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Government Collecting on Defaults on Immigration Sponsorships

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Canadians and Landed Immigrants in Canada are allowed to sponsor their spouses, children, parents and grandparents to immigrate to Canada but they must sign undertakings of assistance. The signer and co-signer undertake to provide all living expenses for the individuals under the sponsorship program. Specifically the sponsor is to provide for the individual ensuring that they will not receive social assistance in Canada.

Some Sponsors are unable to carry on the responsibility, or are unwilling to fulfil this obligation. Previously the only penalty was that someone who defaulted on sponsorship was not allowed to sponsor another individual into Canada until the default had been corrected.

Under the new Immigration and Refugee Protection Act Section 91 *Immigration and Refugee Protection Act*, the law has been changed so that all social assistance payments received by a family class sponsored immigrant are considered a collectible debt owed by the sponsor. Millions have already been collected under this debt recovery program. The sponsor now will have action taken against them by the provincial or federal governments to recover the sponsorship debt if they are in default. A person who co-signs as a sponsor is equally responsible for repaying any debt incurred if the sponsored person receives social assistance.

The length of the sponsorship for a spouse is normally three years. For dependants older than 23 years of age the sponsorship is for three years after they become permanent residents. Dependant children under 23 years of age the sponsorship is for 10 years after they become permanent residents or until the child reaches 25 years of age, whichever comes first. The sponsorship for parents and grandparents is 10 years.

The basic requirements for the sponsorship cover food, clothing, shelter and other needs for everyday living. Dental Care, eye care and other health expenses that are not covered by public health service are also included in the sponsorship undertaking. The sponsorship ensures that the applicant and his or her dependant children do not have to apply for social assistance and do not become a burden to the tax paying public.

This sponsorship commitment is an important component of *The Immigration and Refugee Protection Act*, which provides for the sponsorship of spouses, children, parents and grandparents under a family reunification policy.

Individuals who have signed these sponsorship agreements are now receiving invoices for the amounts of monies the person they had sponsored has received from Social Assistance. In some cases the debt amounts to $85,000 or even $100, 000 as a married couple can receive as much as $1,500 per month on Social Assistance.

The Ontario Overpayment Recovery Unit (ORU) was established in 2004. It utilizes the Canadian Revenue agencies to collect their sponsorship debts for former recipients and sponsors who have defaulted on sponsorship agreements. The Refund Set Off program (RSO) is a debt recovery program used to collect on delinquent accounts owed to the crown. The program seizes tax refunds and GST harmonized sales tax credit to be set off to pay debts owed to the government.

There are a number of categories where the cases will not be referred for debt recovery. They are where the sponsors are deceased with no estate and there is proof that sponsor has been deceased for more than two years. Also exempt is where the sponsor is incapacitated and unable to pay. (For example, if the sponsor is in a hospital institution and there is neither current financial ability to repay the debt nor the ability to make the payments in the future.) Other exemptions include:

- Where there is domestic violence that is confirmed by an independent third party or abuse of the sponsored individual or abuse of the sponsor. In this type of cases the sponsor is still considered to be in default of the obligations and is bared from further sponsorship.

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- Where the sponsor has claimed bankruptcy and the entire debt which was covered by the debt has been discharged. However, if the sponsorship period has not ended, any responsibility accrued after bankruptcy is considered new debt.
- The sponsor is receiving social assistance and the co-signer is not on Social Assistance. There will be attempts to recover the debt from the co-signer.
- The sponsor is receiving a Guaranteed Income Supplement (GIS) under the Old Age Security Act (GAINS - A).
- The sponsor documents extraordinary circumstances. For example, the sponsor has a serious health condition along with high ongoing care costs that have a serious impact on the sponsor's ability to pay the debt. This decision is subject to the approval of the regional director or Ontario Works administrator.
- There is an open eligibility review investigation commencement for the sponsored person. In case the financial situation is not likely to change or the financial situation expected to improve the recovery maybe deferred for up to 12 months.

There are also other ways of being considered in default that will make someone ineligible for a sponsorship.

- If you have failed to pay any arrears on an Immigration loan.
- If you are in default of any support payments under family law.
- If you are ordered to make payments to a spouse or child and have failed to do so.
- If you have posted a performance bond where you agreed to pay money, but have not paid the performance bond, you will also be considered in default.

Fixing a Default

The way to cure these defaults is to bring matters current, pay the bonds, pay the family support, and if you have arrears in an immigration loan pay the debt or repay the full amount of social assistance to the satisfaction of the government authorities that issued the benefits or ordered you to pay.

If the defaulting sponsor pays the full amount of Social Assistance and the government owed debts has been addressed then there will be confirmation of repayment for social assistance forms sent to Citizenship and Immigration Canada. The sponsored person will have to withdraw from social assistance under this provision.

It is possible to resume partial support for the sponsored person that will help alleviate the debt problem. The new sponsorship money will be treated as income and is deducted from the person's social assistance. However, if the sponsoring person provides partial support for the sponsored person and the sponsored person continues to receive some social assistance, the sponsor remains in default. The debt continues to accumulate and the sponsor is responsible to repay this debt. Again, if the sponsor defaults on any partial repayment support payments or the individual goes back on social assistance, the government is instructed to collect the debt.

If the sponsor is below the Low Income Cut-Off (LICO) and there is little possibility of collecting the debt, the government may waive collection and close the file. The government can also keep the file open and if any financial changes occur in the future, the debt will be considered collectible. If there is only partial or no repayment made, then the matter will be sent to the federal government Revenue Agency for collection.

Undertakings for sponsorships are very serious commitments made by the sponsor to look after the sponsored individual. The federal government insists that the undertaking sponsorship is honoured and in the vast majority of circumstances they will not allow a person to sponsor anyone in the future if an undertaking of assistance has been broken.

Sometimes circumstances necessitate that sponsors cannot look after their obligations. There will have to be strong documentation and proof that the financial status does not allow repayment before this matter will be considered closed for collection purposes.

The viability of the Family Class sponsorship program ensures that sponsored individuals who come to Canada do not become a burden to Canadian society and that they do not collect social assistance. This undertaking of assistance helps maintain the viability of the Family Class Sponsorship program because if there is abuse of the program there will be a lack of political support for family reunification. This abuse could potentially adversely affect the families that are separated and the policies of the Canadian government in the case of sponsorship.

Accordingly, the undertaking of assistance must be honoured to the best of the sponsor's ability. However, if you do default, there will be consequences as you will be not be allowed to sponsor

future individuals into Canada, and as we now see the government will come after you to collect any monies paid in the form of Social Assistance.

This article is largely based on *Ontario Works Bulletin 2005-08* and *ODSP Policy Bulletin 2005-06* dated August 30, 2005. This is just a short overview of this issue; if you have any further questions please consult a lawyer.

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Case Tracker: Cases You Should Know!

Mario D. Bellissimo

Stay

Case: Canada v. Okoloubu
Decider: M. Noel J.A.
Citations: 2007 CarswellNat 4433, 2007 FCA 401

[9] Counsel for the Minister insists that the appeal can proceed even if the applicant is removed. I have no doubt that the appeal could theoretically proceed. However, a compelling argument could be made that the appeal is in effect moot given that even if the applicant was to succeed in resisting the appeal, there would be no practical basis for re-evaluating his request to have his permanent residence application processed within Canada on humanitarian and compassionate grounds, as ordered by Harrington J. As the appeal has been brought by the Minister, I believe it appropriate to preserve the applicant's entitlement to an eventual remedy pending its disposition.

Case: Bui v. Canada
Decider: M.M.J. Shore J.
Citations: 2007 CarswellNat 4604, 2007 FC 1369
Notes: PRRA

[28] In addition, it was clearly not the intent of Parliament to allow all negative PRRA recipients to remain in Canada, pending the outcome of any litigation related to their PRRA decisions. Parliament chose to provide a statutory stay of removal pending the outcome of an application for leave of a negative refugee decision by the RPD. Parliament further envisioned statutory stays in certain specified circumstances related to PRRAs, as set out in Section 232 of the Regulations, none of which included applications for leave challenging negative PRRA decisions. (Regulations, sections 231 and 232.)

Case: Kovacs v. Canada
Decider: The Honourable Madam Justice Snider
Citations: 2007 CarswellNat 4247, 2007 FC 1247

Certified Question:

Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?

Minister of Transport

Case: Fontaine c. Canada
Decider: M.M.J. Shore J.
Citations: 2007 CarswellNat 4655, 2007 FC 1160, 2007 CF 1160
Notes: Air safety

[83] Accordingly, in the case at bar it was not any specific acts that made Mr. Fontaine incapable of holding a security clearance, but rather the fact that he is associated with individuals who might have a negative influence on him that gives the Minister reason to believe that Mr. Fontaine might be "prone or induced to . . . commit an act that may unlawfully interfere with civil aviation" (Clearance Program, *supra*, s. I.4).

Skilled Worker

Case: Tathgur v. Canada
Decider: The Honourable Mr. Justice Mandamin
Citations: 2007 CarswellNat 4354, 2007 FC 1293

[35] In result, the Visa Officer was asked by the Applicant's agent to consider exercising the statutory discretion under subsection 11(3) of the *Immigration Regulations, 1978*. The Visa Officer did not consider exercising her discretion as requested. Nor did the Visa Officer consider exercising her statutory discretion under subsection 76(3) of the *IRPA Regulations*. The failure by the Visa Officer to consider exercising the statutory discretion when requested to do so is a failure carry out a statutory responsibility the Visa Officer was obligated to do.

Case: Gay v. Canada
Decider: The Honourable Mr. Justice Shore
Citations: 2007 CarswellNat 4277, 2007 FC 1280