

Understanding a Family Class Sponsorship Breakdown

***Ontario Council of Agencies Serving Immigrants,
OCASI***

What we are NOT going to talk about

- ❑ Family sponsorship applicants either in Canada or overseas waiting for their permanent residence to be issued.
 - ❑ Family reunification of Convention Refugees or Protected Persons (because they are not considered family sponsors.)
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SPONSORSHIP BREAKDOWN: WHAT YOU NEED TO KNOW

Definition of Terms

Who is a Sponsor?

A permanent resident or Canadian citizen who has:

- ❑ established the family relationship;
 - ❑ have proven to Citizenship and Immigration Canada (CIC) financial capacity to meet all the basic requirements for the sponsored family member(s) to be established in Canada;
 - ❑ signed a Sponsorship Agreement and Undertaking with CIC (a commitment to provide for the “basic requirements”).
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Who is a Co-Signer?

The sponsor's spouse or common-law partner who is also a permanent resident or Canadian citizen can help financially by co-signing the Sponsorship Agreement and Undertaking.

- The co-signer has the **same responsibilities** as the sponsor.
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Who is a Sponsored Family Member?

- Spouse, common law or conjugal partner (including same-sex partner);
- Dependant child 22 years or younger;
- Dependant child older than 22 years, who is a full-time student or in some other way is a the sponsor's dependant;
- Parents;

who received their permanent resident status in Canada **only** because a sponsor signed a Sponsorship Agreement with CIC committing to provide for their establishment in Canada.

What is a Sponsorship Undertaking?

The Sponsorship Undertaking is a **legal document** signed by the sponsor and co-signer (if applicable) as a commitment to the Government of Canada to provide basic necessities for the sponsored family member(s).

What is a Sponsorship Agreement?

The Sponsorship Agreement is a **legal document** signed by the sponsor, the co-signer (if applicable) and the sponsored family member(s).

- ❑ The sponsor and co-signer agree to provide the basic requirements for daily living for the sponsored family member(s) included in the Sponsorship Undertaking so that they will not need to apply for social assistance.
 - ❑ The sponsored family member(s) agrees to seek help from the sponsor if they are unable to provide for their own basic requirements.
 - ❑ The sponsored family member(s) also consents to the release of information to the sponsor concerning social assistance during the period of the undertaking.
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What are “Basic Requirements”?

- ❑ food,
 - ❑ clothing,
 - ❑ a place to live,
 - ❑ heat, utilities,
 - ❑ household supplies,
 - ❑ personal requirements and
 - ❑ health care not provided by public health including dental and eye care. (In Ontario there is a three-month waiting period after the date of arrival to become eligible for coverage under OHIP).
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What is Ontario Works (OW)?

OW is a program of the Ontario Ministry of Community and Social Services. It delivers income assistance to residents of Ontario who are in financial need.

It is also commonly known as "Welfare" or "Social Assistance"

What is the Ontario Disability Support Program (ODSP)?

ODSP is a program of the Ontario Ministry of Community and Social Services. It is designed to meet the needs of people with disabilities who are in financial need or who want and are able to work but need support.

What is the Overpayment Recovery Unit (ORU)?

In October 2004, the Ontario Ministry of Community and Social Services established a centralized unit to collect outstanding social assistance debts from sponsors who have defaulted on their Sponsorship Agreement.

What is Sponsorship Breakdown?

A sponsorship breakdown occurs when:

- ❑ the sponsor or co-signer refuse or is unable to provide some or all the basic requirements;
- ❑ the sponsored family member(s) starts to collect social assistance (under Ontario Works or ODSP).

If the sponsored family member(s) **does not** collect social assistance due to self-supporting solutions, then it is **not** a sponsorship breakdown.

What is Sponsorship Default?

During the Sponsorship period if the sponsored family member receives social assistance the sponsor and co-signer (if applicable) are in **Sponsorship Default** and must repay the social assistance payments to the Ontario government.

- ❑ The sponsor is not allowed to sponsor other family members until debt is repaid in full.
 - ❑ Same criteria applies for H&C.
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What is the Length of a Sponsorship?

Depends on the age and type of relationship:

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|--------------------------------------|-----------------------------------|
| Spouse | 3 years |
| Dependent child (<22 yrs.) | 10 yrs. (or until 25 yrs.) |
| Dependent child over 22 yrs. | 3 years |
| Parents | 10 years |

When Does the Undertaking Period Begin?

- ❑ On the day the sponsored family member(s) receives the permanent resident document, (if done within Canada), or
 - ❑ On the day sponsored family member(s) enters Canada as a permanent resident (if done outside Canada).
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INFORMATION FOR SPONSORS AND SPONSORED FAMILY MEMBERS

What are the Sponsor's Legal Responsibilities if there is a Change of Conditions or Circumstances?

- ❑ The Sponsorship Agreement is an unconditional guarantee of support.
 - ❑ It **cannot** be cancelled or modified after sponsored family member(s) receive permanent residence even under change of conditions or circumstances of any of the parties involved (ie: divorce, moving, deterioration of financial condition, etc.).
 - ❑ Bankruptcy: can't sponsor another family member -- sponsorship **default** (lifelong ban).
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What are the Responsibilities of a Sponsored Family Member(s) in Canada?

- ❑ To sign a “Sponsorship Agreement” with the sponsor and co-signer (if applicable).
 - ❑ To try supporting themselves and to ask their sponsors for assistance before seeking government support.
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What are the Consequences of a Sponsorship Breakdown for the Sponsor?

- ❑ Debt = amount of OW or ODSP given to sponsored family member(s).
- ❑ OW or ODSP will advise CIC when a sponsor is not providing support.
- ❑ CIC will ban the sponsor from sponsoring another family member(s) until debt is fully repaid.
- ❑ OW or ODSP will calculate the debt and will refer the case to the Overpayment Recovery Unit (ORU).
- ❑ ORU informs sponsor by letter that sponsored family member(s) has received social assistance.

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Consequences—Sponsor (cont'd)

- ❑ Purpose of letter: to reach an agreement on how the sponsor will resume providing for the sponsored family member(s), or to start the collection of the debt.
- ❑ If necessary, the ORU will pursue the sponsorship debt by sending further letters to the sponsor or by referring the case to Canada Revenue Agency's (CRA) Refund Set-Off Program. The CRA can garnish (take over) any Income Tax refunds.
- ❑ ORU can take other steps against the sponsor e.g. court action.

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Consequences—Sponsor (cont'd)

- The sponsor's credit record will be negatively affected by all these debt recovery actions (e.g. application for a loan).
 - **If a sponsor has been convicted of a sexual offence or an attempt/threat to commit a sexual offence, he/she will not be eligible to sponsor again even if a sponsorship debt is repaid.**
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What happens to Sponsored Family Member(s) when there is a Sponsorship Breakdown?

Conditions of eligibility to receive social assistance:

- ❑ Must try to get support from sponsor, except if breakdown is caused by abuse and/or family violence.
- ❑ After OW or ODSP has established the sponsored person has no means of private financial resources, the application for social assistance is approved.
- ❑ Will receive the same amount from OW or ODSP as any other person on social assistance.
- ❑ If the sponsor is providing partial support this will be treated as income and deducted from the sponsored person's social assistance.

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What happens to Sponsored Family Member(s) (cont'd)

A sponsored family member can be found ineligible to receive Social Assistance if:

- unwilling to provide information about sponsor;
 - have not made reasonable efforts to pursue support from the sponsor or co-signer (if applicable).
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What are the Rights of the Sponsor facing a Sponsorship Breakdown?

- ❑ Immigration status is not affected.
 - ❑ All rights and benefits to which sponsor is entitled are not affected.
 - ❑ Right to sponsor other relatives in the future if: sponsorship period is finished, have repaid outstanding debts and not on social assistance for at least 12 months before the time planning to submit a sponsorship application.
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What are the Rights of a Sponsored Family Member facing Sponsorship Breakdown?

- ❑ Immigration Status is not affected.
- ❑ All rights and benefits to which a sponsored family member is entitled are not affected.
- ❑ If found in financial need a sponsored family member has the right to apply for OW or ODSP.
- ❑ Right to leave someone who is hurting, scaring or abusing them (even if that person is their sponsor).
- ❑ Right to end a violent relationship (spouse).

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Rights of Sponsored Family member(s) (cont'd)

- ❑ Right to sponsor relatives in the future if: sponsorship period is finished and not on social assistance for at least 12 months before the time planning to submit a sponsorship application.
- ❑ The sponsor or co-signer (if applicable) cannot make the sponsored family member leave Canada.

Note: sponsor does not have the right to keep children or property. If there is a dispute, this will be resolved according to Family Law.

Can the Sponsorship Obligations be Withdrawn?

If CIC has already issued a visa, or a family member(s) has already become a permanent resident, the sponsor **cannot withdraw** the sponsorship.

What can the Sponsor do to Resolve a Sponsorship Breakdown?

- ❑ Contact the sponsored family member(s) directly and make an offer of assistance so they will stop receiving benefits.
- ❑ This is not possible if abuse and/or family violence has caused the breakdown.
- ❑ If making an offer of assistance fails, contact OW or ODSP to discuss the options and to remain informed about the situation.

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To Resolve a Breakdown (cont'd)

- ❑ Seek to reach an agreement with OW or ODSP on how to resume providing for the sponsored family member(s) or make arrangements to repay the debt.
 - ❑ The sponsor and the co-signer (if applicable) can provide partial support (debt will continue to accumulate).
 - ❑ If asked to pay back social assistance, the sponsor may want to contact a community legal clinic for advice and help.
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What can Stop or Postpone the Collection of the Debt by the ORU?

- ❑ The sponsor and co-signer (if applicable) are deceased.
- ❑ The sponsor and co-signer (if applicable) are incapacitated and unable to pay (i.e. in hospital and has no current ability to repay the debt).
- ❑ The sponsor and co-signer (if applicable) has undergone bankruptcy and the entire sponsorship debt was covered by the bankruptcy discharge.

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What stops/postpone collection (cont'd)

- ❑ There is third-party verification of domestic violence or abuse by the sponsor against the sponsored person or vice-versa.
- ❑ The sponsor and co-signer (if applicable) is receiving social assistance.
- ❑ The sponsor's net family income is below the Low Income Cut Off (LICO) amount published every year by Stats Canada.
- ❑ The sponsor and co-signer (if applicable) are in receipt of Guaranteed Income Supplement (GIS).

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What stops/postpone collection (cont'd)

- The sponsor and co-signer (if applicable) have documented extraordinary circumstances. For example, the sponsor has a serious health condition along with high, ongoing drug costs (significant impact on ability to repay the debt).

NOTE: In cases where the sponsor's circumstances are likely to change, collection may be deferred up to 12 months. However, sponsorship debt continues to accrue until the end of the sponsorship period.

Exemptions for Sponsored Family Member(s) from Pursuing Sponsorship Support

The sponsored family member will not be asked to pursue financial support from the sponsor where:

- the sponsorship agreement is no longer in effect;
 - the sponsor is in receipt of OW, ODSP, GIS under the Old Age Security Act or Gains-A;
 - the sponsor is deceased;
 - the sponsorship has broken down due to family violence verified by a third-party and the sponsored family member has moved out of the sponsor's home.
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What Happens after the Debt is Paid?

- ❑ The ORU will notify OW or ODSP that the debt has been repaid in full.
 - ❑ OW or ODSP office will send the *"Confirmation of Repayment of Social Assistance Benefits Form"* to CIC to confirm the debt has been repaid in full.
 - ❑ The ORU will send confirmation letter to the sponsor that the debt has been paid in full and that the file has been closed.
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What happens with Permanent Resident Status if Sponsorship Breaks down?

Sponsored family member(s) will **not** lose their permanent resident status if sponsorship breaks down even if they need to apply for social assistance.

IMPLICATIONS OF A SPONSORSHIP BREAKDOWN IN CASES OF ABUSE OR FAMILY VIOLENCE

Defining Abuse

Abuse can be physical, emotional, verbal, sexual, psychological, and economic. It includes assault and battery, and other forms of mistreatment and cruelty such as constant threats, stalking, and psychological violence.

All types of abuse have one thing in common — they create fear.

What are the Implications of a Sponsorship Breakdown due to Abuse or Family Violence?

- ❑ In Sponsorship Breakdown that is caused by abuse or family violence the sponsor may either refuse or just stop providing assistance to the sponsored family member(s).
- ❑ The sponsored family member(s) may be forced to apply for social assistance (doesn't have to ask sponsor for assistance).
- ❑ Report any alleged incident of abuse and/or family violence in the application for OW or ODSP.

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Implications due to Abuse or Family Violence (cont'd)

- ❑ The Sponsored family member will be granted three (3) months to establish the allegation of abuse by obtaining third-party verification.
- ❑ Documentation of abuse by a professional with knowledge of the person's situation is acceptable third-party verification.

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Implications due to Abuse or Family Violence (cont'd)

- Can be confirmed by a letter on appropriate letterhead from any of the following:

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| Law Enforcement Officer | Member of the Clergy |
| Lawyer | Guidance Counselor |
| Teacher | Victim Service Worker |
| Medical Doctor | Settlement Services Worker |
| Social Worker | Community Health Care Worker |
| Social Service Worker | |
| Shelter Worker | |

Implications due to Abuse or Family Violence (cont'd)

- ❑ If unable to obtain third-party verification within three months, additional time may be provided as required.
- ❑ If abuse/family violence is confirmed, referral of the case for debt collection is deferred for up to 12 months.
- ❑ CIC will register the default but no letters will be sent to the sponsor or co-signer (if applicable) by either CIC or Social Services.
- ❑ If abuse and/or family violence has been resolved, the case can be referred for debt collection.

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Implications due to Abuse or Family Violence (cont'd)

- If a sponsor has been convicted of a sexual offence or an attempt, threat to commit a sexual offence, she or he is not eligible to sponsor again even if the sponsorship debt is paid off.

NOTE: A PERMANENT RESIDENT OR CANADIAN CITIZEN CAN LEAVE AN ABUSIVE PARTNER AND HER/HIS STATUS IN CANADA WILL NOT BE AFFECTED BY THAT DECISION ALONE.

What Happens when the Victim of Abuse is a Minor?

For a minor under 16:

- ❑ OW or ODSP will contact Children Services
 - ❑ Children's Aid Society will make a risk assessment of the situation.
 - ❑ Abandonment of a child could be considered abuse in itself and the abandoning sponsor or co-signer(if applicable) could be prosecuted.
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What if the sponsor has kept the documents?

- If the sponsored family member is afraid to ask their sponsor for their documents, they can apply to CIC for a certified copy of the permanent resident papers or a permanent resident card replacement.
 - The police can help. The sponsored family member can ask directly or have a community worker request the police to go to sponsor's house with the sponsored person for safety.
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What to do when there is Abuse or Family Violence?

Abuse and family violence are not acceptable in Canada and are considered a crime.

- Seek legal advice.
 - In an emergency call 911.
 - Obtain crisis counselling, emotional support, and referrals to shelters for women: Assaulted Women's Helpline
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Where to go for Additional Information, Help And Referrals

- ❑ Immigrant Serving Organizations
 - ❑ Settlement.Org
 - ❑ 211 Information & Referral Service
 - ❑ Community Legal Clinics
 - ❑ Assaulted Women's Helpline
 - ❑ Ontario Works (OW) or Ontario Disability Support Program (ODSP)
 - ❑ Overpayment Recovery Unit (ORU)
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