Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

OP 2

Processing Members of the Family Class

Canada

OP 2 Processing members of the family class

Updates to chapter

Listing by date:

Date: 2006-07-10

Changes have been made throughout this chapter and any previous version should be discarded. Of particular note are the following substantive changes.

- Section 5.6 Processing priorities: This section has been slightly expanded to outline the Department's family class processing priorities.
- Section 5.7 Non-routine cases: This section has been significantly expanded to include instructions on "Work In Progress" event notation.
- Sections 5.10—Non-accompanying family members, 5.11— Inadmissibility and non-accompanying family members and 5.12—Exclusion from the family class have been significantly re-written to clarify the text. The section on "Excluded family members and humanitarian and compassionate grounds" has been significantly expanded.
- Section 5.23 "When must requirements be met by family members?" has been slightly altered to add clarity to "Dependent children over 22 years of age and full-time student"
- Section 5.33 "Legality of foreign divorces" has been significantly re-written and updated to reflect the current legal interpretation of when to recognize a foreign divorce.
- Section 5.40 "Same-sex marriages in Canada (interim departmental policy)" has been significantly re-written to bring it in line with legal developments of the past year.
- Section 10.5 "Sponsors who may be subject to an A44(1) report" has been altered slightly.
- A new sub-section has been added to section 17 on Quebec cases. Sub-section 17.2 is entitled "Appeal-allowed cases" and details coding information.

2005-02-11

Changes have been made throughout this chapter and any previous version should be discarded. Of particular note are the following substantive changes:

- Section 5.9 Assessing an application
- Section 5.11 Inadmissibility and non-accompanying family members
- Section 5.12 Exclusion from membership in the family class – provides information pursuant to the regulatory changes of August 2004 involving R117(9)(d), R117(10) and R117(11)
- Section 5.17 – Dissolutions of convenience
- Section 5.26 Assessment of conjugal relationships
- Section 5.28 Minimum age for marriage
- Section 5.30 Recognition of a marriage
- Section 5.33 Legality of foreign divorces
- Section 5.40 Same-sex marriages in Canada
- Section 5.51 Switching categories between spouses, conjugal partners and conjugal partners
- Section 7.7 What to do if a family member is added to an application during processing

- Section 12.5 Conjugal relationships – dissolutions of convenience
- Section 13.1 Illegal marriage
- Section 13.2 Polygamous marriages
- Section 18.4 – Security certificates – deleted
- Section 18.5 – Minister's Opinions - deleted
- Section 18.4 Authorization to return to Canada
- Appendix A – Sample Letter to Sponsor deleted
- Appendix B – Family class sponsorships (Process Chart) becomes Appendix A

2004-03-12

Changes concerning conjugal partners have been made. They affect in particular the following sections of the chapter:

- Section 5.25 Characteristics of conjugal relationships:
- Section 5.35 What is cohabitation?:
- Section 5.45 What is a conjugal partner?;
- Section 5.47 Assessment of conjugal partner relationships
- Section 6. The definitions have been revised to more clearly describe policy concerning assessment of conjugal partners.

Minor changes have also been made throughout the chapter.

1. What this chapter is about

This chapter explains:

- How to process permanent residence applications from members of the family class.
- Criteria that must be met by applicants in the family class
- Refusals of applications under the family class
- How to handle appeals of refusals of applications in the family class

For additional information on processing applications to sponsor members of the family class, refer to IP2.

2. Program objectives

The intent of the family class program is to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives and family members.

3. The Act and Regulations

Provision	Reference in Act or Regulations
Objective relating to family reunification	A3(1)(d)
Sponsor does not meet requirements	A11(2)
Selection of members of family class	A12(1)
Right to sponsor a family member	A13(1)
Obligation of sponsorship	A13(3)
Inadmissible family member	A42
Right to appeal family class refusal	A63(1)
Inadmissible classes	A33 - A42
Exception to excessive demand	A38(2) and R24
Definition of common-law partner	R1(1)
Interpretation of common-law partner	R1(2)
Definition of family member	R1(3)
Definition of dependent child	R2
Definition of conjugal partner	R2
Definition of relative and family member	R2
Bad faith (relationships or dissolutions of convenience)	R4 and 4.1
Definition of a member of the family class	R117(1)
Adoption under 18	R117(2)
Best interests of the child	R117(3)
Child to be adopted	R117(1)(g)
Adoption over 18	R117(4)
Excluded relationships	R117(9), R117(10) and R117(11)
Withdrawal of sponsorship application	R119

Approved sponsorship application	R120
Requirements for family member of member of family class - visa issuance	R121
Requirements for family member of member of family class in order to grant permanent residence	R122
Who may sponsor	R130
Sponsorship criteria	R133

3.1. The forms required are shown in the following table.

Name/Purpose	Number
Application for permanent residence	IMM 0008GEN Generic
Schedule 1/Background declaration	IMM 0008Esch1 Schedule 1
Application to sponsor and Undertaking	IMM 1344AE
Sponsorship Agreement	IMM 1344BE
Additional family information	IMM 5406E
Financial evaluation	IMM 1283E

4. Instruments and delegations

A6 authorizes the Minister to designate officers to carry out specific duties and powers, and to delegate authorities. It also states those ministerial authorities, which may not be delegated, specifically those relating to security certificates or national interest.

Pursuant to A6(2), the Minister of Citizenship and Immigration, has delegated powers and designated those officials authorized to carry out any purpose of any provisions legislative or regulatory in instrument IL 3 - Delegation and Designation.

For delegated/designated authorities with respect to sponsorship applications, see IP 2, Section 4.

4.1. Delegated powers

IL 3 organizes delegated powers by modules. Each module is divided into columns including column 1: provides an item number for the described powers, column 2: provides a reference to the sections or subsections of the Act and Regulations covered by the described powers and column 3: provides a description of the delegated powers. The duties and powers specific to this chapter are found in the modules listed below:

- Module 1 - Permanent residence and the sponsorship of foreign nationals
- Module 9 - Inadmissibility – loss of status – removal

4.2. Delegates/designated officers

The delegates or designated officers, specified in column 4 of Annexes A to H, (contained in IL 3) are authorized to carry out the powers described in column three of each module. Appendices are organized by region and by module. Officers should verify the list below for the appendix specific to their region.

Appendix A	Atlantic Region
Appendix B	Quebec Region
Appendix C	Ontario Region

Appendix D	Prairies/NWT Region
Appendix E	BC Region
Appendix F	International Region
Appendix G	Departmental Delivery Network
Appendix H	NHQ

5. Departmental policy

5.1. Family class requirements

Members of the family class and their family members must meet the following requirements:

- they must have an eligible relative, or spouse, common-law partner or conjugal partner who meets the requirements for sponsorship;
- they must prove their identity, age and relationship among themselves and to their sponsor;
- the applicant and family members must not be described in any of the inadmissible classes; and
- they must have valid and subsisting passports or travel documents.

5.2. Who must complete an IMM 0008?

All principal applicants, regardless of age, must complete an IMM 0008GEN. Spouses, common-law partners and dependent children over 18 years of age who are included in the sponsorship, must complete a Schedule 1 - Background Declaration and Additional Family Information - (IMM 5406E). This includes spouses, common-law partners and family members whether or not they accompany the principal applicant to Canada.

When a parent sponsors two or more dependent children of any age there must be separate IMM 0008s for each child.

Dependent children under 18 years of age, or who are not accompanying the principal applicant, may be asked to complete Schedule 1 - Background Declaration and Additional Family information (IMM 5406E) in order to assist with verification of identity and relationship, or to assist in their examination. If this is done, explain that the forms are intended to serve as a source of information and not as an application for permanent residence.

5.3. When does a family class application exist?

In family class redesign cases (spouse, common-law partner, conjugal partner or dependent children), a family class application requires receipt by CPC-M of an IMM 1344AE, a properly completed and signed IMM 0008 and the correct processing fees. If any of these elements are missing, the application is returned to the sponsor.

Other family class cases require that the IMM 1344AE and correct fees have been received by CPC-M and the properly completed and signed IMM 0008 received by the visa office

See R10 and R12 for more information on what constitutes an application.

5.4. Lock-in age of dependent children

The lock-in of age for dependent children is the day CPC-M receives a completed IMM 1344AE and correct processing fees. Dependent children must be less than 22 years of age when the sponsorship application is received.

Under 22 years means up to and including the last day before the dependent child's 22nd birthday.

Offices must date-stamp application forms as soon as they are received.

See [OP 1, General Processing Guidelines] for more information about the lock-in date.

5.5. Time limit for returning a completed IMM 0008

The following applies to members of the family class other than spouses, common-law partners, conjugal partners and dependent children including children who are being adopted outside Canada and children who are to be adopted in Canada.

Visa offices must receive an accurately completed IMM 0008GEN. This form, when signed, forms the basis for a decision on an application for permanent residence. It is also used by CICs to support A44(1) reports and is part of the record when sponsors appeal refusals.

Sponsored relatives, including those destined to Québec, have one year to submit an application to a visa office. The one-year period begins on the date of CPC-M's sponsorship assessment letter to the sponsor. This is the same date as the "date signed" contained in the sponsorship notification from CPC-M to the visa office.

Sponsors may withdraw their application and request a refund of the permanent residence application processing fee, if an IMM 0008GEN is not submitted.

5.6. Processing priorities

Applications for permanent residence from spouses, common-law partners, conjugal partners and dependent children have the highest priority, along with children to be adopted. Other members of the family class follow. These are operational, not regulatory priorities. The Department aims to process 80% of sponsorship and permanent residence applications submitted on behalf of the high-priority group of spouses, common-law partners, conjugal partners and dependent children within six months.

5.7. Non-routine cases

While every effort should be made to process high-priority cases expeditiously, it is recognized that there are circumstances where priority processing may legitimately be affected. While not exhaustive, the list below provides some examples of non-routine cases that may not be processed according to the six-month service standard..

Examples of non-routine cases:

- medical, security or criminal issues;
- suspected relationship or dissolution of convenience;
- misrepresentation of marital status at time of marriage;
- previous deportation;
- inability to support self and family members due to legal obligations or other reasons;
- relationship of applicant to sponsor or applicant to other family members in doubt;
- marital status of family member suspect;
- sponsor under investigation for violation of IRPA; or

- outstanding criminal charge against sponsor.

The following would frequently, but not necessarily, be non-routine cases:

- legal validity of foreign marriage in question (marriage which occurred in country other than in processing mission's area of responsibility);
- custody of children of applicant;
- residence status of sponsor in doubt;
- delays created by applicant not following instructions;
- communications not received by mission or by applicant (unreliable postal system, mission not informed of change of address);
- family members and principal applicant residing in different countries and processing coordination difficulties occur; or
- applicant previously removed or excluded from Canada.

In an effort to aid analysis and identification of non-routine cases, the Work In Progress (WIP) event structure in CAIPS should be used by visa offices to flag non-routine cases. Visa offices may enter the following WIP events to identify a file that is non-routine and therefore might be processed outside of the six-month service standard. The WIP events are:

- Background check delay
- Medical delay
- Criminality delay
- Other delay

One or more of these WIP events may be entered when the cause of a possible delay is identified.

Examples of possible delays:

- Medical delay— the requirement to undergo 6 months of treatment for active tuberculosis;
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- Criminality delay—a family member has a pending criminal charge that must be resolved before admissibility may be determined;
- Other delay—an interview is required but area trips are made to the region only once or twice per year and an area trip has been completed just recently;
- the sponsor is from Quebec, was found to be ineligible by Quebec, and successfully appealed;
- an investigation in Canada is required prior to determining whether the sponsor is eligible.

5.8. Sponsorships by Canadian citizens living abroad

See IP 2 for further details on who may be sponsored, sponsorship requirements and where to submit an application

5.9. Assessing an application

Officers must be satisfied that applicants and their family members, whether accompanying or not, are not inadmissible and otherwise meet all requirements of the family class [A11(1)].

Officers must also be satisfied that sponsorship requirements are still met at the time of visa issuance. If a sponsor is no longer eligible, officers must refuse the application except where the application has been approved under A25.

5.10. Non-accompanying family members

Applicants must declare all family members when applying for a visa and must again declare all family members, whether accompanying or not, prior to obtaining permanent resident status. Permanent residents who did not declare all their family members on their application are reportable under A44(1) [see also “Sponsor who may be subject to an A44(1) report” (section 10.5 below) and “Misrepresentation” (section 5.22 below)]. In addition, all family members, whether accompanying or not, must be examined, unless the appropriate officer determines that they are not required by the Act or the former Act to examine the family member [R117(10)]. Family members who were not declared and examined are excluded from the family class and may not be sponsored at a later date as per R117(9)(d) unless R117(10) applies.

Non-accompanying family members must undergo medical examinations. They must also establish that they are not inadmissible for criminal or security reasons. If the requirement for minimum necessary income is applicable, sponsors must demonstrate that they can support all family members, including non-accompanying family members.

Non-accompanying family members need not be in possession of a passport or travel document.

5.11. Inadmissibility and non-accompanying family members

All family members, whether accompanying the principal applicant or not, are required to be examined unless an officer decides otherwise. Normally, an inadmissible family member, whether accompanying or not, would render the principal applicant inadmissible. There are, however, two exceptions to this rule described in R23. The first is the separated spouse of the applicant and the second is where a child of the applicant who is in the legal custody of someone other than the applicant or an accompanying family member of the applicant, or where someone other than the applicant or accompanying family member of the applicant is empowered to act on behalf of that child by virtue of a court order or written agreement or by operation of law.

If an applicant’s separated spouse or their children who are in the custody of someone else are inadmissible, their inadmissibility would not render the applicant inadmissible. Because separated spouses can reconcile and custody arrangements for children may change, examination is required in order to safeguard the future right to sponsor them in the family class. If these family members are not examined, they cannot be sponsored in the family class in the future under R117(9)(d) unless R117(10) applies.

Satisfactory documentary proof of a separation and of custody being with someone other than the applicant is required. A separation agreement or custody papers are examples of acceptable proof.

Officers will not issue a permanent resident visa to separated spouses, common-law partners or children in the custody of someone else, even if they are examined. This is because separated spouses and partners are not members of the family class as per R117(9)(c) and because children in the custody of someone else are non-accompanying family members.

If these family members are genuinely unavailable or unwilling to be examined, the consequences of not having them examined should be clearly explained to the applicant and reflected in the CAIPS notes. Officers may wish to have applicants sign a statutory declaration indicating they understand the consequences of failing to have the family member examined.

[See also section 5.12, Exclusion from membership in the Family Class – R117(9)(d), R117(10) and R117(11) below.

5.12. Exclusion from membership in the family class – R117(9)(d), R117(10) and R117(11) (former OM OP 03-19)

Under both the previous legislation and under IRPA, both the applicant and the applicant's family members, whether accompanying or not, must meet the requirements of the legislation. There are no exceptions to the requirement that all family members must be declared. With few exceptions, this also means that all family members must be examined as part of the process for achieving permanent residence.

Officers should be open to the possibility that a client may not be able to make a family member available for examination. If an applicant has done everything in their power to have their family member examined but has failed to do so, and the officer is satisfied that they are aware of the consequences of this (i.e., no future sponsorship possible), then a refusal of their application for non-compliance would not be appropriate.

Officers must decide on a case-by-case basis using common sense and good judgment whether to proceed with an application even if all family members have not been examined. Some scenarios where this may likely occur include where an ex-spouse refuses to allow a child to be examined or an overage dependant refuses to be examined. Proceeding in this way should be a last resort and only after the officer is convinced that the applicant cannot make the family member available for examination. The applicant themselves cannot choose not to have a family member examined.

The intent of R117(9)(d), R117(10) and R117(11) is to ensure that persons whom the sponsor made a conscious decision to exclude (either by not declaring and/or not having the persons examined) from their own application for permanent residence cannot later benefit by being sponsored by this same person as a member of the family class.

Where, however, the applicant has declared the person and CIC chooses not to examine the family member, for example, because of an administrative decision or for policy reasons, or due to an administrative error, the family member is not excluded from membership in the family class. However, a sponsor cannot sponsor a family member if an officer determined at the time the sponsor previously submitted their application for permanent residence:

1. that the sponsor was informed that the family member could be examined and that the sponsor was able to make the family member available for examination, but did not do so, or

2. that the family member did not appear for examination when he was able to do so.

Many of the family class cases that are currently being processed have a sponsor who immigrated to Canada under the previous legislation. Under the previous legislation, certain persons either did not have to be examined as part of the application or could not be examined due to an administrative policy or decision taken by CIC.

There are two groups of persons who fall into the above category:

- The family members of an applicant for refugee status did not have to be examined as part of the application. (In addition, it should be noted that under the current Regulations, i.e., R176, the non-accompanying family members of a protected person, who is seeking to remain in Canada as a permanent resident, are not required to be examined and therefore should not be excluded from the family class in a subsequent sponsorship);

- Where an application for H&C consideration was made in Canada, CIC did not allow the overseas family members to be included as part of the application. Consequently, they were not examined.

In addition, under the previous legislation, there were situations where an application could proceed even though the applicant made a decision not to have a family member examined, namely:

- where a dependent child was in the custody of the sponsor's spouse or ex-spouse;
- where the applicant was formally separated from their spouse.

Consequences of no examination:

Where CIC made the decision not to require examination of family members

As per R117(10), the exclusion of R117(9)(d) does not apply to an applicant where it is established that an officer determined, during the course of the sponsor's own application for permanent residence, that this applicant (then a family member of the foreign national who later became a sponsor) was not required to be examined, as applicable, under IRPA or the former Act. The key notion operating here is whether it was the decision of the officer who, being fully advised of the existence of the family member through the truthful declaration of the foreign national who later became a sponsor, determined that it was not required that that family member be examined and did not require that the family member be examined. If the decision for non-examination was made by the officer, then R117(9)(d) does not apply in respect of that family member and that family member is not excluded.

Nevertheless, as per R117(11), R117(9)(d) **does** apply to an applicant if an officer determines that this applicant **could** have been examined during the **sponsor's** own application for permanent residence, but that the **sponsor** chose not to make the applicant available for examination or that the **applicant** did not appear for examination. The choice in this situation rests with either the sponsor or the applicant (not with an officer of the Department) and, consequently, the applicant is excluded, pursuant to R117(9)(d) and R117(11), for not having the family members examined as part of the sponsor's own application for permanent residence.

Separated spouse

Where a spouse was not examined as part of the application for permanent residence because the applicant and spouse were separated and examination was not required, the spouse cannot later be sponsored as a member of the family class by virtue of their relationship to the sponsor. This was true under R4(2) of the previous legislation and it is still valid under R117(9)(d) of the current legislation. To preserve the option to sponsor at a later date, the separated spouse must be examined. [(R117(9)(d) and R23)]

The relationship between the foreign national and the sponsor will be considered to be an excluded relationship where the foreign national was the sponsor's spouse but was living separate and apart from the sponsor.

Dependent child in the custody of a former spouse

In some cases where a child was in the custody of the other parent, the applicant may have been advised, pursuant to R6(5) of the *Immigration Regulations, 1978* and per R23 of the current Regulations, that the child did not have to be examined because of the custody situation. In this situation, the decision whether or not to have a child examined is definitely the applicant's decision.

The applicant should have been fully counselled by the officer on the consequences of not having the child examined, i.e., exclusion from later sponsorship in the family class by the applicant. The CAIPS notes should reflect that this counselling took place. In situations where it is evident that the applicant was fully counselled, the dependent child is excluded from membership in the family class by virtue of their

relationship to the sponsor and cannot be sponsored by this person at a later date. This was true under R4(2) of the previous legislation and is still valid under R117(9)(d) of the current legislation.

In cases where, upon review, it is not clear that the applicant in fact made the choice not to have the child examined and/or it is not clear that the applicant understood the consequences of the choice, a review board, i.e., the IAD may conclude that the officer was in breach and that the applicant was not correctly advised. Natural justice and fairness require that the consequences of a decision of this magnitude be fully explained and understood, whether at interview or through correspondence.

Excluded family members and humanitarian and compassionate grounds

A25 requires officers and delegated authorities to examine humanitarian and compassionate factors (H&C) upon the applicant's request. In addition, if an officer believes there are strong humanitarian and compassionate factors present in a case, the officer may on their own initiative, without the applicant specifically requesting it, put the case forward to the person with the delegated authority to approve the use of A25(1) for the case. A separate application and fee are not required.

A25 can be used by applicants to overcome being an excluded family member or any other requirement of the Act. This includes an applicant who has a sponsor who does not meet eligibility requirements.

The text that follows addresses the use of A25 in relation to R117(9)(d). This regulation excludes from the family class, persons who were not examined as non-accompanying family members at the time their sponsor made their application for permanent residence.

In considering the use of H&C for excluded family members, the officer should take into account all relevant factors including, but not limited to, those provided below.

General

- The onus is on the client to understand their obligations under the law. The information guides included with application kits and visa issuance letters give clear information on the need to declare and have examined all family members including new family members.

- The exclusion found in R117(9)(d) exists to encourage honesty and prevent applicants from circumventing immigration rules. Specifically, it exists to prevent applicants from later being able to sponsor otherwise inadmissible family members under the generous family class sponsorship rules when these family members would have prevented the applicant's initial immigration to Canada for admissibility reasons (i.e., excessive demand).

- The application of humanitarian and compassionate considerations may nonetheless be appropriate in cases that are exceptional and deserving from a reasonable person's point of view.

Case-specific factors

- Canada's continuing obligations under the *Convention on the Rights of the Child* require that the Department consider the best interests of a child directly affected by the application whether they are explicitly mentioned by the applicant or are otherwise apparent. (For more information on the application of the policy pertaining to the best interests of the child, see OP4, section 8.3.)

- Where family members were declared but not examined and it is clear that the applicant/sponsor made their best efforts to facilitate this examination and that this lack of examination was beyond the applicant's/sponsor's control, considering the use of H&C factors may be appropriate.

When the client presents compelling reasons for not having disclosed the existence of a family member, it may also be appropriate to consider the use of H&C factors. For example:

- a refugee presents evidence that they believed their family members were dead or that their whereabouts were unknown; or

- a client presents evidence that the existence of a child was not disclosed because it would cause extreme hardship because the child was born out of wedlock in a culture that does not condone this.

Where an officer decides to put forward a case for consideration of H&C factors in the absence of a specific request from the client, the client should be informed that H&C factors are being considered and should be provided with an opportunity to present their own reasons for H&C consideration. This is procedurally fair and ensures that the decision-maker has all the information necessary before making a decision.

Should a decision be made to process an application favourably even though the applicant is excluded pursuant to R117(9)(d), the case should be coded as **FCH.** FCH indicates that the case is within the family class, but that H&C consideration was given. This means that the sponsorship is enforceable and the normal family class exemptions apply where applicable (i.e., excessive demand and LICO). Should the application be rejected, the sponsor has appeal rights. See OP4, section 8.2, for further information on processing family class cases under A25.

Accompanying family members not excluded

Visa offices may encounter situations where a common-law partner and dependent child of a sponsor are applying for permanent residence and these individuals were not examined at the time of the sponsor's own pre-IRPA application for permanent residence. Common-law partners were not family members pre-IRPA so were not required to be examined. These individuals are not inadmissible under R117(9)(d). See R355. However, any children of the sponsor who met the pre-IRPA definition of dependent child should have been examined. If they are now being sponsored in the family class, then they are inadmissible under R117(9)(d). If, on the other hand, they are included in the common-law partner's application for permanent residence as accompanying family members, then they are not being sponsored themselves as members of the family class but rather are the family members of a member of the family class and hence they are not inadmissible under R117(9)(d).

R70(4) states that,

> "A foreign national who is an accompanying family member of a foreign national who is issued a permanent resident visa shall be issued a permanent resident visa, if, following an examination, it is established that
>
> (a) the accompanying family member is not inadmissible; . . . ".

This may seem to contradict R117(9)(d). However, the intent of R117(9)(d) is that the sponsor may not sponsor a person as a member of the family class if that person was not examined as part of the sponsor's application for permanent residence. In the example given above, the child is not being sponsored as the dependent child of the sponsor, but rather as the accompanying family member of the principal applicant.

5.13. Who qualifies as a dependent child?

R2 and Section 6 in this chapter describe who qualifies as a dependent child.

In order to meet R2(b)(i) of the definition of "dependent child", a child must be under 22 years of age and not a spouse or common-law partner on the date when the IMM 1344AE is received by CPC-M, and not a spouse or common-law partner when the visa is issued, and when they arrive in Canada.

Not a spouse or common-law partner means that the dependent child must not be married or involved in a common-law relationship. A dependent child who is single, divorced, widowed, or whose marriage has been annulled is not a spouse. Similarly, if the dependent child was involved in a common-law relationship but that relationship no longer exists, they may be considered to meet the definition.

R2(b)(ii) & (iii) describe children over the age of 22 who may be considered dependent children if they are substantially dependent on their parents for financial support. This includes full-time students enrolled in accredited post secondary institutions or children with a physical or mental condition. In such cases, officers must ask for documentary evidence of full time attendance at school, evidence of the institution's accreditation with the relevant authority, evidence of the physical or mental condition and evidence of financial dependency on parents.

For further information on dependent children over the age of 22, see:

- Assessment of a claim that a dependent child is a student, Section 14 below.

5.14. Human reproductive technologies

Biological child" in R2(a)(i) also includes a child who:

(a) is not genetically related to the parent making the application;

(b) was born through the application of assisted human reproductive technologies; and

(c) was born to the parent making the application or to the person who, at the time of the birth of the child, was that parent's spouse, common-law partner or conjugal partner.

This definition is meant to capture children born to parents through assisted human reproductive technologies, such as in vitro fertilization, who may not share a genetic relationship to those parents. In this case, the female spouse or partner must have given birth to the child. In Canadian Family Law, the spouse or common-law partner of the parent who gives birth to a child is presumed to be the other legal parent even if there is no genetic relationship to the child. If the child was born through a surrogacy arrangement, however, the child will legally be the child of the surrogate mother who gave birth until a subsequent adoption occurs that would create a legal parent/child relationship.

In these cases, documents suitable for establishing parent/child relationships are birth certificates or authorized evidence indicating that the person claiming to be the parent is the birth mother or the spouse or common-law partner of the birth mother at the time of birth. Evidence must also indicate that the parents availed themselves of assisted human reproductive technologies and that the child was subsequently born to the mother.

5.15. Establishing identity and relationship

Members of the family class must prove their relationship to their sponsor and to their family members.

The onus is on the applicant to provide evidence of their identity and relationships to their sponsor and accompanying family members. Applicants must answer questions truthfully and provide any documents necessary to establish that they are not inadmissible [A16(1)]. An applicant, who cannot provide satisfactory documentary evidence of a relationship, has the option to undergo DNA testing.

DNA testing involves the comparison of DNA profiles extracted from blood samples taken from persons claiming to be a biological father, mother or child(ren). If properly conducted, the test is considered a highly reliable means to verify a claimed relationship. This test is commercially available. (See OP 1 for more information on DNA testing.)

5.16. Relationships of convenience

Persons who entered into a non-genuine marriage, common-law relationship, conjugal partnership or adoption in order to obtain permanent residence in Canada must be refused [R4].

In the case of a child to be adopted, the regulation excluding a relationship of convenience from the family class is R117(1)(g)(i).

Officers must have sufficient evidence to support a conclusion that a relationship is not genuine (see Identifying a relationship of convenience, Section 12 below, and OP 3 for adoptions.)

Officers must clearly explain in the case notes why the relationship is one of convenience.

Sponsors may submit an appeal of a refusal on these grounds to the Immigration Appeal Division (IAD).

5.17. Conjugal relationships - Dissolutions of convenience

A person, who dissolves a marriage or conjugal relationship and subsequently resumes a conjugal relationship in bad faith, should be refused pursuant to R4.1, if the intention was to acquire any status or privilege under the Act.

Officers must have sufficient evidence to support a conclusion that a relationship was dissolved in bad faith (see Conjugal relationships - Identifying a dissolution of convenience, Section 12.5 below).

Officers must clearly explain in the case notes why they found that the relationship was dissolved in bad faith.

Sponsors may submit an appeal of a refusal on these grounds to the Immigration Appeal Division (IAD).

5.18. Adoptions

For information on processing adoptions and orphaned family members, see OP 3.

5.19. Medical requirements

Members of the family class are medically inadmissible if they or their family members are likely to be a danger to public health or to public safety or if their admission might reasonably be expected to cause excessive demands on health or social services [A38(1)]. See Exceptions to medical inadmissibility, Section 5.20 below.

Instructions on medical examinations can be found in OP 15. That chapter also explains how to interpret medical results to determine if the applicant is medically admissible and the steps to take before informing applicants that they are refused for medical reasons.

If a member of the family class or a family member is found to be inadmissible for medical reasons, and no new information is provided (see OP 15), the application should be refused.

See OP 20 for information on Temporary Resident Permits.

5.20. Exceptions to medical inadmissibility

A38(2)(a) states that spouses, common-law partners and dependent children who are members of the family class are not inadmissible even if they have a medical condition that will result in excessive demand to health or social services.

R24 provides further exemption from medical inadmissibility that might reasonably be expected to cause excessive demand on health or social services for conjugal partners and children to be adopted.

5.21. Criminal and security requirements

Members of the family class and their family members must be admissible to Canada under all sections of A33 - A37 relating to criminality and security.

Officers must establish admissibility through an applicant's police certificate and background reports and assessments. For more information on determining admissibility on criminal and security grounds, see the IC manual, Security and Criminal Screening of Immigrants, and ENF 2.

Applicants and their family members who are inadmissible for criminal or security reasons must be refused. See OP 20 for information on Temporary Resident Permits.

5.22. Misrepresentation

A foreign national is inadmissible for two years for withholding or misrepresenting information that is material to making a decision on an application [A40].

See ENF 2 section 9 for information on dealing with such cases.

5.23. When must requirements be met by family members ?

Family members	When must requirements be met
Spouse or common-law partner	Meets the definition of spouse or common-law partner as described in section 6 below **when the application is received by CPC-M, when the visa is issued and when they enter Canada.**
Dependent children under 22 years of age	• Is under 22 years of age and not a spouse or common-law partner **when the application is received by CPC-M;** and • without taking into account their age, they continue not to be married or not involved in a common-law relationship **at visa issuance and when they enter Canada.**
Dependent children over 22 years of age and full-time students	Since before the age of 22 or, if married or a common-law partner before the age of 22, since becoming a spouse of common- law partner they have been: • substantially dependent for financial support on their parents; and • continuously enrolled and actively pursuing a course of study at an accredited post secondary institution **when the application is received by CPC-M and when the visa is issued.**
Dependent children over 22 years of age and unable to be financially self- supporting due to a physical or mental condition	Since before the age of 22 have been: • substantially dependent for financial support on their parents **when the application is received by CPC-M;** and • continue to be substantially dependent upon their parents **when the visa is issued.**
Dependent children of dependent children	Is the dependent child of an accompanying dependent child [R70(5)] when the **application is received and when the visa is issued**.

5.24. Sponsoring one other relative regardless of age or relationship

Sponsors who do not have a living spouse or common-law partner, conjugal partner, a son or daughter, father, mother, grandparent, brother, sister, uncle, aunt, nephew or niece, who is a Canadian citizen or a permanent resident, or any relative or family member who can be sponsored as a member of the family class, may sponsor one relative regardless of age or relationship (anyone connected by blood or adoption).

Sponsors submit information concerning family members and relatives on the Family Information Sheet. If a chosen relative is inadmissible, the sponsor may choose another relative.

5.25. Characteristics of conjugal relationships

The word “conjugal” is not defined in legislation; however, the factors that are used to determine whether a couple is in a conjugal relationship are described in court decisions.

Marriage is a status-based relationship existing from the day the marriage is legally valid until it is severed by death or divorce. A common-law relationship (and in the immigration context, a

conjugal partner relationship) is a fact-based relationship which exists from the day on which the two individuals can reasonably demonstrate that the relationship meets the definition set out in the Regulations. While this is a significant difference, there are many similarities in the two types of relationships. This is because of the history of the recognition in law of common-law relationships and their definition, which includes the word "conjugal."

The term "conjugal" was originally used to describe marriage. Then, over the years, it was expanded by various court decisions to describe "marriage-like" relationships, i.e., a man and a woman in a common-law relationship. With the *M. v. H.* decision in 1999, the Supreme Court of Canada further expanded the term to include same-sex common-law couples.

The word "conjugal" does not mean "sexual relations" alone. It signifies that there is a significant degree of attachment between two partners. The word "conjugal" comes from two Latin words, one meaning "join" and the other meaning "yoke," thus, literally, the term means "joined together" or "yoked together."

In the *M. v. H.* decision, the Supreme Court adopts the list of factors that must be considered in determining whether any two individuals are actually in a conjugal relationship from the decision of the Ontario Court of Appeal in *Moldowich v. Penttinen*. They include:

- 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 (e.g., attitude and conduct concerning children)
- the societal perception of the two as a couple.

From the language used by the Supreme Court throughout *M. v. H.*, 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.

Based on this, the following characteristics should be present to some degree in **all** conjugal relationships, married and unmarried:

- mutual commitment to a shared life;
- exclusive – cannot be in more than one conjugal relationship at a time;
- intimate – commitment to sexual exclusivity;
- interdependent – physically, emotionally, financially, socially;
- permanent – long-term, genuine and continuing relationship;
- present themselves as a couple;
- regarded by others as a couple;

- caring for children (if there are children).

People who are dating or who are thinking about marrying or living together and establishing a common-law relationship are NOT yet in a conjugal relationship, nor are people who want to live together to "try out" their relationship.

Persons in a conjugal relationship have made a significant commitment to one another. A married couple makes the commitment publicly at a specific point in time via their marriage vows and ceremony, and the marriage certificate and registration is a record of that commitment. In a common-law or conjugal partner relationship, there is not necessarily a single point in time at which a commitment is made, and there is no one legal document attesting to the commitment. Instead, there is the passage of time together, the building of intimacy and emotional ties and the accumulation of other types of evidence, such as naming one another as beneficiaries of insurance policies or estates, joint ownership of possessions, joint decision-making with consequences for one partner affecting the other, and financial support of one another (joint expenses or sharing of income, etc. When taken together, these facts indicate that the couple has come to a similar point as that of a married couple – there is significant commitment and mutual interdependence in a monogamous relationship of some permanence.

5.26. Assessment of conjugal relationships

The following are key elements that officers may use to establish whether a couple is in a conjugal relationship. These apply to spouses, common-law partners and conjugal partners.

a) Mutual commitment to a shared life to the exclusion of all other conjugal relationships

A conjugal relationship is characterized by mutual commitment, exclusivity, and interdependence and therefore cannot exist among more than two people simultaneously. The word "conjugal" includes the requirement of monogamy and, therefore, an individual cannot be in more than one conjugal relationship at one time. For example, a person cannot have a conjugal relationship with a legally married spouse and another person at the same time. Nor can a person have a conjugal relationship with two unmarried partners at the same time. These would be polygamous-like relationships and cannot be considered conjugal.

This does not, however, require that an individual in an unmarried conjugal relationship be divorced from a legally married spouse. See: What happens if the common-law partner (principal applicant) is married to another person, section 5.38 below.

The requirement of exclusivity or monogamy applies in equal measure to marriage, common-law partnership and conjugal partnership. Thus, the common-law and conjugal partner categories cannot be used to get around restrictions related to bigamy and polygamy (See section 13.2 Polygamous marriages below for further information). By the same token, common-law and conjugal partner relationships are not expected to be any more exclusive than ordinary married relationships. Proof of exclusivity is not usually required in the assessment of these relationships any more than it would be in assessing a marriage.

b) Interdependent – physically, emotionally, financially, socially

The two individuals in a conjugal relationship are interdependent – they have combined their affairs both economically and socially. The assessment of whether two individuals are in a conjugal relationship should focus on evidence of interdependency.

The following list is a set of elements which, when taken together or in various combinations, may constitute evidence of interdependency. It should be kept in mind that these elements may be present in varying degrees and not all are necessary for a relationship to be considered conjugal.

Factor	Details
Financial aspects of the relationship	• Joint loan agreements for real estate, cars, major household

	appliances; • Joint ownership of property, other durable goods; • Operation of joint bank accounts, joint credit cards evidence that any such accounts have existed for a reasonable period of time; • The extent of any pooling of financial resources, especially in relation to major financial commitments; • Whether one party owes any legal obligation in respect of the other.
Social aspects of the relationship	• Evidence that the relationship has been declared to government bodies and commercial or public institutions or authorities and acceptance of such declarations by any such bodies; • Joint membership in organisations or groups, joint participation in sporting, cultural, social or other activities; • Joint travel; • Shared values with respect to how a household should be managed; • Shared responsibility for children; shared values with respect to child-rearing; willingness to care for the partner's children; • Testimonials by parents, family members, relatives or friends and other interested parties about the nature of the relationship and whether the couple present themselves to others as partners. Statements in the form of statutory declarations are preferred.
Physical and emotional aspects of the relationship -the degree of commitment as evidenced by:	• Knowledge of each other's personal circumstances, background and family situation; • Shared values and interests; • Expressed intention that the relationship will be long term; • The extent to which the parties have combined their affairs, for example, are they beneficiaries of one another's insurance plans, pensions, etc.? • Joint decision-making with consequences for one partner affecting the other; • Support for each other when ill and on special occasions letters, cards, gifts, time off work to care for other; • The terms of the parties' wills made out in each other's favour provide some evidence of an intention that the relationship is long term and permanent; • Time spent together;

	• Time spent with one another's families; • Regular and continuous communication when apart.

Examples of supporting documents:
• Family memberships, medical plans, documentation from institutions that provides recognition as a couple;
• Marriage certificate (not just a solemnization record), wedding invitations, commitment ceremony (certificate, invitations), domestic partnership certificate;
• joint ownership of possessions, joint utility bills, lease/rental agreement, joint mortgage/loan, property title, joint bank statements; money transfers.
• documents showing travel together, long distance phone bills; other proof of continuous communication (emails, internet chat site printouts, letters).
• insurance policies (documents naming the partner as a beneficiary), wills, powers of attorney;
• significant photographs;
• statements of support from families, bank manager, employers, financial professionals, religious leaders, community leaders, professors, teachers or medical professionals.

The above elements may be present in varying degrees and not all are necessary for a relationship to be considered conjugal. Whether an element is present may depend on the culture or preferences of the couple. For example, in some cultures, women have a limited role in the management of the family finances; thus there may not be joint ownership of property or joint bank accounts. Some couples may choose to keep aspects of their financial affairs separate and yet are clearly in a conjugal relationship and have merged their affairs in other respects.

Officers should consider each relationship individually and take into account any other relevant information provided by the applicant (or information otherwise available to the officer), in order to assess whether a conjugal relationship exists.

Officers should also take into account to what extent the laws and/or traditions of the applicant's home country may discourage the parties from openly admitting the existence of the relationship.

5.27. Marriage in Canada

The federal and provincial governments share constitutional power with respect to marriage (and divorce). The federal government has broad legislative responsibility for divorce and for aspects of capacity to marry or who can legally marry whom. The provinces are responsible for laws about the solemnization of marriage.

All provincial and territorial Marriage Acts:

- provide for religious and civil marriage ceremonies;
- require witnesses to a marriage ceremony;
- identify officials or individuals authorized to solemnize a marriage;

- set minimum age requirements for marriage; and
- some provinces require a medical examination.

Marriages that take place in Canada must meet federal requirements with respect to capacity (i.e., right to marry) and provincial requirements with respect to solemnization.

5.28. Minimum age for marriage

Persons below certain ages cannot legally marry in Canada without parental consent. The minimum age for marriage without consent varies between provinces. It is:

- Nineteen (19) in British Columbia, Newfoundland, Nova Scotia, the Northwest Territories, the Yukon and Nunavut.
- Eighteen (18) in Alberta, Manitoba, New Brunswick, Ontario, Prince-Edward Island, Quebec, and Saskatchewan.

Parental consent must normally be proven for married persons under the provincial age of majority.

Sponsors must meet provincial age requirements.

To be recognized for immigration purposes, foreign national spouses must be 16 years of age. Spouses under the age of 16 are not members of the family class as per R117(9)(a). Sponsorship applications submitted for a spouse under 16 will be refused.

Because age is an aspect of capacity to marry that can be "cured" by the passage of time, once an underage spouse turns 16, they are members of the family class. However, if the sponsorship and immigration application was submitted when the spouse was under 16, even if the spouse turns 16 during processing, the application should be refused due to the failure to have a sponsorship. The sponsor must re-apply. The Regulations require that the criteria for sponsorship be met at the time of the application [R133] and one of the criteria is that the sponsorship application be filed in respect of a member of the family class [R130].

5.29. Valid marriage: degrees of consanguinity

In order to contract a valid marriage, a person must have the "capacity" to do so. An element of capacity is that two people are not too closely related. This is called "consanguinity".

The federal *Marriage (Prohibited Degrees) Act* prohibits marriage between persons related lineally by consanguinity or adoption, and between siblings, whether brother and sister by whole blood (same parents), half-blood (one common parent) or by adoption.

The following relationships, whether by consanguinity or adoption, fall within the prohibited degrees. In Canada, applicants may not marry their:

- grandfather/grandmother;
- father/mother;
- brother/sister;
- half-brother/half-sister;
- son/daughter;
- grandson/granddaughter;

- other lineal relatives, such as great-grandparents/great-grandchildren.

In Quebec these relationships are repeated in the *Civil Code*.

5.30. Recognition of a marriage

A marriage that is legally recognized according to the law of the place where it occurred is usually recognized in Canada. A16(1) puts the onus on applicants to prove their marriage is legal where it took place. A marriage, which took place abroad, must be valid both under the laws of the jurisdiction where it took place and under Canadian federal law.

Marriages performed in embassies or consulates must meet the requirements of the host country in which the mission is located. A diplomatic mission or a consular post is considered to be within the territory and jurisdiction of the host (receiving) state. Therefore, a marriage performed in an embassy or consulate must be legally recognized by the host state in order to be valid for Canadian immigration purposes. An applicant who married in an embassy or consulate must satisfy an officer that all of the requirements of the host country with respect to marriage have been met, including whether the host country recognizes marriages performed in diplomatic missions or consular posts within its jurisdiction. Exceptions to this requirement are rare. Where there is some question, the matter should be referred to NHQ Selection Branch.

If a proxy marriage occurs at a foreign mission in Canada (the proxy is given by the foreign national and the Canadian resident is present at the mission for the ceremony), the marriage must meet the legal requirements of Canada (federal and provincial) in order to be legally valid. At this time, no provinces permit proxy marriages; therefore, these marriages are invalid.

Previously married applicants must be legally divorced before they may remarry. In addition to proving that their subsequent marriage is legal, they must first prove that their divorce was legal.

Polygamous marriages are legal in many countries, but they are not legal in Canada. Therefore, they are excluded from the definition of marriage as per R117(9)(c)(i). If the legality of a marriage or divorce is in doubt, consult the visa office responsible for the country where it took place. Provide that office with all available documents and information.

If another visa office cannot resolve any doubts, refer the matter to NHQ Selection Branch.

5.31. Persons who have undergone a sex-change

Persons, who change their sex legally, retain the sex they had at birth for the purposes of marriage. A marriage to someone who has had a sex change is recognized for immigration purposes only where the parties are of the opposite birth sex.

If the parties are of the same birth sex and have lived together in a conjugal relationship for at least one year, they may be considered as common-law partners for the purposes of immigration.

5.32. Freedom to marry

The most common impediment to a legal marriage is a previous marriage that has not been dissolved.

Marriages are dissolved through the death of one of the parties, divorce or annulment.

5.33. Legality of foreign divorces

Visa officers may need to look closely at foreign divorces to determine if sponsors or applicants were, or are, legally free to marry again. The fact that a marriage licence was issued, or that a couple has remarried, is not proof that a divorce was legal where it occurred, or that it would be recognized as legally valid in Canada.

A foreign divorce is without effect if it was obtained by fraud or by denial of natural justice.

The federal *Divorce Act* of 1985 governs the recognition of foreign divorces. It specifically provides for the recognition of foreign divorces where the divorce was granted after February 13, 1986. These divorces are valid in Canada if either spouse was ordinarily resident in the foreign jurisdiction for one year immediately preceding the application for the divorce.

The *Divorce Act* also preserves common-law rules respecting recognition of foreign divorces. For example, Canadian courts may recognize foreign divorces when:

- they are issued from a court in a country where neither spouse was ordinarily resident, but where the decree is recognized by the law of that country (other than Canada) where one or both were ordinarily resident at the time of the divorce. For example, a party living in California obtains a divorce in Nevada. If California recognizes the Nevada divorce, it is valid in Canada.

- either party can show that they had a "real and substantial connection" with the foreign jurisdiction at the time of the divorce. Factors that might indicate whether there was a real and substantial connection would be whether an individual was born in that country, had family there, and regularly travelled there to spend time in the jurisdiction. This could be strengthened further if the individual owned property or conducted business in the jurisdiction. These factors are relevant because they indicate whether the court in that other country had the proper jurisdiction to hear the divorce when neither of the parties was ordinarily residing there for a year preceding the divorce action. If the real and substantial connection is made, and that party obtains a legal divorce in that country, it is valid in Canada.

It is also possible that a divorce, issued by a court in a country where neither spouse was ordinarily resident but that is recognized by a second country (other than Canada) where one or both can show that they had a real and substantial connection to that second country at the time of the divorce, would be valid in Canada. For example, a party now ordinarily resident in Canada obtains a divorce in Nevada but was born in California, still has family there, and regularly travels there to spend significant amounts of time, maintaining a cottage that they inherited. If California recognizes the Nevada divorce, it may be valid in Canada, although it may be necessary to seek legal advice from NHQ.

See the table below for examples.

Situation:	**Likely result in Canadian law:**
An individual marries abroad, immigrates to Canada, and resides here while the spouse remains abroad.	If the Canadian resident or spouse obtains a divorce where the spouse lives, the divorce would be recognized by Canadian law because the spouse is ordinarily resident in the country that grants the divorce.
Both spouses become permanent residents in Canada, then one spouse takes up permanent residence in another country.	If the Canadian resident goes to the country where the spouse has lived for at least one year to obtain a divorce, it would be valid because the spouse is ordinarily resident in the country that grants the divorce.
Both spouses become permanent residents in Canada, then six months later the spouses obtain a divorce from their native country's consulate in Canada, which is considered legal in their native country.	The divorce may not be recognized under Canadian law because neither party was resident in the native country for one year immediately preceding the divorce unless either can show a real and substantial connection at the time of the divorce. It may be necessary to seek legal advice from NHQ.
Both spouses become permanent residents in Canada, then citizens. Several years later, one spouse goes back to their native country and obtains a divorce and remarries. Neither spouse was resident in the native country for a year preceding	The divorce is not recognized under Canadian law because neither party was resident in the native country for the one year immediately preceding the divorce.

the divorce, but the spouse who obtained the divorce visited the native country a few times.	
Neither party to the divorce was ever resident or domiciled in the country that granted the divorce.	The divorce is not recognized under Canadian law and a subsequent marriage is void unless one or both can show that they had a real and substantial connection to a country other than Canada at the time of the divorce, and the foreign decree would have been recognized as valid in that country. It may be necessary to seek legal advice from NHQ. Similarly, if both parties continue to reside in Canada and obtain a "mail order" divorce in a foreign country, without any real and substantial connection to that country or to another that would recognize the decree, the divorce is not recognized in Canada.

Caution must be exercised where neither spouse was ordinarily resident in the foreign jurisdiction for one year immediately preceding the application for the divorce, as without a Canadian court order, the possibility exists that neither the divorce nor any subsequent marriage may be recognized for the purpose of Canadian law. When there is doubt about the validity of a foreign divorce, visa offices should refer the matter to NHQ Selection Branch. When making an enquiry, officers should provide detailed information about the facts of the case, including, if possible, a copy of the court judgment. Applicants may also choose to seek a ruling on the legal validity of the foreign divorce from the Canadian courts.

5.34. Recognition of a common-law relationship

A common-law relationship is fact-based and exists from the day in which two individuals demonstrate that the relationship exists on the basis of the facts. The onus is on the applicants to prove that they are in a conjugal relationship and that they are cohabiting, having so cohabited for a period of at least one year, when the application is received at CPC-M.

A common-law relationship is legally a *de facto* relationship, meaning that it must be established in each individual case, on the facts. This is in contrast to a marriage, which is legally a *de jure* relationship, meaning that it has been established in law.

5.35. What is cohabitation?

"Cohabitation" means "living together." Two people who are cohabiting have combined their affairs and set up their household together in one dwelling. To be considered common-law partners, they must have cohabited for at least one year. This is the standard definition used across the federal government. It means continuous cohabitation for one year, **not intermittent cohabitation adding up to one year**. The continuous nature of the cohabitation is a universal understanding based on case law.

While cohabitation means living together continuously, from time to time, one or the other partner may have left the home for work or business travel, family obligations, and so on. The separation must be temporary and short.

The following is a list of indicators about the **nature of the household** that constitute evidence that a couple in a conjugal relationship is cohabiting:

- Joint bank accounts and/or credit cards;
- Joint ownership of residential property;
- Joint residential leases;
- Joint rental receipts;

- Joint utilities accounts (electricity, gas, telephone);
- Joint management of household expenditures;
- Evidence of joint purchases, especially for household items;
- Correspondence addressed to either or both parties at the same address;
- Important documents of both parties show the same address, e.g., identification documents, driver's licenses, insurance polices, etc.;
- Shared responsibility for household management, household chores, etc.;
- Evidence of children of one or both partners residing with the couple;
- Telephone calls.

These elements may be present in varying degrees and not all are necessary to prove cohabitation. This list is not exhaustive; other evidence may be taken into consideration.

5.36. How can someone in Canada sponsor a common-law partner from outside Canada when the definition says "is cohabiting"?

According to case law, the definition of common-law partner should be read as "an individual who is (ordinarily) cohabiting". After the one year period of cohabitation has been established, the partners may live apart for periods of time without legally breaking the cohabitation. For example, a couple may have been separated due to armed conflict, illness of a family member, or for employment or education-related reasons, and therefore do not cohabit at present (see also 5.44 for information on persecution and penal control). Despite the break in cohabitation, a common-law relationship exists if the couple has cohabited continuously in a conjugal relationship in the past for at least one year and intend to do so again as soon as possible. There should be evidence demonstrating that both parties are continuing the relationship, such as visits, correspondence, and telephone calls.

This situation is similar to a marriage where the parties are temporarily separated or not cohabiting for a variety of reasons, but still considers themselves to be married and living in a conjugal relationship with their spouse with the intention of living together as soon as possible.

For common-law relationships (and marriage), the longer the period of separation without any cohabitation, the more difficult it is to establish that the common-law relationship (or marriage) still exists.

5.37. When does a common-law relationship end?

A common-law relationship is deemed severed or ends upon the death of one partner or when at least one partner does not intend to continue the conjugal relationship. Again, the facts of the case must be examined to determine if the intent of at least one partner is to stop cohabiting in a conjugal relationship.

5.38. What happens if the common-law partner (principal applicant) is married to another person?

Persons who are married to third parties may be considered common-law partners provided their marriage has broken down and they have lived separate and apart from the spouse for long enough to establish a common-law relationship – at least one year. In this case they must have cohabited in a conjugal relationship with the common-law partner for at least one year. Cohabitation with a common-law partner cannot be considered to have started until a physical

separation from the spouse has occurred. A common-law relationship cannot be legally established if one or both parties continue their marital relationships.

Officers must be satisfied that a principal applicant is separated from and no longer cohabits with a legal spouse. This evidence may be in the form of a signed formal declaration that the marriage has ended and that the person has entered into a common-law relationship. An officer may require that the person produce other written evidence of a formal separation or of a breakdown of the marriage. Acceptable documents include a separation agreement, a court order in respect of custody of children identifying the fact of the marriage breakdown, documents removing the legally married spouse(s) from insurance policies or will as beneficiaries (a "change of beneficiary" form).

In the above circumstances, the legal spouse of the principal applicant need not be examined and will not be considered a member of the family class if the applicant later attempts to sponsor this spouse. [See R117(9)(d)]. Notes in CAIPS should indicate that the applicant was aware of the consequences of non-examination.

5.39. What happens if the sponsor's common-law or conjugal partner relationship breaks down and the sponsor wants to sponsor a previously separated spouse?

R117(9)(d) states that a foreign national is not a member of the family class if they were a non-accompanying family member of a sponsor and were not examined. Thus, a previously separated spouse who was a non-accompanying family member and not disclosed and examined cannot be sponsored by the spouse in Canada, even if the spouse's common-law or conjugal partner relationship has ended.

Humanitarian and compassionate consideration may be given, provided the relationship is bona fide and there is evidence that a conjugal relationship has been re-established for a period of at least one-year. In such a case, a marriage certificate is not taken as *prima facie* proof of a relationship because the marriage had broken down and a common-law relationship had been established. (See Dissolutions of convenience - section 12.5 below.)

See OP 4 for more information on humanitarian and compassionate consideration overseas.

CIC excludes from the family class family members who were never identified as such when the sponsor applied for permanent residence as a refugee or any other class. The purpose is to protect the integrity of the family class and prevent people who misrepresent their family composition from benefiting from the misrepresentation through subsequent sponsorship in the family class [R117(9)(d)].

There can be no new sponsorship if there is an existing sponsorship undertaking in respect of a spouse, common-law partner or conjugal partner and the three-year period of that sponsorship has not ended [R117(9)(b)].

5.40. Same-sex marriages in Canada (interim departmental policy)

Same-sex couples' access to a civil marriage was extended throughout Canada on July 20, 2005, under the *Civil Marriage Act*. CIC will examine the impact of this Act on its policies and programs in due course. In the meantime, CIC's interim policy on same-sex marriage remains in place. This policy recognizes the validity of marriages in Canada between a Canadian citizen or permanent resident and their same-sex partner for the purposes of family class sponsorship.

Canadian citizens and permanent residents can apply to sponsor their same-sex partner as a spouse if they were issued a marriage certificate by a Canadian province or territory on or after the following dates:

- Ontario (June 10, 2003);
- British Columbia (July 8, 2003); or
- Québec (March 19, 2004);
- Yukon (July 14, 2004;

- Manitoba (September 16, 2004);
- Nova Scotia (September 24, 2004);
- Saskatchewan (November 5, 2004);
- Newfoundland (December 21, 2004);
- New Brunswick (on or after July 4, 2005);
- **All other provinces or territories (on or after July 20, 2005).**

Same-sex marriages performed outside Canada are not recognized for immigration purposes. However, a Canadian citizen or a permanent resident who married their same-sex partner outside Canada may qualify to sponsor their partner as a common-law or a conjugal partner.

Applicants, **in the family class and the spouse or common-law partner in Canada class only**, who meet the above criteria are to be coded and processed as spouses **(FC1)** and must meet the requirements of a spousal assessment (whether the relationship is *bona fide*). **Applicants meeting this criteria who are coded as FC1 must also be given the Special Program Code for "spouse, same sex" (SSS in CAIPS, 403 in FOSS).**

5.41. Foreign common-law registrations and same-sex marriages

Some countries allow civil registrations of common-law same-sex and/or common-law opposite-sex partners.

Marriages between people of the same sex are legal in some jurisdictions; however, such marriages are recognized for purposes of that particular jurisdiction only. These partners are not recognized as spouses in Canadian law. They may, however, be recognized as common-law partners and be processed as members of the family class, provided they meet the definition of common-law partner. See: Recognition of a common-law partnership, Section 5.34. If they have not been able to cohabit for one year, the foreign national partner may apply as a conjugal partner provided they have maintained a conjugal relationship for at least one year. See Section 5.45 below.

5.42. Simultaneous common-law or conjugal partner relationships with two or more people (polygamous-like relationships)

A common-law or conjugal partner relationship cannot be established with more than one person at the same time. The term "conjugal" by its very nature implies exclusivity and a high degree of commitment; a conjugal relationship cannot exist among more than two people simultaneously. Polygamous-like relationships cannot be considered conjugal and do not qualify as common-law or conjugal partner relationships.

5.43. Prohibited relationships - Common-law partners

Common-law relationships have most of the same legal restrictions as marriages, because they are defined as "conjugal" relationships, which legally import these restrictions – for example, on prohibited degrees of consanguinity. Thus, the list of relationships falling within the prohibited degrees in the *Marriage (Prohibited Degrees) Act* applies equally to common-law partners.

The Regulations set out the same minimum age for both spouses and common-law partners – age 16 [R117(9)(a)]. Common-law partners may begin to live together prior to age 16, but their relationship is not legally recognized until both partners attain 16 years. Parental consent is implied in the fact that they have cohabited long enough to establish the relationship without the parents interfering in the establishment of the relationship.

5.44. Inability to cohabit due to persecution or any form of penal control

The Regulations provide that persons in a conjugal relationship for at least one year but unable to cohabit due to persecution or any form of penal control may be considered a common-law couple. "Persecution" is intended to include "fear of persecution or any form of penal control", it does not

mean that the persons must have cohabited and been persecuted as a result, in order to be considered a common-law couple.

"Persecution" in this context refers to actions taken by a state or government to oppress or punish, usually by law, persons in certain types of relationships, such as homosexual ones. Persecution can also mean strong social sanctions whereby the culture and mores of the country result in ostracism, loss of employment, inability to find shelter, or other sanctions, for persons in common-law opposite- sex or same-sex relationships even if such relationships are not illegal per se.

Persecution in this context is not intended to apply to persons claiming to be Convention refugees on other grounds. Refugees in common-law relationships (except those applying on grounds of sexual orientation) must still meet the definition of common-law partner.

Note: Refugees in common-law relationships who have been separated as a result of military action, civil war, human rights violations, etc. may be considered common-law partners provided they met the requirements of the definition prior to their separation and intend to resume their relationship.

"Penal control" is any punitive restriction imposed on an individual or group by authorities that does not apply to the general population. Thus, two persons in a homosexual relationship may, in some countries, be unable to live together, because the law forbids such relationships. This provision does NOT apply to persons in an incestuous relationship, where one of the partners is under the minimum age of consent or where one of the partners is detained as a result of what in Canada would be offences under the *Criminal Code*.

Officers must assess whether persons in the above situation are in a conjugal relationship. Evidence of a conjugal relationship may be difficult for such a couple to provide, since it is unlikely that they will have been able to combine their affairs in the same way as a couple able to live openly together.

In order to assess whether a relationship is conjugal officers may consider the following types of evidence:

- Knowledge of each other's personal circumstances, background and family situation;
- The duration of the relationship– the longer the duration, the more likely it is conjugal in nature;
- Documents predating by a year or more the application to immigrate to Canada showing:
  - Travel together;
  - A chronology of the relationship detailing how the couple first met, the measures taken to overcome customs, religious or family doctrines;
  - Evidence of support and commitment to each other through shared information on events of importance (for example: births, deaths, family gatherings etc.);
- If applicable, documents showing how the couple maintained a long-distance relationship and made efforts to live in the same country such as: letters to/from foreign officials or government authorities ;
- Photographs that document the relationship, airline tickets, visas, visa denials, long distance phone bills or other proof of continuous communication, testaments or life insurance policies that have been in effect for more than a year in which their partner is named as beneficiary.

5.45. What is a conjugal partner?

This category was created for exceptional circumstances – for foreign national partners of Canadian or permanent resident sponsors who would ordinarily apply as common-law partners but for the fact that they have not been able to live together continuously for one year, usually because of an immigration impediment. In most cases, the foreign partner is also not able to marry their sponsor and qualify as a spouse. In all other respects, the couple is similar to a common-law couple or a married couple, i.e., they have been in a *bona fide* conjugal relationship for a period of at least one year.

Both marriage and common-law partnership (common-law partnerships may be opposite-sex and same-sex) are legally recognized in Canada for purposes of federal benefits and obligations (*Modernization of Benefits and Obligations Act*, June 2000). In order to be eligible for federal benefits, couples must either be married or meet the definition of common-law partner in each statute or regulation. IRPA brought CIC's immigration legislation into conformity with the *Modernization of Benefits and Obligations Act*.

Because of Supreme Court decisions, the choice not to marry is a constitutionally protected choice. Thus, CIC cannot require couples to marry in order to immigrate. However, if they are not married, they must be common-law partners. There is NO provision for fiancé(e)s or "intended common-law partners" in IRPA. If a Canadian and a foreign national can get married or can live together and establish a common-law relationship, this is what they are expected to have done **before** they submit sponsorship and immigration applications.

Marriage immediately creates a legal relationship recognized for immigration purposes. Common-law partners, however, have to meet the definition, including living together continuously for one year to have their relationship legally recognized. In the immigration context, there are some exceptional circumstances where a Canadian is in a conjugal relationship with a foreign national partner and would ordinarily sponsor that person as a common-law partner, but the two have not been able to live together continuously for one year, usually because immigration rules prevent them from long stays in one another's countries. As well, for these individuals, marriage is usually not an available option. The conjugal partner category is mainly intended for partners where **neither common-law partner status nor marriage is possible**, usually because of marital status or sexual orientation (both analogous grounds of discrimination under the Charter), combined with an immigration barrier.

For example, the foreign partner may be married but comes from a country where divorce is not possible or the Canadian and partner may be in a same-sex relationship. In both cases, the partners probably will not be able to obtain long-stay visas in order to live together in one another's country and meet the cohabitation requirement for common-law partners. Because the other option – marriage – is not available to these couples, they are permanently separated. This is unfair and discriminatory. The conjugal partner category provides the ability for a Canadian in these circumstances to sponsor the foreign national partner. It is not intended to be used to avoid the usual requirement to be a spouse or common-law partner before immigrating.

The conjugal partner category applies **only** to the family class and only to a foreign national sponsored by a Canadian citizen or permanent resident living in Canada. This category does not apply to the spouse or common-law partner in Canada class as the exception would not be required in Canada.

Conjugal partners are exempt from meeting the LICO requirements and the excessive medical demand criteria. There are no conditions attached to their permanent resident visas although sponsorship is required. As members of the family class, their sponsor has appeal rights.

A conjugal partner is not a common-law partner under Canadian law until the one-year cohabitation requirement has been met. Applicants should be counselled that they and their partner will not be considered to be in a common-law relationship for purposes of other federal benefits and obligations until they have lived together in Canada in a conjugal relationship for at least one year. The applicant's Confirmation of Permanent Residence form will not indicate their

marital status as “conjugal partner” since this relationship is not legally recognized in Canada beyond the IRPA.

Note: A Canadian citizen residing abroad may sponsor a conjugal partner provided that the sponsor and applicant will be residing together in Canada when the applicant becomes a permanent resident [R130(2)]. The situations in which this could occur would be rare.

5.46. Can conjugal partners be substitutes for fiancé(e)s?

Conjugal partners are NOT substitutes for fiancé(e)s. CIC decided that it no longer wanted to be in the business of assessing future relationships or the intention of two individuals to establish and maintain a conjugal relationship. Thus, there is no fiancé(e) category in the IRPA and Regulations. If they intend to apply as **spouses,** Canadians and their foreign national fiancé(e)s are expected to be married **before** the immigration process takes place, i.e., the foreign national must be married to the Canadian sponsor and apply to immigrate as a married spouse.

Fiancé(e)s are individuals who **intend** to marry and intend to establish a conjugal relationship. In most cases, they have not yet established a conjugal relationship. They intend to combine their affairs and become mutually interdependent, but have not yet done so. Even if they have a sexual relationship, they have not yet achieved the level of mutual interdependence that characterizes a conjugal relationship although they intend to do so at some point when they marry.

Most traditional fiancé(e)s cannot meet the definition of conjugal partner. They have not merged their affairs and established the required mutual interdependency. As well, conjugal partners must have established a sexual relationship, and traditional fiancé(e)s would be unlikely to meet this criterion.

5.47. Assessment of conjugal partner relationships

A foreign national who wants to immigrate as the conjugal partner of a sponsor must provide evidence that the two have maintained a conjugal relationship for at least one year (see Assessment of conjugal relationships, Section 5.26 above). The couple must provide evidence that they are in a committed and mutually interdependent relationship of some permanence and have combined their affairs to the extent possible. People who are dating or who are thinking about marrying or living together and establishing a common-law relationship are NOT in a conjugal relationship, nor are people who want to live together to “try out” their relationship.

A conjugal relationship is a “marriage-like” relationship; persons in a conjugal relationship have made a commitment similar to the commitment made through marriage. A married couple makes their commitment publicly at a specific point in time via their marriage vows and ceremony, and the marriage certificate and registration are records of that commitment. In a common-law or conjugal partner relationship, there is not necessarily a single point in time at which a commitment is made, and there is no one legal document attesting to the commitment. Instead, there must be the passage of time together, the building of intimacy and emotional ties and the accumulation of other types of evidence, such as naming one another as beneficiaries of insurance policies or estates, joint ownership of possessions, joint decision-making with consequences for one partner affecting the other, and financial support of one another (joint expenses or the sharing of income, etc.). When taken together, these facts indicate that the couple has come to a similar point as that of a married couple – there is significant commitment and mutual interdependence in a monogamous relationship of some permanence.

In general, people who have made the level of commitment expected in a conjugal relationship would normally marry or live together. If a foreign national could have married their Canadian sponsor or lived with them, and chose not to do so, then it is questionable whether they have the significant degree of commitment characteristic of a conjugal relationship.

The conjugal-partner applicant should explain why they have not been able to live continuously with their sponsor for at least one year. In most cases, there will be an immigration impediment to continuous cohabitation (e.g., inability to obtain long-stay visas for one another’s country). Non-

cohabitation for purely personal or economic reasons (i.e., did not want to give up a job or studies) does not normally qualify as a sufficient impediment, but should be assessed on a case-by-case basis. Applicants should be able to provide evidence that they have seriously considered living together as common-law partners. For example, they might have explored options for living together in one another's country, such as work or study permits, how their occupational skills and qualifications would be recognized in their partner's country, visitor visas, long-term visitor status, etc.

Officers should also inquire whether the couple is planning to marry. If they are planning to marry, then they are fiancés and may not have established a conjugal relationship. Officers should explain that there is no fiancé(e) category in Canada's immigration legislation, and that the foreign national fiancé(e) must be married to their Canadian sponsor and apply to immigrate as a married spouse.

Note: The requirement under the spousal category to be married before immigrating likely would not apply to people in same-sex relationships who are planning to marry, because there are very few jurisdictions where they can get married before coming to Canada. They may apply as common-law or conjugal partners, provided they meet the requirements.

Couples may say that they want to live together for a while before they get married, but cannot qualify as common-law partners because they cannot arrange their affairs to meet the cohabitation requirement. It is not the purpose of the conjugal-partner category to allow couples to "try out" their relationship by living together before they get married. Such individuals are not yet in a conjugal relationship and thus are not conjugal partners. Persons in a conjugal relationship have already made a significant commitment and intend to be together for a significant time or even permanently.

Although the intention of the conjugal-partner category is to accommodate those few Canadians with foreign partners who can neither marry nor live together, inability to marry cannot be an absolute requirement, since this could have the effect of "forcing" those couples to marry who may have chosen not to do so. Persons who have established and maintained a conjugal relationship for one year and who do not intend to marry might be conjugal partners if they have been unable to cohabit because of an immigration impediment or other serious barrier. The key to determining whether an individual is a conjugal partner is whether they are in a conjugal relationship with their sponsor and whether there is a compelling barrier to continuous cohabitation.

Without continuous cohabitation and the merging of households that takes place when a couple is in a common-law relationship, conjugal-partner relationships are more challenging to assess than common-law relationships. The following table provides some additional elements to consider when assessing such relationships.

Factor	Details
Length of time relationship has existed	Because a conjugal relationship means interdependency, mutual commitment and exclusivity, such a relationship is not established immediately when two people meet or when they start to date or even necessarily when they begin a sexual relationship. A conjugal relationship builds over a period of time. Officers must assess the facts of each case individually; however, in general terms, most conjugal partners will likely have known one another for more than one year.
Amount of time spent together	How many times and for how long at a stretch have the two been together? Evidence may take the form of airline tickets, receipts from vacations, visas, passports, leave forms from work etc.
Reasons why couple has been unable to cohabit continuously for one year	The applicant should be able to explain why they have not been able to cohabit continuously for one year. For example, there may be legal impediments to a common country of residence. The partners might not have been able to obtain long-stay visas or immigrant visas for one another's countries. If they could have lived together, but chose not to,

	then it is reasonable for the officer to question whether the relationship is a conjugal relationship.
Evidence showing how the long- distance relationship has been maintained	The volume, regularity and style of the communication between partners should be considered, e.g., long distance calls and other communication, e-mails, letters, recognition of each other's significant events, family functions, etc.
Evidence of efforts to live in the same country	Airline tickets, visas, work permits, study permits, visa denials, denials of recognition of credentials.

It is important to note that not all the financial, social, physical and emotional factors listed in Section 5.26above are *requirements* of any conjugal relationship. They are elements that may be present in varying degrees and not all are necessary for any relationship to be of a conjugal nature. For example, a Canadian and their conjugal partner may not have been able to merge their affairs financially in the same way as a couple living together—for example, they might not yet have joint bank accounts or credit cards, etc. What officers should look for is evidence that the partners have begun to merge their affairs to the extent they can, given that they live in different countries.

5.48. Prohibited relationships - Conjugal Partners

Conjugal partner relationships have most of the same legal restrictions as marriages and common- law relationships, because they are defined as "conjugal" relationships, which legally import these restrictions – for example, on prohibited degrees of consanguinity. Thus, the list of relationships falling within the prohibited degrees in the *Marriage (Prohibited Degrees) Act* applies equally to conjugal partners. See Valid marriage, Section 5.29 above.

In the case of minimum age, the R117(9)(a) sets out the same minimum age for spouses, common- law partners and conjugal partners – age 16.

5.49. What happens if the conjugal partner (principal applicant) is married to another person?

Persons who are married to third parties can be considered conjugal partners provided their marriage has broken down and they have lived separate and apart from their spouse for long enough to establish a conjugal relationship with another person. In this case, they must have separated from the legally married spouse and established a conjugal relationship with the conjugal partner and been in that relationship for at least one year. A conjugal relationship cannot be legally established where one or both parties continue in a conjugal relationship with their spouse.

Establishing a conjugal relationship takes a period of time; it is expected that the date from which the conjugal relationship exists will be some reasonable time after separation from the legally married spouse has occurred. Although a couple in a conjugal partner relationship might have known one another while one or both was still with their legally married spouse, they could not be in a conjugal relationship until there was a separation from the legally married spouse and the new conjugal relationship established. See also What happens if a common-law partner (principal applicant) is married to another person, Section 5.38 above.

The conjugal partner must satisfy an officer that they are separated from and no longer cohabiting with the legal spouse. Evidence may be in the form of a signed formal declaration that the marriage has ended and that the person has entered into a conjugal partner relationship. An officer may require that the person produce other written evidence of a formal separation or of a breakdown of the marriage. Acceptable documents include a separation agreement, a court order in respect of custody of children identifying the fact of the marriage breakdown, documents removing the legally married spouse(s) from insurance policies or will as beneficiaries (a "change of beneficiary" form).

In the above circumstances, the legal spouse of the principal applicant will not be examined and therefore is not a member of the family class. This spouse cannot subsequently be sponsored by the principal applicant [see R117(9)(d)].

5.50. Internet relationships

An Internet relationship alone, without other convincing evidence that the couple has established and maintained a conjugal relationship for at least one year and spent time together, will raise serious concerns as to whether a conjugal relationship exists. Conjugality should be assessed based on the elements of interdependency as set out in Section 5.26above.

5.51. Switching categories between spouses, common-law partners and conjugal partners

Applicants are required to indicate the category in which they are applying for immigration to Canada. Conjugal partners, common-law partners and spouses are all specific categories with specific requirements.

There is no requirement for an officer of the Department to automatically re-assess an application by considering such an application in terms of a different relationship between the applicant and the sponsor within the family class. The onus is entirely upon the applicant to indicate what their relationship is to the sponsor and to fulfill the requirements of the category under which they apply. There is no option to make a general application within the family class (within the conjugal categories, for example). A fundamental understanding of the family class is that members of that class must establish themselves as one of certain prescribed members in terms of their relationship with the sponsor. Different relationships to the sponsor correspond to different categories within the class as described in the Regulations. Applicants must self-identify within an application and they must meet the requirements of the category under which they apply. Each of spouses, common-law partners and conjugal partners are different categories with different requirements, and applicants choose to identify themselves, voluntarily, depending on their relationship to the sponsor on the application forms.

However, applicants are also obliged to inform the Department if aspects of their life change prior to the finalization of their case, including their marital/conjugal status. If their conjugal relationship changes (for example, if applicants are in a conjugal-partner relationship with a sponsor and the applicant and sponsor marry), then officers should make adjustments to the application (i.e., coding) and should proceed with processing in terms of the new conjugal relationship. (See 13.1 for guidance on procedures regarding technically illegal marriages). Until further notice, applicants whose marital status changes following a refusal decision—for example, following the refusal of their conjugal-partner application the sponsor marries the applicant—should be counselled to reapply under the appropriate category— in the above example, FC1.

6. Definitions

Annulment	Annulment is distinct from divorce. Unlike divorce, an annulment effectively means that the marriage never existed. Grounds for annulment in Canada include bigamy, prohibited degrees of consanguinity or affinity, incapacity, non-compliance with statutory established procedures, errors in identity, and duress, in other words, where there was no legal capacity on the part of one or both parties to legally marry. If any of these factors were present when the marriage was celebrated, it may be annulled.
Arranged marriage	Family members or a marriage broker usually arrange such marriages. The participants may not have met before the marriage, but will be familiar with each other's background. Such marriages are recognised for immigration purposes because they are legally recognized where they occur but must also be legal under federal Canadian law. See definition of “marriage” below.
Cohabitation	To meet this definition, the partners must have ordinarily cohabited, meaning that they lived together continuously in one home for at least one year, although from time-to-time, one or the other may have left the home

	for work, business travel, family obligations, and so on.
Common-law partner	A common-law partner means a person who is cohabiting in a conjugal relationship with another person, having so cohabited for a period of at least one-year. "Common-law partner" refers to both opposite-sex and same-sex couples. A common-law partner may be a principal applicant or a family member.
Conjugal partner	A conjugal partner means, **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. A conjugal partner can be in an opposite-sex or same-sex relationship. A conjugal partner is not a family member.
Dependent child R2(a)(i) and (ii)	"dependent child," in respect of a parent, means a child who a) has one of the following relationships with the parent, namely, i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or ii) is the adopted child of the parent; and
Dependent child R2(b)(i) and (ii)	b) is in one of the following situations of dependency, namely, i) is less than 22 years of age and not a spouse or common-law partner, ii) has depended substantially on the financial support of the parent since before the age of 22 or if the child became a spouse or common-law partner before the age of 22, since becoming a spouse or common-law partner and,
Dependent child R(2)(b)(ii)(A) R(2)(b)(ii)(B)	b)(ii) since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or
Dependent child R2(b)(iii)	iii) is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.
Family Members	A family member in respect of a person means: • A spouse or common-law partner of the person • A dependent child of the person or of the person's spouse or common-law partner • A dependent child of a dependent child referred to in (b)
Marriage	A marriage in Canadian law is "the union of one man and one woman to the exclusion of all others." See section 5.40 for information on the interim policy on same-sex marriages. A marriage must be legal both in the country where the couple got married and under Canadian federal law i.e. the *Marriage (Prohibited Degrees Act)* with respect to consanguinity and the *Criminal Code* with respect to polygamy and bigamy
Orphaned relatives and family members under 18 years of age	An orphan is a person whose father and mother are both deceased. A sponsor's orphaned brother, sister, nephew, niece, grandson or granddaughter under 18 years of age and unmarried and not a common-law partner, is a member of the family class R117(1)(f).
Polygamous marriage (bigamy)	Polygamous marriages and potentially polygamous marriages occur when either of the participants already has a spouse, and has gone through or intends to go through a further marriage ceremony without divorcing. For Canadian immigration purposes, R117(9)(c)(i) excludes from recognition marriages that took place when the sponsor or spouse was

	married to another person. Therefore, the first marriage is the only one that can potentially be recognized. See also Section 13.2 below.
Proxy marriage	At a proxy marriage one of the participants is not present and has named a proxy to represent him or her. If the law of the country in which the marriage ceremony was performed permits proxy marriages, they are legal marriages for immigration purposes, provided they are legal under Canadian federal law. See definition of "marriage" above and also Section 5.27 above.
Relative	Means a person who is related to another person by blood or adoption.
Relationship of convenience (Bad faith)	A relationship of convenience is a marriage, common-law relationship, conjugal partnership or an adoption that is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act. Individuals involved in a relationship of convenience are not members of the family class.
Spouse	A spouse is a married person. A spouse may be a principal applicant or a family member. For further information on spouses see: Definitions of marriage, common-law partners and conjugal partners Relationships of convenience, Section 5.16 above.
Technically illegal marriage (not legally recognized)	Some marriages may not be legal where they occurred, e.g., defect in capacity (who can marry whom), a marriage in embassy is not recognized by host country, religious prohibitions, form of ceremony not permitted, etc. but the marriage would otherwise be recognized in Canada. If the relationship between sponsor and applicant is genuine and the relationship meets the requirements of a common-law or conjugal-partner relationship, they may be processed as such. See Section 13.1 below, for more detailed information.
Telephone marriage	A marriage in which one of the participants is not physically present and is not represented by a proxy but participates directly by telephone is a legal marriage if it is legally recognized according to the law of the place where it occurred . This is a legal marriage for immigration purposes provided it meets the Canadian federal requirements, with respect to consanguinity and polygamy/bigamy.
Tribal marriage	Tribal marriages, or customary marriages carried out according to tribal custom, are valid for immigration purposes if they are legally recognized where they occur. Tribal marriages are normally unrecorded.

7. Procedure: Processing an application

7.1. Spouses, common-law partners, conjugal partners, and dependent children (FC redesign)

In the case of sponsored spouses, common-law partners, conjugal partners and dependent children residing outside Canada the following are submitted directly to the CPC-M:

- a completed application, including the sponsorship application (IMM 1344AE);
- the immigration application (IMM 0008GEN);
- proof of payment of fees;

The CPC assesses a sponsor's eligibility and reviews the IMM 0008GEN to ensure that it is complete and signed before sending the application to the visa office for processing (see IP 2 sections 9, 12, 13, 14, and 17 for procedures for sponsorship assessment, discontinuation of sponsorship and refund process). Sponsorship recommendations are sent to the visa office electronically, through CAIPS.

Note: The above application process does not apply in cases of adoptions. See Other members of the family class, Section 7.2 below, for sponsorship process involving cases of adoption and OP 3 section 7 for the process related to applications for permanent resident visas.

7.2. Other members of the family class

For all other family members, including children who are adopted abroad by parents who are residents of Canada, the sponsorship application (IMM 1344AE), proof of payment of fees and supporting documents are submitted to CPC-M for assessment. The CPC will notify the visa office (via CAIPS) of their assessment of the sponsorship and will instruct Docupost to send a family class application to the sponsor who is responsible for sending it to the prospective applicant.

The sponsored family member must complete and send the application/submission directly to the appropriate visa office.

Upon receipt of a completed IMM 0008GEN, the visa office must :

- Verify CAIPS to determine whether the sponsorship assessment in support of the immigration application/submission has been received and ensure a correct match up of sponsorship and immigration information before any processing occurs;

- If sponsorship assessment has not been received from CPC: return the submission to the applicant and include a letter informing the applicant that processing cannot begin until a sponsorship application is submitted to CPC-M;

- If sponsorship assessment has been received from CPC: verify the immigration submission/ application to ensure that it satisfies the requirements of R10 and R11 and is correctly completed and signed;

- If the IMM 0008GEN does not satisfy R10 and R11 or is not complete or not signed: return it to the applicant and include a letter informing the applicant that processing cannot begin until the application is completed correctly and/or signed;

- If the IMM 0008 satisfies R10 and R11 and is correctly completed and signed; date stamp the application as received and ensure that all supporting documents and schedules have been included and that photographs of the principal applicant and each family member whether accompanying or not, with names and dates of birth printed on the back, have been attached;

- Enter all the required processing information related to both the applicant and the family members into CAIPS, thus creating the electronic record and ensuring the date of receipt of the application in the "Application Received" field;

  If supporting documents are missing or additional information is required: Send written notification to the applicant requesting missing documents and/or information. See Time limit for submitting missing information, Section 7.4 below.

See Appendix A for an overview of the family class process in and outside Canada.

7.3. Creating a family class file

Visa offices normally create one file for all applicants listed on the same undertaking. However, if a parent in Canada sponsors two or more children, separate files must be opened for each child.

Visa offices may open separate files for children sponsored by one parent and listed on the same undertaking as the other parent. They must be members of the family class in their own right. This is appropriate when for example, the sponsored parent is inadmissible, but visas may be issued to the children.

Note: The legislation precludes issuance of immigrant visas to a foreign national whose family members are inadmissible (A42).

7.4. Time limit for submitting supporting documents or information

Sponsored members of the family class must submit supporting documents or information, as described in the application guide, with their submissions. The visa office will determine whether the submission satisfies R10 and R11 and can be considered an application and date stamped received. Once the application is date stamped, the visa office will ensure that all required supporting documents have been received. If the documents are missing or information is not sufficient, inform applicants:

- that they have 90 days to provide the missing information (time frames may vary depending on documentation required and circumstances); and
- that failure to provide missing information by the deadline may result in refusal.

The 90-day period begins on the date of the visa office's written notification to the applicant.

If missing information is submitted within the 90-day period, then processing may continue.

If applicants do not respond within the 90-day period, continue processing towards a decision. A decision should be based on the information that is available and before the officer.

7.5. Reviewing an application

An officer should review the file and consider the following:

Assessment factors	See reference:
• Does the number of family members on the IMM 0008GEN, whether accompanying or not, coincide with the number of persons listed on the IMM1344AE?	Ability of sponsor to meet sponsorship requirements, Section 10 below.
• Does the sponsor still meet eligibility requirements?	A sponsor, IP 2, Section 5.9
• Is the sponsor reportable under A44(1))?	Sponsor reportable under A44(1), Section 10.5 below.
• Is a background check necessary? If yes, proceed with a request for the background check.	IC, Security and Criminal Screening of Immigrants
• Is an interview required? (if yes, proceed immediately with scheduling.	Conducting Interviews, Section 8 below.
• Is the sponsor a resident of Quebec?	Sponsorships from persons residing in Quebec, Section 10.7 below.
• Are there concerns related to relationships with family members?	Identifying a relationship of convenience, Section 12 below.

7.6. Closing a file

A case may be refused only if an IMM 1344AE and an IMM 0008GEN have been submitted; if an applicant does not return an IMM 0008 by the deadline do not refuse the applicant. In such a case the visa office must:

- retire the file. Record the case closed decision in the case file notes. Do not enter any decision. Give the file a retirement date;

- Inform the applicant in writing that the file has been closed. Send copies of the letter to the sponsor and to CPC-M.

If the sponsor requests to discontinue the application, the CPC will refund the Right of Permanent Residence Fee and the Permanent Resident Application Fee.

The sponsor has no right of appeal if a decision has not been made regarding issuance of a permanent resident visa [A63].

7.7. What to do if a family member is added to an application during processing?

New family members must be added and non-accompanying family members can become accompanying family members on an application of a person applying in the family class during the processing of an application. There may be occasions when a child is born to an applicant subsequent to the issuance of the visa but prior to obtaining permanent resident status. In these cases, it may not be necessary to create a new file and start processing all over again. All that is needed is to have the child added to the sponsorship, the processing fee paid and a medical examination done. See the CAIPS user guide for how to proceed in these cases.

If the officer believes that the income test (if applicable) may no longer be met as a result of the addition of the new family member, they should request a reassessment by the CPC. The visa office must determine if the income test is still met (based on CPC-M's initial assessment of the sponsor). If the income test is still met, request CPC-M to add the new family member to the IMM 1344AE and IMM 1344BE.

If the income test is not met, the application should be refused. (See: Issuing visas, Section 17 below.)

If a sponsor has given an undertaking to the province of Québec, the visa office must refer the case to *Service aux garants et aux candidats à l'immigration.*

Officers should not issue permanent resident visas until CPC-M confirms that the sponsor has added the family member to the IMM 1344AE and IMM 1344BE. The visa office must ensure that applicants add the family member to the copy of the sponsorship agreement if the family member is the sponsor's spouse, common-law partner or conjugal partner, or if the family member is over 22 years of age. The family member must also sign the agreement.

8. Procedure:Conducting interviews

Officers should interview applicants and their family members only when it is essential to assess an application. Waive interviews whenever possible.

Interviews may help to confirm applicants' identities and relationship to sponsors or other family members. Interviews may also clarify any questions about applicants' admissibility.

Interviews may be conducted at a visa office or any other appropriate location.

Ask applicants to bring any documents necessary for the selection decision.

If a relationship of convenience is suspected, officers may wish to interview applicants (and sponsor where applicable) separately.

Focus interviews on information essential for the decision.

See OP 1 for more information on interviewing applicants.

9. Procedure: Establishing identity and relationship

Applicants may establish their identity and relationships with birth or baptismal records and marriage certificates.

If birth or marriage documents are unreliable, other types of official records may be acceptable. Examples of documents that may be accepted include:

- voter's registration lists,
- military records,
- baptismal certificates,
- old passports,
- income tax forms,
- school records,
- household registries,
- hospital records,
- identity cards,
- old immigration records.
- Notarised letters from reliable bank officers, religious leaders, police authorities or civic and other government officials.

Officers should be familiar with the types of documentation and prevalence of fraudulent documents in their area of responsibility.

Any document on its own may fail to establish identity or relationship. Documents should be consistent one with the other and weighed according to their reliability and relevance. For example, one household registry alone may not be reliable. Officers may need to corroborate it with several earlier registries for the same household, or hospital birth records and national identity cards.

Be aware of documents issued to replace lost or stolen documents or identity cards. Look closely at identity or relationship documents which post-date interest in immigration. Self-serving statutory declarations carry little weight unless they predate interest in immigration.

It may help to compare documents with those provided by other members of the same family or against old immigration files for the same family.

When in doubt, officers may consult:

- the visa office that processed any other application for permanent residence; or
- the visa office responsible for the applicant's country of citizenship; or
- the issuing agency of the document.

If a relationship cannot be established through normal channels, applicants may be offered the option of undergoing DNA testing (see Establishing identity and relationship, Section 5.15 above, and OP 1 Sections 5.9 to 5.12).

10. Procedure: Ability of sponsor to meet sponsorship requirements

R133 outlines certain requirements that must be met by a sponsor. In all cases, there must be an undertaking to assist a sponsored immigrant and any family members to become successfully established and, where applicable, an immigration officer must be of the opinion that it can be fulfilled. If a sponsor does not meet the requirements of the Regulations the application should be refused.

Sponsors must indicate on their sponsorship application whether they wish to proceed with the sponsorship even if they do not meet the requirements to sponsor. If not, a sponsor may discontinue the sponsorship application and receive a refund of all but the sponsorship processing fee. If, however, the sponsor indicates that they wish to proceed, the sponsorship application will be sent to the visa office. When the application for permanent residence is received, the visa office will use the information available to assess whether the application should be accepted or refused [A11(2), R120]. Cases approved with H&C consideration should be coded FCH.

For further information see IP 2 Section 12.

10.1. Financial test - sponsor

CPC-M will indicate where applicable whether or not the financial test is met. This is determined by taking into account the number of persons in Canada for whom the sponsor is responsible, including persons who are the subject of another undertaking signed or co-signed by the sponsor, and the number of persons included on the sponsorship undertaking, including non-accompanying family members. There are exceptions to the requirement for a sponsor to meet the minimum necessary income test. See R133(4).

10.2. Change in family size

Family size may decrease or increase after CPC-M makes its initial assessment. The change may affect the minimum necessary income that a sponsor is required to meet. CPC-M's information provided along with the sponsorship details includes the maximum number of persons for whom the income test is met. Officers should compare family size prior to visa issuance with this maximum number. If it is equal to or less than this maximum number, the financial requirement is met.

For more information on financial assessment of a sponsor, see IP 2.

10.3. Sponsors who do not meet the income test

Visa offices may receive undertakings from sponsors who are required to meet the income test but who do not meet it. If the financial test is not met, CPC staff will send a copy of the work in progress (WIP) transcript and a detailed explanation as to why the application to sponsor is Not Met. CPC-M will also send the Financial Evaluation (IMM 1283E). It details a sponsor's financial situation. If a sponsor does not fall under one of the categories described in R133(4), the application should be refused under A11(2) pursuant to R120(a).and R133(1).

Sponsors of dependent children and of spouses, common-law partners or conjugal partners (unless they have dependent children who have dependent children of their own) do not have to meet financial requirements, but they do undertake to provide for the basic necessities of the sponsored applicants so that the applicants do not need social assistance. Applicants may be refused for financial reasons under A39 if they are unable or unwilling to support themselves and their dependent children and there are not adequate arrangements for their care and support.

Officers should take into consideration the sponsor's financial situation and willingness to assist, as well as the financial situation or employment prospects of the applicant, if applicable.

10.4. Reassessing a financial test

Officers may ask CPC-M to reassess sponsors' income. R120 allows reassessment if the sponsor no longer meets the income test. The new calculation is based on the 12-month period before the date that the officer receives the new information and determines that a reassessment is required.

A reassessment should be requested only when an applicant has met all other requirements.

See also Assessment of adequate arrangements, Section 11 below.

10.5. Sponsors who may be subject to an A44(1) report

A final determination on an application for permanent residence cannot be made if a permanent resident sponsor or co-signer is the subject of an A44(1) report [R136].

Sponsors, who became permanent residents on the basis of never having been married, sometimes attempt to sponsor spouses they married before immigrating. Similarly, sponsors who became permanent residents as single children might sponsor a common-law partner with whom they lived in a conjugal relationship before immigrating. In such cases the sponsor may be reported under A44(1) for misrepresenting a material fact [A40(1)a)]. In addition, the original sponsor of a family member who misrepresented their marital status may be reported under A44(1).

Officers with reason to believe that a sponsor may be subject to an A44(1) report for this or other reasons should provide details to CPC-M.

The CPC will:

- decide whether or not to refer a sponsor to a CIC for an A44(1) report to be written and, if a decision is done to do this, transfer the sponsorship to an inland CIC;
- ensure the sponsor is written up;
- inform the visa office of the name of the CIC responsible for the investigation and deciding on a course of action; and
- ensure that the results of the investigation are provided to the visa office.

During an investigation of a sponsor, visa offices should:

- suspend processing of the application;
- Inform the applicant of the reason for the delay.
- enter a WIP event (X1016) in CAIPS to indicate a delay in processing.

If such cases are common at a visa office, officers should monitor them regularly. Officers should report delays in finalization due to pending A44(1) reports to their geographic desk in the International Region.

10.6. Changes in a sponsor's circumstances

A sponsor's circumstances may change after CPC-M's initial assessment. When officers have reason to believe that a reassessment of the sponsor is material to the visa decision, they may ask CPC-M to investigate further.

CPC-M will inform visa offices when sponsor's circumstances could change in any way that might affect their ability to meet any of the sponsorship requirements in R133.

Officers may issue permanent resident visas to members of the family class only if a sponsorship undertaking is still in effect [R120].

10.7. Sponsorships from persons residing in Quebec

Service aux garants et aux candidats à l'immigration informs the sponsor if an "engagement" is approved or refused. In approved cases, the *Service aux garants et aux candidats à l'immigration* sends the sponsor three copies of the "engagement".

One copy will bear the notation *Copie conforme Service aux garants et aux candidats à l'immigration #_____*. It will also bear a *Service aux garants et aux candidats à l'immigration* stamp, the ministerial decree number and the number of the employee authorized to sign the "engagement".

The sponsor sends the copy bearing the notation, stamp and number to the sponsored applicant. The sponsored applicant attaches it to their application for a permanent resident visa.

If the sponsor does not meet federal criteria, the CPC forwards the IMM 1344AE to both *Service aux garants et aux candidats à l'immigration* and the visa office with a note explaining which federal sponsorship criterion is not met. If the sponsored person submits an application for a permanent resident visa, the visa office refuses the case without waiting for a response from the *Service aux garants et aux candidats à l'immigration'*..

If an application is refused or withdrawn, or applicants advise that they do not plan to use the visa, officers will send a copy of the refusal letter or file closure letter to the *Service aux garants et aux candidats à l'immigration* in Canada (not to SIQ).

11. Procedure: Assessment of adequate arrangements

To determine whether an applicant satisfies A39 officers must assess whether the applicant is able and willing to support himself/herself. If an applicant does not satisfy this requirement, officers must determine if adequate arrangements have been made for support. In such a case, the sponsor's situation, ability and willingness to assist and the duration of the undertaking, should be taken into consideration, even in cases where the immigration officer did not form an opinion on the undertaking (i.e., when financial requirements do not apply).

The requirements of A39 may be met if there are adequate arrangements for care and support. This can include assistance from other than the sponsor (for example, other family members in Canada).

12. Procedure: Identifying a relationship of convenience

See Relationships of convenience, Section 5.16 above, and Simultaneous common-law or conjugal partner relationships with two or more people (polygamous-like relationships), Section 5.42 above.

Officers must form an opinion based on factors which, taken together, could lead a reasonably prudent person to conclude that a relationship was not genuine and was entered into for immigration purposes. It is important for officers to examine the particular circumstances of a relationship and to assess it in the context of the cultural norms of the country.

Old immigration files can provide clues as to whether a relationship is genuine. They may contain evidence that the parties are related to a degree that precludes marriage, a common-law relationship or conjugal partner relationship.

Officers may need to closely examine evidence that a marriage took place. Photographs or other documents used as evidence of a marriage can be altered. Marriage certificates and other documents may be fraudulent.

In some instances, home visits may be used to establish cohabitation in the case of a marriage or common-law relationship.

Some factors that may be considered and that are common to marriage, common-law relationships and conjugal partner relationships are as follows:

- Do the spouses, common-law or conjugal partners have a good knowledge of each other's personal circumstances, background and family situation?
- The immigration status of the applicant and the timing of the marriage, common-law relationship or conjugal partner relationship.
- Is there evidence that both parties have planned their immigration or immigration of the foreign born spouse/common-law partners or conjugal partner jointly and over a period of time?
- Is there a history of multiple marriages, divorces, common-law relationships or conjugal partner relationships?
- Have previous relationships clearly ended and does the period of separation seem reasonable in the circumstances?
- Do the applicants speak a common language?

12.1. Marriage of convenience

Factors specific to a marriage of convenience include:

- The circumstances and duration of the courtship.
- The wedding itself (where it was celebrated, what type of marriage, who attended).
- Did the marriage ceremony conform to the beliefs and culture of the participants?
- Is there evidence that the spouses have lived together?

12.2. Common-law partnership of convenience

While there are many similar factors to consider when assessing common-law relationships, there are some differences. Differences in age, race, religion or culture in some countries may prevent individuals from getting married and may lead them to form a common-law relationship instead. Therefore, such differences should not necessarily be viewed as an indicator of a relationship of convenience where the individuals claim to be in a common-law relationship. Knowledge of the laws and customs of the country is essential in a determination of how differences between the partners should be interpreted.

Other factors that may be considered when assessing a common-law relationship:

- How the couple met and the circumstances that led them to decide to live together.
- The length of time the parties knew one another before they established a common-law relationship.

- How convincing is the evidence that the couple have lived together for at least one year? Is it sufficient? (This does not apply to persons unable to live together for reasons of persecution and penal control. See Foreign common-law registrations and same-sex marriages, Section 5.41 above.)

- Have the parties combined their affairs to the extent that a reasonable person would expect of a couple in a conjugal relationship (vs. what could be expected of "room-mates")? (See Recognition of a common-law partnership, Section 5.34 above.)

- Do the couple demonstrate the level of interdependence expected of persons in a conjugal relationship? (See Assessment of conjugal relationships Section 5.26 above.)

- Is there evidence that the couple has established their own household and lives separately from their families in a conjugal relationship (rather than a sibling relationship), even if co-located with other family members? In some cases, DNA testing may be required to ensure that applicants are not blood relatives.

Procedural fairness requires that officers inform applicants of any doubts about the relationship and give them a chance to respond.

CPC-M may arrange an interview with a sponsor, but officers must provide specific questions for the sponsor to answer.

Case notes must contain sufficient detail to support the decision. See OP 1 for information on case notes.

12.3. Conjugal partner relationship of convenience

Most of the factors discussed above are relevant when assessing a conjugal partner relationship. The main difference is the emphasis placed on continuous cohabitation. As conjugal partners have been unable to cohabit continuously for one year, officers should focus on the genuineness of the relationship and the evidence of interdependence, mutual commitment and exclusivity. (See Sections 5.25 and 5.26 above.)

Although cohabitation is not a requirement, officers should consider the amount of time the partners have spent together. Another factor to consider is whether the partners have attempted to obtain visas to visit one another or to immigrate to one another's countries. A claim that a conjugal relationship exists without much evidence of time spent together may suggest a relationship of convenience. As well, officers should ask why the couple has been unable to cohabit. If it is evident that they could have lived together and chose not to, then this may indicate that there is not a mutual commitment to a shared life together and may suggest a relationship of convenience.

Other factors to consider are previous marriages or common-law relationships, particularly if a conjugal partner claims that the relationship with the sponsor has ended and they are now applying to sponsor another conjugal partner or their spouse to whom they are still legally married. (See What happens if the common-law partner (principal applicant) is married to another person, Section 5.38 above.)

12.4. Adoptions of convenience

See OP 3 for information on assessing adoptions of convenience.

12.5. Conjugal relationships—Dissolutions of convenience

In addition to persons who may enter into relationships of convenience for the sake of acquiring any status under the Act, officers must be conscious of persons who "conveniently" dissolve their marriages or conjugal relationships and then subsequently resume them for the sake of facilitating immigration – that is, persons in conjugal relationships who fraudulently declare that their conjugal

relationship is dissolved in order to facilitate their own or other persons' immigration application and later attempt to sponsor that person. R4.1 provides officers the means to refuse applications where persons have dissolved a relationship in bad faith in order to acquire any status under the Act.

Situations where bad faith relationship-dissolution may occur include, but are not limited to:

- where applicants are in a conjugal relationship with a person whom they believe is inadmissible to Canada (and who would consequently render them inadmissible); and
- where applicants conveniently dissolve conjugal relationships so that they might establish a new relationship of convenience with another person from whom they will subsequently separate once both parties have permanent residence in Canada (and where the dissolved relationship will resume once fraudulent immigration is achieved).

As in the case of reviewing suspected relationships of convenience, officers must form an opinion based on factors which, taken together, could lead a reasonably prudent person to conclude that a relationship was dissolved for immigration purposes. It is important for officers to examine the particular circumstances of a relationship and to assess it in the context of the cultural norms of the country.

In some instances, home visits or other kinds of investigations such as telephone calls may be used to establish that cohabitation is not continuing once a relationship is supposedly dissolved.

Factors to consider regarding a suspected bad faith dissolution of a marriage or conjugal relationship:

- the circumstances and duration of the dissolution;
- the divorce itself (if applicable) – how it was effected, what documents have been submitted as evidence;
- did the dissolution conform to the beliefs and culture of the participants?
- is there evidence that the parties continue to cohabitate?

13. Procedure: Unable to establish that a marriage, common-law relationship or conjugal partner relationship exists

Officers should be familiar with the basic requirements for legal marriage in their territory of responsibility. This includes knowing:

- the minimum age for marriage;
- prohibited degrees of consanguinity;
- how freedom to marry is established;
- residency requirements;
- the prescribed form for marriage; and
- any other requirements, such as a license or parental consent.

13.1. Illegal marriage

Some marriages may not be legal where they occurred, e.g., defect in capacity (who can marry whom), marriage in embassy not recognized by host country, religious prohibitions, form of ceremony not permitted, etc., but the marriage would be otherwise recognized in Canada. Officers should explain to the applicant that they do not qualify as a spouse because their marriage is not legal where they married, but that they might qualify if they marry in another jurisdiction where their marriage would be legal.

If re-marriage in another jurisdiction is not feasible, and if the relationship between sponsor and applicant is genuine and the relationship meets the requirements of either common-law partner or conjugal partner, they may be processed as such. To qualify as common-law partners and conjugal partners, they must have maintained a conjugal relationship (have combined their affairs, be mutually interdependent, have a sexual relationship, etc.) for at least one year and, in the case of common-law partners, must have lived together for at least one year. Applicants should be consulted before they are processed in another category.

If applicants qualify as common-law or conjugal partners, officers should explain that their marriage will not be recognized as legal in Canada. If they wish to be recognized as a married couple, they will have to marry in Canada. If they are conjugal partners, officers should explain that they must live together in a conjugal relationship for one year before either can exercise any rights or privileges associated with common-law status.

The applicant must meet the definition of “common-law partner” or “conjugal partner” at the time the sponsorship and permanent residence applications are submitted, i.e., for common-law partners, they must have lived together continuously in a conjugal relationship for at least one year, and for conjugal partners, they must have been in a conjugal relationship for at least one year. Applicants who applied as newlywed spouses who had not established a conjugal relationship prior to the “marriage” would have to re-apply as common-law or conjugal partners once they met the definition.

If the applicant is unwilling to be considered as a common-law or conjugal partner, or is unable to provide satisfactory evidence of a conjugal relationship, the applicant should be refused.

13.2. Polygamous marriages

Officers must counsel both parties that polygamy is an offence under the *Criminal Code* of Canada.

R117(9)(c)(i) states that a spouse is not a member of the family class if the spouse or sponsor was already married to another person at the time of the subsequent marriage. This regulation prohibits a second (or third, etc.) wife from being recognized as a spouse within the family class and provides that only the first marriage may potentially be recognized for immigration purposes.

In order for the first marriage to be recognized as legally valid under Canadian law, the couple must live together in a monogamous marriage in Canada. Common law imparts that a polygamous marriage can be converted into a monogamous marriage provided that the couple live together in a monogamous relationship from the time of arrival in Canada. This conversion is effected by the stated intention of the parties to so convert their marriage, followed by some factual evidence that they have complied—usually by divorcing the other spouses and/or by a remarriage in a form that is valid in Canada.

Note: The Department cannot **require** divorce(s) and remarriage. However, officers can ask for evidence that the parties have converted their marriage to a monogamous one and can explain what might constitute such evidence.

The decision to refuse must be based on the balance of all evidence, and not solely because the applicant did not obtain a divorce. The parties must understand that refusal to provide such evidence may result in a refusal of their application.

A polygamous second (or third, etc.) marriage cannot be converted to one of monogamy. If a husband wishes to sponsor a wife other than his first as a spouse, he must divorce his other wives and remarry the chosen wife in a form of marriage that is valid in Canada. He and his chosen spouse must sign a declaration to that effect.

When a sponsor and applicant have been practising polygamy and there are children existing from several spouses, officers must caution the sponsor and the spouse being sponsored that other spouses will not be eligible for immigration to Canada even if their respective children are sponsored. Officers must explain that separation of children from their mothers will likely be permanent, and counsel the sponsor and applicant to consider the consequences of that separation on the children. If the children nonetheless are sponsored, and if one of these children subsequently sponsors their respective mother, this mother must be cautioned that she will have no spousal status and related legal protection in Canada and that she will not be eligible for support or other benefits that also flow from marriage under Canadian law.

The prohibition against polygamy in the Regulations, and the lack of recognition of all spouses except the first, cannot be avoided by processing a second spouse as a common-law partner. Legally, it is not possible to establish a common-law relationship that meets the definition of such in terms of conjugality, where one or both parties are still living in a pre-existing conjugal relationship. The notion of conjugality has within it the requirement of monogamy; therefore, it is only possible in law to establish a new common-law relationship after a person is either divorced or separated from the spouse or common-law partner and where they have convincingly formed the intention not to continue with that previous relationship.

An already existing marriage, uninterrupted by separation, divorce or death, is a barrier that cannot be overcome when assessing a second spouse as a common-law partner. However, where such a barrier is removed (i.e., a first wife is subsequently divorced or is deceased), a husband and second wife could choose either to remarry, or could potentially meet the definition of common-law partner (i.e., where a husband was separated from a first wife and lived with a second wife in a *bona fide* conjugal relationship for one year after the separation from a first wife). Because a subsequent marriage (where the first is continuing) is not valid in Canadian law, persons in such a scenario would be considered as single in law and thus, they would have to remarry to be considered married under Canadian law.

See also Definitions, Section 6 above.

13.3. No common-law relationship or conjugal partner relationship

If a couple is unable to cohabit and/or unable to provide satisfactory evidence of a conjugal relationship (see Recognition of a common-law relationship, Section 5.34 above, and What is a conjugal partner, Section 5.45 above), the application should be refused.

14. Procedure: Assessment of claim that a dependent child is a student

Check information on the application for discrepancies. The answers to the following questions may be relevant:

- What are the cultural norms in the applicant's country?
- In a society where most children leave school at age 15, it might be unusual for a 22-year-old to still attend school. Have younger siblings completed their education by age 15?

See also Who qualifies as a dependent child, Section 5.13, above.

14.1. Documentation

If documentation from a legitimate institution appears to be fraudulently altered or obtained fraudulently, verify it with the issuing institution or another reliable authority.

If the issuing institution is clearly not an educational institution, authenticity may be immaterial. Officers need not cite fraud as the reason an applicant is not a dependent son or daughter. Rely on proof of the ineligibility of the institution. If there is proof of fraud, however, officers must cite it as well.

Inform applicants about any doubts in order that they may have a chance to respond. If it appears that documents are false or that the schools they attend are not educational institutions, tell them why. This may be done either during an interview or in writing.

14.2. Full-time student

Officers may question applicants about their educational institution during an interview. If they are enrolled and attending school as full-time students, dependent children should be able to speak knowledgeably about their course of studies, their activities at school, teachers, classmates, the physical description of the school, and so on.

The questions below may assist in a determination of whether a son or daughter is a full-time student:

- Is the student enrolled in a program given at an educational institution such as a university, college or other educational institution?
- Is the student in attendance at the educational institution?
- Is attendance full-time? Is it the dominant activity in the life of the applicant?
- Is the program of studies followed at this educational institution academic, professional or vocational? (See below)
- Is the institution accredited by a relevant government authority?

An officer must be satisfied that an applicant is in attendance at an educational institution with the intention of studying. If this is in doubt an officer may look at:

- The record of a student's actual attendance at school;
- The grades achieved by the student;
- Whether the student can discuss, with some knowledge, the subjects studied;
- Whether the student has made a genuine effort to assimilate the knowledge in the courses being studied.

If it is evident that an applicant is enrolled at an educational institution primarily to qualify as a dependent child for immigration purposes and not with the intention of studying, the applicant is not eligible as a dependent child.

14.3. Post secondary institution

An institution must be accredited by a relevant authority. Officers should normally accept a state-recognised institution as an educational institution. In countries with licensed schools, officers may require evidence of licensing or state recognition.

Not all countries have an authority responsible for licensing educational institutions. Not all educational institutions will be licensed. Provided unlicensed institutions offer career preparation through a formal curriculum, examinations, and granting diplomas, they may be acceptable.

Institutions may be unlicensed because there is no licensing body or because they do not qualify for licenses. In either case, request proof the institution has the characteristics of an educational institution.

Proof may be documents concerning the student or the institution. It can include evidence of enrolment, proof of attendance, transcripts, class notes, marked essays, tuition receipts, evidence of a curriculum, calendar, yearbook, etc.

If there is no such authority or if accreditation is in question, officers should use the following guidelines to assess an educational institution:

Factor	Details
Primary Purpose of the Institution	Its primary purpose should be formal education. Education may be academic. Many university programs do not have a specific career orientation. They provide the knowledge, skills and mental development to allow students to enter the work force or to enrol in programs of advanced studies. Formal education may also be career specific preparation. Professional university faculties, vocational or technical schools or colleges, and specialized occupational schools offer this type of education. An educational institution, by definition, implies the existence of a building or buildings devoted primarily to education, training or development. The existence of premises is a factor in assessment of the requirement that a student be in attendance. Ask for evidence of curriculum, examination results, degrees or diplomas and official transcripts to determine if an institution's primary activity is formal education, training or preparation for a career.
Curriculum	A formal curriculum usually consists of several courses, which lead to an educational goal. A specific program usually comprises a coherent curriculum of courses for which there may be prerequisites and which lead to a required number of credits.
Examination Results	Each course should conclude with a measurement of progress or knowledge acquired, such as an examination, a graded essay, thesis or project. Each student then receives a final mark in each course, which gives the successful student the required credits.
Diplomas	A specified number of credits and, in some cases, specific compulsory courses will lead to a diploma or degree. Dependent children who are still full-time students are not likely to have diplomas yet. They must have documentation indicating what degrees or diplomas are normally granted where they study.
Transcripts	Genuine institutions provide official transcripts. A transcript of the previous year of studies may be evidence of full-time attendance or eligibility to re-enrol at an institution.

14.4. Institutions that are not "educational institutions"

Examples of institutions that are not educational institutions under this Regulation include:

- Centres providing on the job training, for example a hairdresser's salon or garage.
- Institutions offering only correspondence courses.
- Institutions that enrol students to enable them to qualify as a dependent son or daughter under Canadian Immigration Regulations.

- Private training establishments offering specialized courses not leading to a diploma or a vocational certificate, for example, those offering courses such as computer orientation, internet training, amateur painting, sculpting, sewing etc

14.5. Financial support for students

Officers must be satisfied that a child is substantially supported by a parent. The onus is on the applicant to provide whatever proof is necessary. Do not hesitate to examine the degree of financial support provided by a parent to their children.

As well as proof of support, officers need to know the cost of studying at a particular institution and whether the child is living at home or in residence. Applicants must provide this information.

Cancelled cheques in the parent's name for all or most of the tuition or room and board, would normally constitute acceptable proof of financial support. Letters from institutions may be acceptable if they state that parents have paid all or most of the tuition or other costs.

Proof of support may be fraudulent or fraudulently obtained. Do the cancelled cheques predate interest in immigration? Are the parents capable of financially supporting a child at school?

Some institutions may not charge tuition. A 22-year-old may attend a publicly funded school and live at home. In such cases officers should rely on evidence that the school does not charge fees. Where a child is clearly a full-time student living at home, assume the parents provide room and board.

If the child became a spouse or common-law partner before the age of 22, but is still a full-time student, proof of financial support from parents must date from before the time of the marriage or the beginning of the common-law partnership.

For more details, see “Substantially” financially supported, Section 14.6 below.

14.6. "Substantially" financially supported

Parents must provide substantial financial support to the son or daughter who is claiming to be a dependent child. Dictionaries define "substantially" as considerable in quantity, of real importance or value, and of considerable amount. Parents must have provided such financial support since before their children reached 22 years of age, or since their marriage or entering into a common-law relationship, if either took place before the child turned 22 years of age.

Small scholarships or earnings from evening or summer jobs do not disqualify dependent children if they are still substantially financially dependent on their parents.

Students who pay a substantial part of their tuition, room and board from their own salaries, large student loans or who are financially supported by persons other than a parent do not satisfy the definition.

Emotional support from parents is not a factor. Parents must still be providing financial support when the visa is issued.

15. Procedure: Ineligible dependent children

If, after reviewing an application an officer believes that claimed dependent children are not members of the family class as described in [R2] they should:

- give the applicants a deadline for providing additional information about the ineligible dependent children;

- if by the deadline the officer still believes that the dependent child is ineligible, issue visas to the rest of the family and send a letter explaining why visas cannot be issued to the ineligible family members.

See also Refusals, Section 18 below.

16. Procedure: Assessing eligibility at visa issuance

Applicants are expected to inform the visa office if there are any changes in their circumstances that are relevant to processing. If processing times are long, (more than a year), officers may wish to confirm that children are still eligible before issuing visas.

Visas may be issued to dependent children who qualified because they are under 22 years of age only if they are still not married or a common-law partner at the time of visa issuance. They must also meet these requirements when they arrive at the port-of-entry.

Officers may request evidence of full-time student status before issuing visas. Children who were full-time students may no longer qualify at visa issuance because they have graduated or left school or because a parent no longer supports them.

Ineligibility of dependent children who no longer qualify does not preclude issuance of visas to a principal applicant and other eligible dependent children. The ineligible child is no longer a family member as per R70(5).

17. Procedure: Issuing visas

When all requirements are met, a visa may be issued.

Attach counselling information as appropriate.

Explain in writing that all family members must travel with the principal applicant, or follow before the expiry date on their visas. Family members, who arrive in Canada before the principal applicant, will not become permanent residents.

Ensure that the names of non-accompanying family members are included on the visa of the principal applicant and state they have also undergone examination, if applicable. (See Non-accompanying family members, Section 5.10 above, and Inadmissibility and non-accompanying family members, Section 5.11 above.)

17.1. Quebec cases

If an application for Quebec is refused or withdrawn, or applicants tell you that they do not plan to use their visa, send a copy of the refusal letter or file closure letter to Service aux garants et aux candidats à l'immigration in Montreal (not to an SIQ office abroad).

In approved cases, do *not* send a copy of the permanent resident visa to Service aux garants.

17.2. Appeal-allowed cases

See OP 21, section 8.5, for further information and the *CAIPS System User Guide* for details on reopening and processing these cases.

When issuing a visa on an appeal-allowed case, the Case Type “2” must be entered on the Final Decision screen in CAIPS. There is no distinction made for cases allowed by the IAD for reasons of law or humanitarian and compassionate considerations. The case should be finalized under the original FC Immigrant category.

18. Procedure: Refusals

Ensure that all reasons for refusal are included in a refusal letter.

See also Ineligible dependent children, Section 15 above.

For more details, see:

- Applicant is clearly not a member of the family class, Section 18.1 below;
- Deletion of sponsored children, Section 18.2 below;
- Sponsor does not meet the sponsorship requirements, Section 18.3 below;
- Authorization to return to Canada, Section 18.4 below.

18.1. Applicant is clearly not a member of the family class

Visa offices may receive sponsorships for persons who are clearly not members of the family class. The CPC sends these undertakings to missions only if sponsors insist. The CPC will indicate that the sponsorship is not on behalf of a person described in the definition of member of the family class and the sponsor's reasons for submitting an IMM 1344AE for an ineligible person.

If such a sponsorship is forwarded to a visa office, the visa office:

- assesses the application and may refuse on the basis that the applicant is not a member of the family class;
- sends a copy of the refusal letter to the CPC for information.

If a sponsor files an appeal with the IAD and the IAD determines that the foreign national is not a member of the family class, the IAD may not consider humanitarian and compassionate considerations (A65).

18.2. Deletion of sponsored children

Ineligible dependent children may claim to be dependent children of a member of the family class, but cannot satisfy an officer that they are dependent children. For example a child who is over 22 at the time of application who cannot satisfy an officer that they are full-time students.

If a dependent child is ineligible, issue immigrant visas to the applicant and eligible family members. Do not issue visas to the ineligible person. Do not refuse an entire application because the alleged dependent child of a member of the family class is not a dependent child.

Except in cases in which an ineligible individual is the principal applicant, the sponsor has no right of appeal to the IAD since there has been no family class refusal. The applicant or ineligible dependent child (not the sponsor) may seek redress from the Federal Court.

If sponsored dependent children are ineligible:

- Send a letter to the principal applicant to explain that visas will not be issued to the ineligible dependent children because they are not dependent children under the definition;
- send a copy of the letter to the sponsor explaining that they cannot appeal since there has been no refusal;
- counsel the sponsor to ask the CPC to refund the Right of Permanent Residence Fee for the ineligible dependent children;
- if the sponsor appeals, Appeals Officers will file a motion of non-jurisdiction with the IAD; at the request of Appeals Officers, forward the file and statutory declaration explaining why visas were not issued to ineligible dependent children.

If a sponsored dependent child is deleted because they provided fraudulent or false information, and if the principal applicant was either involved or aware of the misrepresentation, the whole family should be refused [A40(1)(a)].

See also Misrepresentation, Section 5.22 above.

18.3. Sponsor does not meet the sponsorship requirements

If a sponsor does not meet requirements of sponsorship refuse the application A11(2) and R120.

If the income test, where required, is not met for all family members, whether accompanying or not, refuse the entire application as R133(j) requires that the sponsor meet the income test.

18.4. Authorization to return to Canada

See OP 1, Section 6 for detailed information.

19. Procedure: Notifying sponsors of appeal rights

These procedures apply to all family class applications, including those sponsored by residents of Quebec. They also apply to cases of refused sponsored applicants who receive temporary resident permits.

When a case is refused, visa offices must:

- send a letter to the sponsor’s address in Canada to advise of the right of appeal. If the sponsor is temporarily outside Canada, the letter may be sent to a non-Canadian address.
- include a copy of the refusal letter that was sent to the family class applicant, a Notice of Appeal IRB/CISR28 (6/98) and information insert. The dates on original refusal letters sent to the family class applicants and copies sent to sponsors must be identical. Sign both the original and the copy of the refusal letters.
- Include the sponsor's client ID or the applicant's client ID and the applicant's file number in the upper right hand corner of the notification of appeal rights letter.
    - The sponsor's client ID is an eight digit number divided by a hyphen. It can be found on the undertaking (IMM 1344AE).
    - The applicant's client ID is the last eight figures of CPC-M's file number.
    - The CPC-M file number begins with the point of service code 9570. It is part of the information sent electronically by CPC-M to visa offices.
- Include the information insert with refusal letters for family class applicants. Adding this information is an effort to obtain new addresses for sponsors. It does not replace the notification of appeal rights letter to the sponsor. IAD rules do not allow officers to notify sponsors through applicants.

19.1 Other administrative rules related to notice of appeal rights

Regular mail may be used to notify sponsors of appeal rights. If regular mail is not reliable, use unclassified diplomatic bags.

If sponsors or applicants supply a new address, visa offices must re-send the notification of appeal letter to that address. There is no set time limit on the response other than that imposed by the schedule for Disposition of Paper Documentation (see OP 1).

Retain undeliverable returned envelopes and notification of appeal rights letters on applicants' files. Treat them as refusal letters according to the Disposition of Paper Documentation schedule. Visa offices need not make any further attempt to locate sponsors.

20. Procedure: Appeal submitted

See OP 21 for information on dealing with appeals.

Appendix A Family class sponsorships