held that even if the privilege accrued from the marriage would be conveyed to the appellant's children, the second prong of the branch was satisfied.

While many of the factors relevant in determining if a common-law or conjugal partnership exist are the same as the factors relevant in determining good faith, it is still a distinct two-step process wherein first the validity of the relationship is established, and then whether section 4 of the IRP regulations applies.¹⁴⁴

New Relationships – Section 4.1 of the IRP Regulations

The IRP Regulations were amended in 2004 with the addition of section 4.1¹⁴⁵ which added a new category of bad faith relationships. Section 4.1 reads as follows:

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 foreign national has begun a new conjugal relationship with that person after a previous marriage, common-law partnership or conjugal partnership with that person was dissolved primarily so that the foreign national, another foreign national or the sponsor could acquire any status or privilege under the Act.

The intent of section 4.1 has been stated to be “to prevent persons in a conjugal relationship from dissolving the relationship to free them to gain admission to Canada only to

¹⁴⁰ *Mohamed, Rodal Houssein v. M.C.I.* (F.C. no. IMM-6790-05), Beaudry, May 24, 2006; 2006 FC 696.

¹⁴¹ See, for example, *Brunelle, Sherry Lynn v. M.C.I.* (IAD VA4-00937), Munro, January 28, 2005.

¹⁴² *Lorenz, Hubert Calvin v. M.C.I.* (IAD VA6-00444), Nest, June 15, 2007.

¹⁴³ *Gavino, supra*, footnote 138.

¹⁴⁴ *Macapagal, supra*, footnote 84.

¹⁴⁵ SOR/2004-167, s. 4.

turn around and resume their previous relationship.¹⁴⁶ Section 4.1 will apply even if the partners originally dissolved their relationship with the intent of facilitating their admission to another country, only to change their plans and come to Canada.¹⁴⁷

In *Wen*,¹⁴⁸ the IAD set out a list of non-exhaustive factors to consider when assessing the applicability of section 4.1 of the Regulations. They are: when the relationship was dissolved, the reason for the dissolution of the relationship, the temporal relationship between the ending of the relationship and the forming of a new relationship with the subsequent partner, evidence that the former spouses or partners did not separate or end contact with each other, the intent of the spouses or partners upon reestablishing their relationship, the length of the subsequent relationship, the temporal connection between the dissolving of the subsequent relationship and the re-establishment of a new relationship with the previous spouse or partner, and the intentions of the parties to the new relationship in respect of immigration.

TIMING – Section 121(a) of IRP Regulations

Section 121(a) of the IRP Regulations requires that a person who makes an application for a permanent resident visa as a member of the family class or as a family member must be a family member of the applicant or of the sponsor both at the time of the application and at the time of its determination. Hence, the foreign national must be a spouse or meet the definition of common-law partner or of conjugal partner and not be in an excluded relationship or bad faith relationship both at the time of the application for a permanent residence visa and at the time a determination is made by the officer.

It is arguable that a foreign national must also be a member of the family class or a family member at the time of the filing of the appeal and at the time of the hearing before the IAD since their interest in obtaining a permanent resident visa is premised on their continuing relationship with the sponsor or the applicant. Section 67(1)(a) of the IRPA¹⁴⁹ may be relied upon as support for this position.

¹⁴⁶ *Harripersaud, Janet Rameena v. M.C.I.* (IAD TA3-11611), Sangmuah, June 30, 2005. See also *Mariano, Edita Palacio v. M.C.I.* (IAD WA5-00122), Lamont, September 20, 2006.

¹⁴⁷ *Harripersaud, ibid.*

¹⁴⁸ *Wen, Chun Xiu v. M.C.I.* (IAD TA5-14563), MacLean, May 29, 2007. See also *Zheng, Wei Rong v. M.C.I.* (IAD TA4-16616), MacLean, August 23, 2007.

¹⁴⁹ S. 67(1)(a) of the IRPA states: To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, the decision appealed is wrong in law or fact or mixed law and fact. [emphasis added]

In some cases, where an application for permanent residence was based on marriage and the IAD has found that marriage not to be valid, they have examined whether or not the appeal could be allowed based upon a common-law or conjugal partnership.¹⁵⁰

DISMISSAL IN LAW OF THE SPONSORSHIP APPEAL

Where the IAD dismisses an appeal because the applicant is not a spouse or does not meet the definition of “common-law partner” or “conjugal partner” or due to the application of s. 4, s. 4.1, s. 5 or s.117(9) of the IRP Regulations, the dismissal of the appeal is arguably based in law and not on a lack of jurisdiction, given the wording in s. 63(1) and s. 65 of the IRPA. Contrary to the former *Immigration Act*, the IRPA specifically provides in s. 65 of the IRPA that humanitarian and compassionate grounds may only be considered where the foreign national is a member of the family class. The absence of such a specific provision in the former *Immigration Act* was the basis, along with the wording in s. 77 of the former Act, for the jurisdictional dismissal of the appeal.

¹⁵⁰ *Tabesh v. M.C.I.* (IAD VA3-00941), Wiebe, January 7, 2004 followed in *Ur-Rahman, Mohammed Ishtiaq v. M.C.I.* (IAD TA3-04308), Collins, January 13, 2005. It must be noted that it is not common practice for the Immigration Appeal Division to amend refusal grounds without application from a party.

CASES

<i>Adjani, Joshua Taiwo v. M.C.I.</i> (F.C., no. IMM-2033-07), Blanchard, January 10, 2008; 2008 FC 32.....	28
<i>Amjad, Ali Saud v. M.C.I.</i> (IAD TA3-09455), Hoare, February 11, 2005.....	26
<i>Atwal, Jaswinder Kaur v. M.E.I.</i> (I.A.B. 85-4204), Petryshyn, Wright, Rayburn, January 30, 1989.....	9
<i>Badhan, Lyle Kishori v. M.C.I.</i> (IAD V95-00432), Boscarior, September 3, 1997.....	7
<i>Baird v. Iaci</i> , [1997] B.C.J. No. 1789 (S.C.)(QL)	15
<i>Bakridi, Faizl Abbas v. M.C.I.</i> (IAD V99-03930), Baker, January 9, 2001	8
<i>Bhatti, Mukhtar Ahmad</i> (IAD TA2-11254), MacPherson, July 10, 2003.....	26
<i>Bhullar, Sawarnjit Kaur v. M.E.I.</i> (IAD W89-00375), Goodspeed, Rayburn, Arpin (concurring), November 19, 1991.....	9
<i>Brar, Karen Kaur v. M.C.I.</i> (IAD VA0-02573), Workun, December 4, 2001	8
<i>Brunelle, Sherry Lynn v. M.C.I.</i> (IAD VA4-00937), Munro, January 28, 2005.....	31
<i>Bui, Binh Cong v. M.C.I.</i> (IAD TA3-18557), Whist, August 19, 2005	21
<i>Burmi, Joginder Singh v. M.E.I.</i> (I.A.B. 88-35,651), Sherman, Arkin, Weisdorf, February 14, 1989.....	9
<i>Buttar, Amrit Kaur v. M.C.I.</i> (F.C. no. IMM-1669-06), Blais, October 25, 2006; 2006 FC 1281	9
<i>Cai, Changbin v. M.C.I.</i> (F.C. no. IMM-6729-06), Kelen, August 3, 2007; 2007 FC 816	18
<i>Cantin, Edmond v. M.C.I.</i> (IAD MA4-06892), Néron, August 1, 2005	14
Castel, J.-G., <i>Canadian Conflict of Laws</i> (Toronto: Butterworths, 1986)	10
<i>Chan v. Canada (Minister of Employment and Immigration)</i> , [1995] 3 S.C.R. 593	18
<i>Chartrand, Rita Malvina v. M.C.I.</i> (IAD TA4-18146), Collins, February 20, 2006	20
<i>Chiem, My Lien v. M.C.I.</i> (F.C.T.D., no. IMM-838-98), Rothstein, January 11, 1999	6
<i>Craddock v. Glover Estate</i> [2000] O.J. No. 680 (S.C.)(QL)	17
<i>De Guzman v. M.C.I.</i> , 2006 S.C.C.A. No. 70 (Q.L.)	28
<i>De Guzman, Josephine Soliven v. M.C.I.</i> (F.C.A., no. A-558-04), Evans, Desjardins, Malone, December 20, 2005; 2005 FCA 436.....	28
<i>Do, Thi Thanh Thuy</i> (IAD TA3-17390), D’Ignazio, September 3, 2004	17

<i>Donkor, Sumaila v. M.C.I.</i> (F.C. no. IMM-654-06), Mosley, September 12, 2006; 2006 FC 1089.....	30
<i>Donoso Palma, Segio v. M.C.I.</i> (IAD MA1-03349), di Pietro, July 9, 2002.....	7
<i>Dunham Audrey Pearl v. M.C.I.</i> (IAD TA4-00144), Néron, August 24, 2004	14, 20
<i>El Salfiti, Dina Khalil Abdel Karim v. M.E.I.</i> (IAD M93-08586), Durand, January 24, 1994	6
<i>Feehan v. Attwells</i> (1979), 24 O.R. (2d) 248 (Co. Ct).....	17
<i>Ferdinand v. M.C.I.</i> (IAD TA5-09330), MacLean, October 12, 2007	14
<i>Fraser v. Canadian National</i> , [1999] J.Q. no. 2286, (S.C.)(QL).....	15
<i>Froment, Danielle Marie v. M.C.I.</i> (F.C. no. IMM-475-06), Shore, August 24, 2006; 2006 FC 1002.....	30
<i>Fuente: M.C.I. v. Fuente, Cleotilde Dela</i> (F.C.A., no. A-446-05), Noël, Sharlow, Malone, May 18, 2006; 2006 FCA 186.....	28
<i>Gavino, Edwin Dorol v. M.C.I.</i> (F.C. no. IMM-3249-05), Russell, March 9, 2006; 2006 FC 308	30, 31
<i>Ghosn, Kassem Ata v. M.C.I.</i> (IAD VA4-02673), Rozdilsky, March 27, 2006.....	26
<i>Gill, Sakinder Singh v. M.E.I.</i> (IAD V89-01124), Gillanders, Verma, Wlodyka, July 16, 1990.....	9
<i>Grewal, Inderpal Singh v. M.C.I.</i> (IAD T91-04831), Muzzi, Aterman, Leousis, February 23, 1995	7
<i>Grewal, Ravinder v. M.C.I.</i> (IAD MA3-00637), Beauchemin, May 4, 2004	6
<i>Harripersaud, Janet Rameena v. M.C.I.</i> (IAD TA3-11611), Sangmuah, June 30, 2005	32
<i>Hazlewood v. Kent</i> , [2000] O.J. No. 5263 (Sup. Ct.)(QL).....	17
<i>Kang, Randip Singh v. M.C.I.</i> (IAD VA2-02099), Clark, June 3, 2003	30
<i>Kaur, Gurmit v. C.E.I.C.</i> (F.C.T.D., no. T-2490-84), Jerome, May 8, 1985	8
<i>Kaur, Narjinder v. M.E.I.</i> (F.C.A., no. A-405-89), Marceau, Desjardins, Linden, October 11, 1990, at 5. Reported: <i>Kaur v. Canada (Minister of Employment and Immigration)</i> (1990), 12 Imm. L.R. (2d) 1 (F.C.A.)	7
<i>Khan v. M.C.I.</i> (IAD) V93-02590), Lam, July 4, 1995.....	8
<i>Khan, Mohammad Farid v. M.C.I.</i> (F.C. no. IMM-2971-06), Hughes, December 13, 2006; 2006 FC 1490.....	30
<i>Khera, Amarjit v. M.C.I.</i> (F.C. no. IMM-6375-06), Martineau, June 13, 2007; 2007 FC 632	30
<i>Kong, Wai Keung Michael v. M.C.I.</i> (IAD TA6-08094), Ahlfeld, January 31, 2008.....	29
<i>Kumar, Monika v. M.C.I.</i> (IAD TA4-10172), MacDonald, May 8, 2006.....	14

<i>Laforge, Robert v. M.C.I.</i> (IAD MA3-08755), Beauchemin, July 20, 2004	21
<i>Lavoie v. Canada (Minister of National Revenue)</i> , [2000] F.C.J. No. 2124 (F.C.A.), (QL)	15
<i>Leroux, Jean-Stéphane v. M.C.I.</i> (F.C. no. IM-2819-06), Tremblay-Lamer, April 17, 2007; 2007 FC 403	16, 19
<i>Li, Bing Qian v. M.C.I.</i> (F.C.T.D., no. IMM-4138-96), Reed, January 8, 1998	7
<i>Lit, Jaswant Singh v. M.E.I.</i> (I.A.B. 76-6003), Scott, Benedetti, Legaré, May 30, 1978	6
<i>Lorenz, Hubert Calvin v. M.C.I.</i> (IAD VA6-00444), Nest, June 15, 2007	31
<i>Lotay, Harjit Kaur v. M.E.I.</i> (I.A.D. T89-03205), Ariemma, Townshend, Bell, April 18, 1990	8
<i>Macapagal, Rodolfo v. M.C.I.</i> (IAD TA2-25810), D’Ignazio, February 18, 2004.....	15, 31
<i>Mahamat, Ali Saleh v. M.C.I.</i> (IAD TA4-04059), Sangmuah, April 13, 2005	6
<i>Mann, Harnek Singh v. M.E.I.</i> (I.A.B. 85-6199), Wlodyka, June 5, 1987	6
<i>Mann, Jagdeep Kaur v. M.C.I.</i> (IAD TA3-19094), Stein, August 5, 2005	30
<i>Mann, Kirpal Singh v. M.E.I.</i> (I.A.B. 86-6008), Mawani, Gillanders, Wlodyka, April 14, 1987	6
<i>Mariano, Edita Palacio v. M.C.I.</i> (IAD WA5-00122), Lamont, September 20, 2006	32
<i>McCrea v. Bain Estate</i> , [2004] B.C.J. No.290 (QL).....	17
<i>McCullough, Robert Edmund v. M.C.I.</i> (IAD WA3-00043), Boscarior, February 5, 2004.....	14, 15, 16
McLeod, James G., <i>The Conflict of Laws</i> (Calgary: Carswell, 1983).....	6, 7
<i>Mohamed, Rodal Houssein v. M.C.I.</i> (F.C. no. IMM-6790-05), Beaudry, May 24, 2006; 2006 FC 696.....	31
Molodowich v. Penttinen (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.)	13
<i>Morris, Lawrence v. M.C.I.</i> (F.C. no. IMM-5045-04), Pinard, March 18, 2005; 2005 FC 369	29
<i>Nadesapillai, Sritharan v. M.C.I.</i> (IAD T99-11883), Hoare, August 1, 2001	7
<i>Naidu, Kamleshni Kanta v. M.C.I.</i> (IAD VA5-00244), Sealy, February 1, 2006.....	14, 20
<i>Narwal: M.E.I. v. Narwal, Surinder Kaur</i> (F.C.A., no. A-63-89), Stone, Marceau, MacGuigan, April 6, 1990.).....	7
<i>Ni, Zhi Qi v. M.C.I.</i> ,(F.C. no. IMM-4385-04), Pinard, February 17, 2005; 2005 FC 241	31
<i>Orabi v. Qaoud</i> , 2005 NSCA 28 at paragraph 14.....	26
<i>Oucherif, Ichrak v. M.C.I.</i> (IAD MA4-03183), Barazi, October 27, 2005	6

<i>Ouk, Chanta v. M.C.I.</i> (F.C. no. IMM-865-07), Mosley, September 7, 2007; 2007 FC 891.....	30
<i>Owusu, Margaret v. M.C.I.</i> (F.C. no. IMM-1402-06), Harrington, October 6, 2006; 2006 FC 1195	30
<i>Parmar, Ramesh Kumar v. M.E.I.</i> (I.A.B. 85-9772), Eglington, Weisdorf, Ahara, September 12, 1986.....	8
<i>Patel, Allarakha v. M.C.I.</i> (IAD TA3-24341), Sangmuah, May 5, 2005.....	6
<i>Patel, Sunil Jayantibhai v. M.C.I.</i> (IAD TA3-19443), Band, September 28, 2006	9
<i>Porteous, Robert William v. M.C.I.</i> (IAD TA3-22804), Hoare, October 27, 2004.....	14
<i>Pye, Helen Leona v. M.C.I.</i> (IAD MA5-00247), Beauchemin, September 21, 2006.....	8, 9
<i>Quao, Daniel Essel v. M.C.I.</i> (F.C.T.D., no. IMM-5240-99), Blais, August 15, 2000.....	9
<i>Rajudeen v. Canada (Minister of Employment and Immigration)</i> , (1984), 55 N.R. 129 (F.C.A.)	18
<i>Ramdai, Miss v. M.C.I.</i> (IAD T95-01280), Townshend, October 22. 1997	7
<i>Ratnasabapathy, Jeyarajan v. M.C.I.</i> (F.C.T.D., no. IMM-382-98), Blais, September 27, 1999	7
<i>Roberts v. Clough</i> , [2002] P.E.I.J. No. 37 (S.C. (T.D.)), (QL).....	15
<i>Saini, Jaswinder Kaur v. M.C.I.</i> (IAD T89-07659), D'Ignazio, August 26, 1999.....	7
<i>Sanderson v. Russell</i> (1979), 24 O.R. (2d) 429, (C.A.).....	17
<i>Sanichara, Omeshwar v. M.C.I.</i> (F.C. no. IMM-5233-04), Beaudry, July 25, 2005; 2005 FC 1015	30
<i>Sasani, Sam v. M.C.I.</i> (IAD VA6-00727), Shahriari, September 5, 2007	6
<i>Savehilaghi, Hasan v. M.C.I.</i> (IAD T97-02047), Kalvin, June 4, 1998	7
<i>Shaheen, Shahnaz v. M.C.I.</i> (IAD T95-00090), Wright, February 20, 1997	6
<i>Siev, Samuth v. M.C.I.</i> (F.C., no. IMM-2472-04), Rouleau, May 24, 2005; 2005 FC 736.....	13, 14, 16, 29
<i>Singh, Amarjit v. M.C.I.</i> (F.C., no. IMM-5641-02), Snider, May 4, 2006; 2006 FC 565	14
<i>Singh, Harpreet v. M.C.I.</i> (IAD TA4-01365), Stein, May 10, 2006.....	8
<i>Sinniah, Sinnathamby v. M.C.I.</i> (F.C.T.D., no. IMM-5954-00), Dawson, July 25, 2002; 2002 FCT 822.....	9
<i>Sobhan, Rumana v. M.C.I.</i> (IAD T95-07352), Boire, February 3, 1998	6
<i>Spracklin v. Kichton</i> , [2000] A.J. No. 1329 (Q.B.), (QL).....	15
<i>Sullivan v. Letnik</i> (1997), 27 R.F.L. (4 th)(Ont. C.A.) 79.....	17
<i>Tabesh v. M.C.I.</i> (IAD VA3-00941), Wiebe, January 7, 2004.....	33

<i>Taggar: Canada (Minister of Employment and Immigration) v. Taggar</i> , [1989] 3 F.C. 576.....	9
<i>Thauvette v. Malyon</i> [1996] O.J. No. 1356 (QL).....	17
<i>Thomson v. M.N.R.</i> , [1946] S.C.R. 209 per Rand J	26
<i>Tran, My Ha v. M.C.I.</i> (IAD V95-01139), Singh, March 9, 1998.....	7, 8
<i>Ur-Rahman, Mohammed Ishtiaq v. M.C.I.</i> (IAD TA3-04308), Collins, January 13, 2005	33
<i>Ursua, Erlinda Arellano v. M.C.I.</i> (IAD TA4-08587), Boire, September 12, 2005	14, 20
<i>v. MacPherson</i> (1977), 13 O.R. (2d) 233 (C.A.).....	26
<i>Virk, Sukhpal Kaur v. M.E.I.</i> (IAD V91-01246), Wlodyka, Gillanders, Verma, February 9, 1993	6, 8
<i>Wen, Chun Xiu v. M.C.I.</i> (IAD TA5-14563), MacLean, May 29, 2007	32
<i>Xu, Yuan Fei v. M.C.I.</i> (IAD M99-04636), Sivak, June 5, 2000	8
<i>Zheng, Wei Rong v. M.C.I.</i> (IAD TA4-16616), MacLean, August 23, 2007.....	32