

Joint Submissions by African Canadian Legal Clinic, Metro Toronto Chinese & Southeast Asian Legal Clinic and South Asian Legal Clinic of Ontario

Family reunification has been one of the core objectives of Canada's immigration legislation at least since 1978.

Canadian citizens and permanent residents are allowed to sponsor close family members including their spouse and partners from overseas so long as they meet certain requirements. Family reunification is also a critical part of the settlement process. Immigrants who have family support within Canada are better able to cope with challenges of migrating to a new country.

It is in this context that we would like to comment on the proposed conditional visa to be imposed on immigrants who are sponsored as spouses to Canada. We have many concerns with respect to this proposal. Below are some of our key concerns.

Questionable Rationale for the Proposal

According to the Notice in Gazette, the proposed measure takes aim at the so-called "marriage fraud" whereby the parties entered into the relationship for the immigration purpose. The Notice concedes that figures on "marriage fraud" are unavailable, and that not every refusal of spousal sponsorships is based on concerns about bona fide.

From what we can gather, this and other measures currently being considered by the Department to restrict spousal sponsorship are the Government's response to the lobbying efforts by certain groups of sponsors - most of whom male - who allege that their spouse left them shortly after she came to Canada. As such, these male sponsors argue, they have been victims of marriage fraud. To the best of our knowledge, the very few investigations conducted by CIC, CBSA or the Minister's office, to discern the reasons why these sponsored women left their sponsors reveal significant abuse and violence by sponsors which forced sponsored women to leave. Investigations have found that "marriage fraud" was not the true reason for the breakdown. As such, we have reasons to be concerned that some sponsors will use the threat of "conditional visa" to further perpetrate abuse and violence.

Secondly, we find it extremely problematic to equate "marriage for the purpose of immigration" with "marriage fraud", as many of these male sponsors have claimed. Just because one of the purposes for entering into marriage is facilitation of immigration does not mean that the marriage is not genuine. Indeed, until very recently, that has been the law in Canada for many years. Under the former s.4 of IRPR, our immigration law - and the Courts - did recognize that when choosing a prospective spouse, it is reasonable for someone to also consider the citizenship or permanent resident status of the spouse. And we would respectfully submit that even the sponsors themselves are aware, when they go aboard to find a wife, their Canadian citizenship status is something that puts them ahead of other potential suitors, and they often use that to their full advantage.

Given that the Department is unable to verify the real extent of “marriage fraud”, and given that in fact the Canadian law, until very recently, recognized the multiple motives for entering into a marriage, it thus puts into question the rationale for imposing a new condition which has wide ranging implications both for sponsored spouses as well as for the immigration enforcement system in general.

Violence against Women

For every sponsor who feels genuinely betrayed by the person he or she has brought here, there is a sponsored immigrant – most likely a woman – who finds herself in a controlling and sometimes even abusive relationship after landing in Canada. These women are often too ashamed and mostly too afraid to speak out for fear of losing their immigration status. Abusive partners, often men, who cry “marriage fraud” after the relationship breaks down have all the power and privilege to access support and legal assistance. Sponsored women who have been abused – on the other hand - are often isolated and alone. By characterising the issue as marriage fraud, the Government has shifted attention away from the wider systemic problem of violence against women and in so doing laid the blame on the victims.

By the same token, women who arrive in Canada only to learn that their sponsor/partner is not the person they claimed to have been may be locked into unhappy or even abusive and controlling relationships for a minimum of two (2) years—the amount of time it takes to fulfill the condition associated with permanent residency status.

The conditional visa is reminiscent of the conditions that were once imposed on sponsored fiancé (e). Under s.6(1) of the former *Immigration Act*, a sponsored fiancé(e) was required to marry his/her sponsor within 90 days of their arrival, and report their marriage within 180 days to immigration authority. Failure to do so would result in the sponsored person’s status as permanent residents being revoked.

The 90 day marriage condition became a convenient tool for many male sponsors to control their sponsored spouse. The majority of the immigrants who came to Canada at the time as sponsored spouse were women. As women, they were also more likely than men to become victims of domestic violence. Soon, women who were sponsored as fiancées found themselves trapped in abusive relationships. They had to choose between subjecting themselves to further abuse or risking deportation. In *Bule v. Canada (Minister of Citizenship & Immigration)* (1998) 49 Imm. L.R. (2d) (I.A.D.), MTCSALC along with several other community legal clinics and immigrant advocacy groups launched a Charter Challenge to the marriage requirement, on the basis that it violated the rights of sponsored women under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. Given that domestic violence is still very much gendered based, and given that there are still more women than men who are being sponsored as spouse to Canada, there is no question that the proposed conditional visa will result in equally disproportionate and discriminatory impact on women, should it become effective.

Indeed, the commentary of the proposal reveals that the government is aware of the risk. Yet there is nothing in the proposal to clarify what, if any, concrete measures will be put in place in order to protect women who are abused and to ensure that they are not going to be penalized for the actions of their abusers. On the contrary, given the ease with which the Government has accepted the allegations levelled against many of the male sponsors who complain of being ‘taken advantage of’ by their spouse, we are not convinced that adequate measures will in fact be put in place to deal with this serious issue of violence against sponsored immigrant women.

Other Gender Based Discrimination and Impact

Even in cases where there is no abuse, women whose marriages or partnerships dissolve before the conditional visa expires may undergo further victimization upon return to their country of origin. Many cultures and societies are not as accepting of divorced or separated women as we are here in Canada. The proposed legislation would create scenarios in which already traumatized women are being returned to environments where they will face further social isolation, if not outright discrimination.

Impact on Children

The proposal has also not taken into account the potential impact on children born into these relationships. The sponsor and his spouse may have a Canadian born child, and the question may arise as to whether the child will stay in Canada with one parent or leave with the other. Given the likelihood that it would be the mother who is subject to deportation, it is thus also likely that the child would be forced to leave Canada with his/her mother. Alternatively, the child would be forced to stay with his/her father, who in most cases, may not in the best position to care for the child. The proposal is silent as to the issue of the best interests of the child, nor does it indicate whether the best interests of the child would be a factor in evaluating the permanent residency status of the sponsored parent.

Measure is Unnecessary

Canada’s immigration legislation already has provisions that can be used to charge (even criminally) immigrants for misrepresentation in their applications. If marriage fraud were indeed a widespread problem, more charges should have been laid. Already, the Government has expensed significant sums on beefing up scrutiny at visa offices abroad to combat so-called fraudulent marriages; adding another layer of conditional visa is not only harmful towards women but a waste of taxpayers’ money.

Rather than proposing a one-sided solution to a problem that is multi-faceted, the Government should try to facilitate immigration through other means including expanding the definition of family class and relaxing other types of immigration rules. Canada needs immigrants, and if there are more ways than one to immigrate to Canada, getting married would likely to be the last resort for most people.