

PROVINCIAL BRIEFING DOCUMENT 2: EXECUTIVE SUMMARY

Collection of Sponsorship Debt Accrued by Abused Immigrant Women

Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children. Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the period named in a sponsorship undertaking she has signed. The undertaking makes her legally responsible for that debt. Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to enormous debt. While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date. While the legal obligations contained in sponsorship undertakings are a federal matter, the collection of sponsorship debt has been assigned by the Federal Government to the provinces. Therefore, a potential resolution of the issue of sponsorship debt for abused women lies in provincial policy change.

Recommendations

Immediate

1. As part of its *Domestic Violence Action Plan*, the BC Government should address the most pressing issues putting abused immigrant women at risk, including the need to cancel sponsorship debt accrued by women who have been abused by their sponsoree.
2. The BC Government should develop an accessible and effective process by which women can demonstrate that they are victims of domestic violence.

Medium-term

3. The BC Government should develop guidelines for provincial officials so that once abuse has been “proven” it will generally be considered grounds for cancelling sponsorship debt.

Longer-term

4. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who have outstanding sponsorship debt arising from a sponsorship undertaking because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance.
5. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance.

PROVINCIAL BRIEFING DOCUMENT 2

Collection of Sponsorship Debt Accrued by Abused Immigrant Women¹

ISSUE: Sponsorship debt or the threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children.

KEY POINTS

The current situation

- Sponsorship debt may be accrued by an abused woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the period named in a sponsorship undertaking she has signed. The undertaking makes her legally responsible for that debt.
- Sponsorship debt or threat of sponsorship debt may deter women from leaving an abusive relationship and may significantly impact their ability to gain financial independence. A sponsor who is being abused by her sponsoree may be faced with a situation where she either continues to accept the abuse or exposes herself to enormous debt.
- While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in circumstances of abuse, the debt is not cancelled and may be collected at a later date.
- While the legal obligations contained in sponsorship undertakings are a federal matter, the collection of sponsorship debt has been assigned by the Federal Government to the provinces. Therefore, a potential resolution of the issue of sponsorship debt for abused women lies in provincial policy change.

Potential remedies

- A requirement that a victim must repay a debt incurred by an offender may be considered a form of re-victimization. It may also constitute an infringement of the *Canadian Charter of Rights and Freedoms, Section 7 - Life, liberty and security of person*. It could be argued that Canadian policies that make it difficult for a woman to leave an abusive relationship are themselves a form of abuse that threatens her right to life or security of person.

¹ This briefing document may also apply in situations where any other family member has accrued sponsorship debt because of abuse by his/her sponsor, such as a senior abused by a son or daughter whom they have sponsored.

- Sponsorship Undertakings and sponsorship debt may also constitute infringements of the Charter's *Section 15 – Equality Rights*, that states that every individual has the right to equality before the law and equal protection and benefit of the law. It could be argued that the burdens imposed on abused immigrant women by sponsorship undertakings and sponsorship debt constitute unequal treatment before the law.
- Discretion is already inherent in many aspects of the federal and provincial positions on the accrual and collection of sponsorship debt. Therefore, one option for addressing the burden placed on abused women by sponsorship debt may be for BC's Ministry of Housing and Social Development to develop policy to guide discretion in these matters. Policy could state that once abuse had been determined, such abuse should generally be considered grounds to cancel sponsorship debt. Such policy would also have to address the difficulties some immigrant women face in meeting the requirement for "substantial proof".

Bars to sponsorship

- A further complicating issue is that sponsors who have an outstanding debt arising from an undertaking are ineligible to sponsor anyone else under the family class. Women with such outstanding sponsorship debt could still make the application to sponsor other family members, which would inevitably be refused, and then they could appeal the matter to the Immigration Appeal Division (IAD) on Humanitarian and Compassionate (H & C) grounds. Such an appeal would be complex, time-consuming, and best handled by a lawyer. Legal Aid, however, is generally not available for these cases.
- In addition, an abused immigrant woman² who was sponsored under the family class and is forced to claim social assistance because of fleeing an abusive relationship is ineligible to sponsor under the family class while she is in receipt of such services.
- A provincial policy of cancellation of sponsorship debt in cases of domestic violence would remove these bars to sponsorship.

THE CONTEXT

Provincial discretion to suspend or cancel debt

- The current federal *Application to Sponsor and Undertaking* addresses the issue of abuse by stating that "The Minister and the province concerned may choose not to take enforcement action to recover money...if the default is the result of abuse..." However, the document goes on to say that "The decision not to act at a particular time does not cancel the debt. The Minister and the province concerned may recover the debt when circumstances have changed." (Citizenship and Immigration Canada, 2009). Therefore, the decision to suspend collection results in a debt that hangs over the woman and may be collected at any time.

² This could include so-called 'mail-order brides', a term used to describe women who met their foreign spouses through an international introduction or 'pen-pal' agency. (The controversy around the use of the term 'mail-order bride' is acknowledged. In the absence of another more 'neutral' term, the term 'mail-order bride' is used in this document. However, there is no intent to stereotype or stigmatize immigrant women who have married a Canadian as a result of an introduction or 'pen-pal' agency.)

- Provincial and federal discretion appears to be inherent in the wording of the federal undertaking. As noted above, the undertaking states that the federal and provincial governments *may* choose not to collect the debt in circumstances of abuse and *may* collect the debt when circumstances change. The undertaking further states that the sponsor “...will continue to be in default until the amount of benefits received are repaid in full or *repaid to the satisfaction of the government concerned* (italics added). (Citizenship and Immigration Canada. (2009).
- The BC government also has the discretion to forgive debts under section 18 of the BC *Financial Administration Act*.
- In 2006, the then BC Ministry of Community Services announced that its relevant collection branch, the Ministry of Employment and Income Assistance “was prepared to suspend debt collection and interest accrual where there was substantial proof of abuse or threat of abuse by a sponsoree, and where collection could potentially harm the sponsor’s health or safety.” (Correspondence from Deputy Minister Sheila Wynn, received September 21, 2006). However, while suspension of the debt and interest accrual in circumstances of abuse suggests some provincial movement in favour of a sponsor who is a victim of abuse, this policy addresses only suspension, not forgiveness of the debt. In addition, it is difficult for many women who are victims to meet the criteria of “substantial proof”. This is especially true for immigrant women in rural areas where access to services is limited.

Impact of bars to sponsorship

- An inability to sponsor family members to come to Canada may seriously impact abused immigrant women’s ability to settle in Canada and earn their own living because it increases their social isolation, deprives them of emotional support necessary to recover from trauma, and cuts off potential financial and child-care support from family members.
- The predicament for many women is that they cannot find a job because they do not have the education or language skills, so they are forced to accept social assistance. For many this creates a vicious cycle: they are alone with young children or they cannot upgrade their skills and find work because they need family to help look after their children, but they cannot get their family here because they are receiving social assistance. For other women who are working, the job is often poorly paid and does not enable them to pay back money owed in the form of sponsorship debt. So they are unable to bring their family members here to provide the support they need to upgrade their skills in order to earn a higher wage.

Legal responses

- There have been successful attempts by counsel and agencies such as BC Public Interest Advocacy Centre to have the Province cancel collection of sponsorship debt in situations of abuse. However, the successes pertain to an old form of the undertaking which contained vaguer wording than the current undertaking and did not contain language stating that governments could collect on sponsorship debts even if they arose out of circumstances of abuse. Also, these cases occurred through settlement negotiations or on an individual basis: there is as yet no case precedent which can be consistently applied in other cases.

- In a recent decision, the Ontario Court of Appeal in *Mavi v. Canada (Attorney General)*, 2009 found that governments, in the exercise of their discretion regarding the collection of sponsorship debt, have a duty of procedural fairness to those from whom they are trying to collect this debt. This means that sponsors' individual circumstances must be considered before the government can collect on sponsorship debts and that they cannot force people to pay substantial sponsorship debts without first providing them with an opportunity to explain why they should not have to pay. Leave has recently been granted to appeal this decision to the Supreme Court of Canada.
- In an earlier case (*Singh v. Minister of Employment and Immigration*, [1985]), the court found that, unless it specifically states that it applies only to Canadian citizens, the *Charter of Rights and Freedoms* applies to anyone on Canadian soil. Thus, refugees have a right to *Section 7 – Life, liberty and security of person* protection and therefore have a right to procedural fairness, including oral hearings, because their security of person is at stake.
- While the *Mavi* decision was based on administrative law arguments, there are also potential constitutional (*Section 7- Life, liberty and security of person* or *Section 15 - Equality rights*) arguments against the collection of sponsorship debt when there are health and/or safety concerns, including abuse of the sponsor.
- Regarding *Section 15*, only those who sponsor a foreign national are required to sign an undertaking and subjected to sponsorship debt. Thus, only those people who have signed sponsorship undertakings are responsible for paying back their spouses' social assistance. It is arguable that this constitutes unequal treatment before the law. Additionally, domestic violence is suffered disproportionately by women. Therefore, the health and safety repercussions of sponsorship debt incurred as a result of domestic violence are suffered disproportionately by women, which may also constitute an infringement of *Section 15*.
- Constitutional challenges have thus far not reached the courts.

Information to women

- Research and the experience of front-line workers indicate that abused immigrant, refugee, and non-status women often do not have accurate information about sponsorship, including their obligations and rights. It is important that they are provided with complete, accurate, and consistent information about sponsorship at every opportunity, before they enter Canada, immediately upon entry, and at various points thereafter. Ministries and agencies responding to the needs of immigrant women must themselves have accurate and consistent information about sponsorship for abused immigrant women and must have adequate and linguistically appropriate information resources to provide to the women.

RECOMMENDATIONS

1. In the interest of safety for abused immigrant women and their children, the BC Government should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are victims of domestic violence.
2. The BC Government should develop an accessible and effective process by which women can demonstrate that they are victims of domestic violence.

3. The BC Government should take immediate steps to ensure that criteria for meeting the burden of “substantial proof” of domestic violence for purposes of cancelling existing sponsorship debt and exempting abused sponsors in the future include statutory declarations from the women or from competent professionals.
4. The BC Government should develop guidelines for provincial officials so that once abuse has been “proven” it will generally be considered grounds for cancelling sponsorship debt.
5. The BC Government should work with Citizenship and Immigration Canada (CIC) to facilitate coordination of federal and provincial policies and practices to ensure that abused immigrant women are freed from sponsorship debt arising from domestic violence, which may involve ensuring that sponsorship debt does not accrue or that accrued sponsorship debt is cancelled once abuse has been demonstrated.
6. The province should work with the Federal Government to ensure that wording in the federal undertaking clearly states that the provinces have the right not only to suspend debt collection, but to cancel it.
7. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who have outstanding sponsorship debt arising from a sponsorship undertaking because they left an abusive spouse who subsequently received social assistance are not precluded from sponsoring family members until they have paid back the monies he received in social assistance.
8. The province should work with the Federal Government to ensure that wording in the federal undertaking and other information material provided to abused immigrant women clearly states that women who were sponsored under the family class and are forced to claim social assistance because of fleeing an abusive relationship are not precluded from sponsoring family members while receiving social assistance.
9. As part of its *Domestic Violence Action Plan*, the BC Government should address the most pressing issues putting abused immigrant women at risk, including the need to cancel sponsorship debt accrued by women who have been abused by their sponsoree.
10. As part of its *Domestic Violence Action Plan*, the BC Government, in consultation with Legal Services Society, should ensure that abused immigrant women who have legitimate needs for legal representation on issues related to sponsorship debt and cannot afford to pay for it are able to obtain legal representation through Legal Aid.
11. The BC Government should work with CIC and provincial ministries and community agencies to ensure that abused immigrant women are provided with accurate and consistent information on:
 - the facts about sponsorship;
 - their rights in Canada;
 - relevant Canadian laws, including immigration, family, civil, and criminal law;

- options and services available to them in Canada, including language training, settlement services, skills training, social assistance, cultural support services, legal advocacy, and victim support services.

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