





FEDERAL BRIEFING DOCUMENT 4: EXECUTIVE SUMMARY

Sponsorship Debt for Abused Women

Sponsorship debt or threat of sponsorship debt may significantly impact the safety of abused immigrant women and their children. Sponsorship debt may be accrued by a woman who leaves her abusive spouse whom she has sponsored and whose spouse subsequently collects social assistance within the sponsorship period. 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 large debt. While current federal and provincial policy allows for suspension of sponsorship debt collection and interest accrual in cases of abuse, the debt is not cancelled and may be collected at a later date. A further complicating issue is that sponsors who have an outstanding sponsorship debt are ineligible to sponsor anyone else under the family class.

Recommendations

Immediate

- 1. In the interest of safety for abused immigrant women and their children, Citizenship and Immigration Canada (CIC) should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are abused by their sponsoree, both by forgiving existing sponsorship debt and by revising sponsorship undertakings to ensure that such debt is not accrued or is forgiven in situations where such abuse has been demonstrated. Discretion of officials should be guided to the extent that, once abuse has been demonstrated, it will generally be considered grounds for cancelling sponsorship debt.
- CIC 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.
- 3. CIC should work with the provinces to develop consistent policy, guidelines, and practices to ensure that immigrant women are freed from sponsorship debt arising from domestic violence.
- 4. The Federal Government should ensure that wording in the federal undertaking clearly states that the provinces have the right to not only suspend debt collection but cancel it.

Medium-term

- 5. CIC should implement policy that women who have outstanding sponsorship debt 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. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.
- 6. CIC should implement policy that abused immigrant 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. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.







FEDERAL BRIEFING DOCUMENT 4

Sponsorship Debt for Abused 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 then collects social assistance within the three years (or, under an older form of the undertaking, ten years) named in a sponsorship undertaking she has signed. This undertaking makes her legally responsible for that debt.
- Sponsorship debt or threat of sponsorship debt may act as a deterrent to women 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 large 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.

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
themselves constitute a form of abuse that threatens her right to life or security of person.

 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.

¹ This briefing document may also apply in situations where another 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.

- There have been successful attempts by counsel and agencies such as the BC Public Interest Advocacy Centre (PIAC) to have the Province of BC cancel the collection of sponsorship debts in individual situations of abuse.
- 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 both Citizenship and Immigration Canada (CIC) and provincial ministries to develop policy to guide discretion in these matters. Policy could state that once abuse had been determined, it 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 "substantial proof" requirement.

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, but 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.

THE CONTEXT

Sponsorship application and undertaking

- The Federal Government treats sponsors and sponsorees who are victims of abuse very differently. The current Sponsorship Agreement addresses the issue of domestic violence perpetrated against sponsored persons by stating that: "Sponsored persons and/or their family members who are being abused or assaulted by their sponsors should seek safety away from their sponsors even if this means that they will have to apply for social assistance benefits. A sponsor cannot force Citizenship and Immigration Canada to remove you from Canada." (Citizenship and Immigration Canada, 2008). This encouragement for sponsored victims of domestic abuse to leave their abuser is in marked contrast to the penalties imposed on abused sponsors who leave their abusive sponsorees, in the form of sponsorship debt incurred if their abuser subsequently receives social assistance.
- The CIC Application to Sponsor and Undertaking appears to be inconsistent on the matter
 of eligibility of an applicant who has previously sponsored someone who has (or whose
 family members have) received social assistance during the period covered by the
 undertaking. Section E. Eligibility Assessment states that if an applicant answers "yes" to

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² This could include so-called 'mail-order brides', a term that refers to women who met their foreign spouse 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 denigrate immigrant women who have married a Canadian as a result of an introduction or 'pen-pal' agency.)

the question "Have persons you previously sponsored or their family members received social assistance during the validity period of the undertaking?" they are not eligible to be a sponsor and should not submit their application. On the other hand, the final paragraph in Section *G. Undertaking* states the applicant's understanding that they will not be allowed to sponsor another person "....if I am in default of any sponsorship undertaking. This holds true for both this undertaking and any past undertakings where I have not satisfactorily paid back my debts." This clearly implies that it is not the fact that sponsored persons received social assistance that is the bar to sponsorship, but the unpaid sponsorship debt.

- Furthermore, while it is possible (albeit, expensive) to appeal a negative response to a sponsorship application, this is not stated on the *Application to Sponsor and Undertaking*.
 On the contrary, the form states that if an applicant is ineligible for any of the reasons contained in Qs. 5 13, they should not submit their application.
- Until 2002, the older forms of sponsorship undertakings imposed a ten-year period of financial responsibility. This was reduced to three years after organizations such as the National Organization of Women and the Law (NAWL) advocated for changes. NAWL provided a written brief to the 2001 Standing Committee on Citizenship and Immigration backed by a study which analyzed the impact of spousal sponsorship undertakings on the equality rights of immigrant women. (Coté et al, 2001; Han, 2009). These formed the basis for comments contained in the Regulatory Impact Analysis Statement (RIAS) for the Immigration and Refugee Protection Regulations published in the Canada Gazette in 2002.
- In section XIV of RIAS, it was acknowledged that the length of the spousal sponsorship undertaking was decreased because of concerns that the undertaking aggravated domestic violence: "The Regulations take into account the protection of ...spouses, common-law partners and conjugal partners from violence. The duration of sponsorship for a spouse, common-law partner and conjugal partner was decreased from 10 to 3 years given concerns that domestic violence is aggravated by the implied dependency created by the undertaking of support." (Regulatory Impact Analysis Statement. Immigration and Refugee Protection Regulations C. Gaz. 2002). While a three-year undertaking is clearly preferable to a ten-year undertaking, the government's acknowledgement that this was changed because the ten-year undertaking aggravated domestic violence is also applicable to the current undertaking. The difference is in degree, not in substance.
- The current 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.
- Federal and provincial discretion appears to be inherent in the wording of the undertaking.
 As noted, the undertaking states that the federal and provincial governments may choose
 not to collect the debt in cases 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).

Provincial suspension of debt collection

- In 2006, BC Ministry of Community Services announced that its relevant collection branch "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, 2006). However, while suspension of debt and interest accrual in circumstances of abuse suggests some provincial movement in favour of an abused sponsor, this policy addresses only the suspension of debt, not forgiveness of the debt. In addition, it is difficult for many women who are victims to meet the criteria of "substantial proof". This would be especially true for those immigrant women in rural areas where access to services may be limited.
- The BC Government also has the discretion to forgive debts under section 18 of the BC Financial Administration Act.

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, 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 others who are working, the job is often poorly paid and does not enable them to repay sponsorship debt. So they are unable to bring family members here to provide the support they need to upgrade their skills in order to earn a higher wage.

Legal responses

- The successful attempts to cancel sponsorship debt collection in BC 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 the sponsorship debts even
 if they arose out of circumstances of abuse. In addition, these successful cases occurred
 through settlement negotiations or on an individual basis, and 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 Canadian Charter of Rights and Freedoms applies to anyone on Canadian soil. On this basis, 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.
- With respect to Section 15, only those who sponsor a foreign national are required to sign an undertaking and subjected to sponsorship debt. Thus, only those who have signed these undertakings are responsible for paying back abusive 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.

RECOMMENDATIONS

- 1. In the interest of safety for abused immigrant women and their children, Citizenship and Immigration Canada (CIC) should take immediate steps to address the issue of sponsorship debt incurred by sponsors who are abused by their sponsoree, both by forgiving existing sponsorship debt and by revising sponsorship undertakings to ensure that such debt is not accrued or is forgiven in situations where such abuse has been demonstrated. Discretion of officials should be guided to the extent that, once abuse has been demonstrated, it will generally be considered grounds for cancelling sponsorship debt.
- 2. CIC 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.
- 3. CIC should work with the provinces to develop consistent policy, guidelines, and practices to ensure that immigrant women are freed from sponsorship debt arising from domestic violence.
- 4. The Federal Government should ensure that wording in the federal undertaking clearly states that the provinces have the right to not only suspend debt collection but cancel it.
- 5. CIC should implement policy that women who have outstanding sponsorship debt 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. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.

- 6. CIC should implement policy that abused immigrant 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. This policy should be stated in the *Application to Sponsor and Undertaking* as well as in other materials provided to abused immigrant women.
- 7. CIC should state in the *Application to Sponsor and Undertaking* and in other information available to immigrant women that, while certain factors may make an applicant initially ineligible to sponsor a family member, such decisions can be appealed, and what first steps a woman must take to launch such an appeal.
- 8. CIC should take proactive steps to ensure that adequate, linguistically appropriate information is provided to immigrant women both before they immigrate and immediately upon arrival. Particular attention should be paid to finding effective ways to inform so-called 'mail-order brides' about the realities of immigrating to Canada and about the particular vulnerabilities they may face. Accurate and consistent information should be provided on:
 - the facts about sponsorship;
 - the nature, dynamics, and risks of domestic violence;
 - their rights in Canada;
 - relevant Canadian laws, including immigration, family, civil, and criminal law;
 - options and services available to them in Canada;
 - any sponsorship or criminal history of their proposed sponsor.

This includes helping to ensure that other ministries and agencies responding to the needs of immigrant women have accurate and consistent information about sponsorship to provide to abused immigrant women.

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