

Understanding Common-Law Unions; An Immigration Perspective

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Throughout the world families are the cornerstones of societies. In Canada, Citizens and Permanent Residents enjoy a constitutional right to choose who his or her spouse is.

Nowadays, many Canadians and Permanent Residents meet loved ones abroad and desire for those special individuals to immigrate and be united in Canada.

Between 2006 and 2015 Immigration, Refugees and Citizenship Canada (IRCC) Citizenship reported an average of 256,633 new Permanent Residents that immigrated to Canada via its different Immigration Programmes' Categories; Economic, Family Class Sponsorship, Resettled Refugees and Protected Persons in Canada mainly[1].

These individuals are married to Canadians Citizens or Permanent Residents or can be in a Common-Law relationship. For individuals who are married they must provide supporting evidence that their marriage is genuine and not out of convenience to immigrate to Canada.

Many couples are caught in this confusing area of law. For example if one fails to report a common-law relationship and fails to have the partner medically examined then later reconciles with the partner gets married and Immigration Refugee Citizenship Canada (IRCC) rejects the sponsorship application for failure to disclose the common-law relationship and for failure to have the individual medically examined.

For couples that are in a Common Law relationship and apply to be re-united in Canada probing their Common-Law relationship can become a challenge. This can also become a point of dispute for decision makers who assess application for those individuals who wish to be reunited or immigrate to Canada with their loved ones.

Within the process of probing a Common-Law relationship, Canadian Courts have had to look into other areas of law to assist them on decisions, as to what a Common-Law relationship is.

The Immigration and Refugee Protection Act (IRPA) Regulations offers a definition within its regulations, which reads “common-law partner means, 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 (conjunct de fait)”[2].

Within the Jurisprudence, the leading Canadian case is the Supreme Court Decision on Family Law known as *M v H*[3]. This decision provided a legal test to assess “Conjugal Relationships”. This approach is a seven-prong test to determine whether two persons are actually living or have lived in a Conjugal Relationship.

This criteria assesses Shared Shelter, e.g. sleeping arrangements; Sexual and Personal Behaviour, e.g. fidelity, commitment, feelings towards each other; Services, e.g. conduct and habit with respect to the sharing of household chores; Social Activities, e.g. their attitude and conduct as a couple in the community and with their families; Economic Support, e.g. financial arrangements, ownership of property; Children, attitude and conduct concerning children; and Societal Perception of the Couple [4].

In *M v H* the Supreme Court noted “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”

Looking at a more specific immigration related decision *Cai v Canada*, the Federal Court with the understanding laid out at *M v H* noted that the characteristics that should be to some degree in all conjugal relationships, married and unmarried should have a mutual commitment to a shared life; be exclusive -- cannot be in more than one conjugal relationship at a time; be intimate -- commitment to sexual exclusivity; be interdependent -- physically, emotionally, financially, socially; be permanent -- long-term, genuine and continuing relationship; and that the individuals involved shall present themselves as a couple[5].

IRCC’s Help Centre provides examples on how individuals can demonstrate they are in a Common-Law relationship. The text found in the website indicates that some items that can be used as proof of a common-law relationship include:

- A statutory declaration of a common-law union,
- Statements for shared bank accounts,
- Shared credit cards,
- Proof of shared ownership of residential property,
- Shared residential leases,
- Shared rental receipts,
- Bills for shared utilities accounts, such as Electricity, gas or Telephone,
- Proof of shared management of household expenses,
- Evidence of shared purchases (especially of household items),
- Mail addressed to either or both of you at the same address,
- Important documents for both of you showing the same address, such as identification documents, driver’s licences and insurance policies and;
- Any other documents that show you have been living together.

The Canadian Government’s intent on placing reasonable determination methods on Family Class Sponsorships and the eventual immigration of individuals is to discourage potential fraudulent relationships, while respecting the Rule of Law. Exercising your legal rights when choosing a partner and being reunited with them in Canada can at be at times a daunting task.

If you intend to bring in your Common-Law spouse to Canada, as with all types of immigration applications, it can be useful to have guidance and assistance throughout the process from a legally trained professional.

Edward C. Corrigan is Certified as a Specialist by the Law Society of Upper Canada in Citizenship, Immigration and Immigration and Refugee Law.

Selvin Mejia is a Paralegal (unlicensed) and Law Student associated with Edward C. Corrigan Law since 2005.

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1. Immigration, Refugees and Citizenship Canada (IRCC) - Facts & Figures 2015: Immigration Overview - Permanent Residents – Annual IRCC Updates <Accessed May 14, 2017>
 2. Immigration and Refugee Protection Regulations SOR/2002-227 - PART 1- Interpretation and Application - DIVISION 1 - Definitions
 3. *M. v. H.*, 1999 CanLII 686 (SCC), [1999] 2 S.C.R. 3
 4. *ibid* – paragraph 15
 5. IRCC Help Centre - <http://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=347&top=14>) - Accessed May 13, 2017