Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

IP 8

Spouse or Common-law partner in Canada Class

Canada

IP 8 Spouse or Common-law partner in Canada Class

Updates to chapter

Listing by date:

Date: 2006-09-22

The entire chapter has been updated. Previous versions of this chapter should be replaced with this updated version.

The majority of the amendments have been made to reflect changes related to:

- the Minister's Public Policy under A25(1) of IRPA to Facilitate Processing in accordance with the Regulations of the *Spouse or Common-law Partner in Canada Class*; and

- the Minister's Public Policy to allow applicants in the Spouse or Common-law Partner in Canada Class to add, during processing, declared family members to their application for permanent residence.

These policies have been appended to the chapter as Appendix H and Appendix I respectively.

Major changes as a result of the public policies include:

- Section 5.9 has been updated to reflect changes under the spousal policy that grants an exemption to dependent children from the requirement of R128(b) that persons must have requested permanent residence at the time of application by the principal applicant.

- Section 5.14 has been expanded to outline the requirements for the granting of permanent residence in the Spouse or common-law partner in Canada class, including the requirements for a potential sponsor, whether the foreign national qualifies for membership in the class (R124) and may be granted permanent residence (R72), as well as passport requirements.

- Section 5.17 has been updated to discuss changes under the spousal policy affecting holders of temporary resident permits.

- Section 5.18 has been updated to include changes under the spousal policy which permits refugee claimants to be eligible for consideration under the provisions of the Spouse or common-law partner in Canada class.

- Section 5.26 has been expanded to include additional information on family members who are unwilling or unable to be examined.

- Section 5.27 has been updated to reflect the waiver of temporary residence status as well as expanding the definition of persons with "lack of status" under the public policy.

- Sections on "Restoration of status or deemed status" and "Dual intent-restoration of temporary status" (formerly 5.28 and 5.31) have been removed as the maintenance of status is no longer a requirement of the class under the spousal policy.

- Section 12 has been amended to include information on "lack of status,"deferrals and stays of removal as outlined under the spousal policy.

- Appendix E, paragraph I has been added for potential sponsors who do not meet the requirements to sponsor pursuant to R130.

Other changes have been made to the following sections:

- Section 5.28 has been updated to add the cohabitation regulatory provisions found at R124(a).

- Section 11.1 has been added on the suspension of processing procedures.

- Section in 16.4 has been added to indicate how to respond to information provided after a refusal decision is made.

- Appendix A, an In-Canada processing flowchart has been added to outline the processes for step 1 (sponsorship evaluation and class eligibility) and step 2 (permanent residence requirements including admissibility).

2005-02-16

Changes include:

References to the **regulatory amendments**, specifically:

- R4.1: Added to clarify that a relationship between two persons that has been dissolved for the primary purpose of acquiring status of privilege under the *Act* and then resumed is an exlcuded relationship.

- R117(10) (11) and R125(2) and (3): Added to outline very limited exceptions to the general rule of exclusion for non-examination under R117(9) and R125(1).

See sections 5.9, 5.12, 5.25, 5.26 and 10.2 for more details.

Other changes include:

- Under 5.17, the wording on permit holders has been amended to reflect the transitional OM wording for consistency and clarity purposes. New wording has also been added.

- Two new letters have been added as appendices F and G. Appendix F is titled “Invitation to an Examination Interview” and Appendix G “Approval Letter/Sponsorship Eligibility”.

2003-07-17

Both minor and substantive changes and clarifications have been made throughout IP 8 – Spouse or Common-law partner in Canada Class. It is recommended that any former version of this chapter be discarded in favour of the one now appearing on CIC Explore.

The main changes are included in the table below.

Amendments to IP 8

Section title	Section number
Sections not previously available in the chapter and added to explain policy and/or provide guidelines	
Application made	Section 5.3
Application transfer	Section 5.5
Legal temporary resident status in Canada	Section 5.27
Applicants who leave Canada before a final decision is taken on their application for permanent residence	Section 5.29

IP 8 Spouse or Common-law partner in Canada Class

Quebec Cases - Initial Receipt Process	Section 5.40
Quebec Cases - Possible refund of permanent residence processing fees	Section 5.41
Quebec Cases - Assessment against federal sponsorship criteria and identification of ineligible sponsors	Section 5.42
Quebec Cases - Forwarding to MRCI	Section 5.43
Initial Receipt and Coding	Section 8
Sponsorship requirement: Filed an application in respect of a member of the spouse or common-law partner in Canada class	Section 9.2
Legal status in Canada	Section 12
Procedures - Quebec cases	Section 14
Applications for permanent residence (IMM 5002) and who must complete them	Section 5.2
Application processing goals	Section 5.6
Sponsors	Section 5.7
Permit Holders	Section 5.17
Restoration of status or deemed status	Section 5.28
Dual intent	Section 5.30

1. What this chapter is about

This chapter provides policy and procedural guidance on processing applications by temporary residents for permanent residence in Canada under the spouse or common-law partner in Canada class. This chapter explains:

- how to process applications submitted by members of this class;
- requirements that must be met by members of this class, including information about how to process cases under the "Public policy to facilitate processing in accordance with the Regulations of the spouse or common-law partner in Canada class" (the "spousal policy") (see Appendix H); and
- who may sponsor members of this class

1.1. Where to find information on related procedures

For information on related procedures, see the following chapters:

Processing Applications to Sponsor Members of the Family Class	See IP 2
Processing applications for permanent resident visas by members of the family class living outside Canada	See OP 2
Processing applications for permanent resident status made on humanitarian or compassionate grounds	See IP 5
Information on adoptions	See OP 3
Authorized representatives	See IP 9
In-Canada processing flow chart	Appendix A
Public policy under A25(1) to facilitate processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class	Appendix H
Public policy to allow applicants in the spouse or common-law partner in Canada class to add, during processing, declared family members to their application for permanent residence [R128(b)]	Appendix I

1.2. Which CIC offices this chapter involves

All CIC offices may use the policies and guidelines in this chapter. However, primary responsibility for processing sponsorship and permanent residence applications in the spouse or common-law partner in Canada class belongs to the CPC-Vegreville (CPC-V).

2. Program objectives

The creation of the spouse or common-law partner in Canada class promotes family unity. It allows Canadian citizens and permanent residents to sponsor their spouses or common-law partners who live with them in Canada, have legal temporary resident status and meet admissibility requirements. The requirement to have temporary resident status may however be waived by the spousal policy. Sponsored spouses or common-law partners may also include their dependent children in the application.

Table 1: Objectives in the Act related to the spouse or common-law partner

in Canada class

Objective	Reference
Reunite families	A3(1)(d)
Integration involves mutual obligations	A3(1)(e)

3. The Act and Regulations

The Immigration and Refugee Protection Act (IRPA) and its accompanying Regulations were passed on November 1, 2001 and took effect June 28, 2002. Amendments to the Regulations came into force on July 22, 2004.

Table 2: Legislative references for the spouse or common-law partner in Canada class

Provision	Act or Regulations
Admissibility	A11(1)
Sponsor must meet requirements	A11(2)
Spouse or common-law partner may be granted permanent residence based on relationship to Canadian citizen or permanent resident	A12(1)
Right to sponsor: Canadian citizen or permanent resident may sponsor members of the family class	A13(1)
Definition of common-law partner: • Living in a conjugal relationship • Has cohabited for at least one year	R1(1)
Definition of family member	R1(3)
Definition of dependent child	R2
Non-accompanying family members	R23
Spouse or common-law partner in Canada class	R123
Members of spouse or common-law partner in Canada class must : • be the spouse or common-law partner of sponsor, and live in Canada with sponsor; • have temporary resident status in Canada; and	R124
Note: This regulatory requirement may be waived under the spousal policy.	
• be the subject of a sponsorship application.	
No decision if sponsorship withdrawn or discontinued	R126
No approval if sponsorship not in effect	R127
Requirements for family members	R128, R129
Excluded relationships	R5, R117(9), R117(10),

	R117(11) and R125
Bad faith (relationships of convenience, dissolutions and resumptions of convenience)	R4 R4.1
Spouse or common-law partner under age 16	R5(a), R125(1)(a)
Spouse or common-law partner if undertaking not yet ended for previous sponsorship of a spouse or common-law partner	R125(1)(b)
Bigamous relationships	R5(b)(i), R125(1)(c)(i)
Spouse and sponsor separated for at least one year and either is in a common-law relationship	R5(b)(ii), R125(1)(c)(ii)
Previous non-accompanying family member who was not examined for admissibility when sponsor applied for permanent residence	R125(1) (1)(d), R125(2), R125(3)
Requirements for applications	R10
Member of this class must send application to remain in Canada as a permanent resident to appropriate Case Processing Centre	R11(3)
Applications which do not meet the minimum requirements in R10 and R11 will be returned to the applicant	R12
Requirements for documents	R13
Application approved if member: • applied as member of the class; • is in Canada to establish permanent residence; • is a member of the class; • meets applicable selection criteria; • they and family members are not inadmissible; and	R72, R65.1
Note: Inadmissibility requirements related to "lack of status" as defined in the public policy may be waived.	
• they have a passport and medical certificate based on last medical examination within last 12 months, stating that they are not inadmissible on health grounds.	
Family members may be included in application	R72(4)
Inadmissible classes	A33 to A42
Medical inadmissibility exception for spouses, common-law partners and dependent children	A38(2)(a) and (d)
Report on inadmissibility	A44(1)
Work permits	R200, R207
Study permits	R216

3.1. Forms related to the spouse or common-law partner in Canada class

Title	Form number
In-Canada Application for Permanent Resident Status	IMM 5002E

Application to Sponsor and Undertaking	IMM 1344AE
Sponsorship Agreement	IMM 1344BE
Spouse/Common-Law Questionnaire	IMM 5285E
Sponsorship Evaluation	IMM 5481E
Document Checklist – Spouse or Common-Law Partner in Canada	IMM 5443E
Use of a Representative	IMM 5476E

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 that 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 (see IL 3 – Designation and Delegation).

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. Column 1 provides an item number for the described powers, Column 2 provides a reference to the sections or subsections of the Act and/or 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 IL 3 modules listed below:

- Module 1 – Permanent residence and the sponsorship of foreign nationals
- Module 7 – Temporary Residents remaining in Canada
- Module 9 – Inadmissibility – loss of status – removal

4.2. Delegates/Designated officers

The delegates or designated officials, as specified in column 4 of Annexes A to H, in chapter IL 3, are authorized to carry out the powers described in column 3 of each module. Annexes are organized by region and by module. Officers should verify the list below for the annex specific to their region.

Table 3: List of annexes specified in chapter IL 3

Annex A	Atlantic Region
Annex B	Quebec
Annex C	Ontario
Annex D	Prairies/NWT Region
Annex E	British Columbia

Annex F	International Region
Annex G	Departmental Delivery Network
Annex H	NHQ

5. Departmental policy

5.1. Joint applications for sponsorship and permanent residence

Spouses or common-law partners in Canada and their sponsors submit a joint application, which includes the Application to sponsor an Undertaking (IMM 1344AE), the In-Canada Application for Permanent Resident Status (IMM 5002E) as well as the forms and supporting documents identified in the application guide and the appropriate fees.

The CPC-V is responsible for processing and assessing both applications.

Under the spousal policy, pending humanitarian and compassionate (H&C) applications that meet the criteria for the policy will be assessed by the CPC-V under the provisions of the spouse or common-law partner in Canada class. For new H&C applications or pending H&C cases without sponsorships, CIC will contact clients to see if they wish to submit a sponsorship for consideration under the spouse or common-law partner in Canada class.

5.2. In-Canada applications for permanent resident status [IMM 5002E] and who must complete them

All principal applicants, regardless of age, must complete an IMM 5002E. Dependent children over 18 years of age who are in Canada and are seeking permanent residence must also complete an IMM 5002E.

All dependent children outside Canada of any age, whether or not they are seeking permanent residence with the principal applicant, will be contacted by the appropriate visa office. The visa office will indicate which forms must be completed, will provide medical and security instructions and will advise whether interviews are necessary.

5.3. Application made

Reference to an "application made" in the Regulations means the date that the application is date stamped as received by the CPC-V.The CPC-V date stamps an application as received once they have determined that the application is complete (see Section 5.4, below).

Under the spousal policy, many clients can benefit from an administrative deferral of removal if there is evidence that they have a pending spousal application by the time they are deemed removal-ready by the CBSA. In general, the date that the CPC-V has locked in the application is the proof that an application has been made. For cases where a client attests that they have made an application that has not been locked in, clients may present a copy of their application as well as a copy of their fees receipt to show that an application has been made. Such proof may also assist the CPC-V in locating the file for prompt action.

5.4. When does an application exist?

An application in the spouse or common-law partner in Canada class requires receipt by the CPC-V of a properly completed and signed Application to Sponsor and Undertaking [IMM 1344AE], a properly completed and signed In-Canada application for permanent resident status [IMM 5002E] including the Background Declaration [IMM 5002E-Schedule 1] and proof of payment of the correct processing fees. Under the spousal policy, H&C applications with a spousal connection will be considered applications in the spouse or common-law partner in Canada class after the receipt of a sponsorship, if not already submitted.

For further information see:

- Sponsorship application and minimum requirements, IP 2, Section 5.12; and
- Minimum requirements for applications, IP 2, Section 5.13.

5.5. Application transfer

Applications for permanent residence made in Canada under the spouse or common-law partner in Canada class cannot be converted into applications for a permanent resident visa made outside Canada under the family class. Applications that began in Canada can therefore not be transferred to visa offices outside Canada.

5.6. Application processing times

Application processing times for in Canada cases can be found on the CIC Web Site, http://www.cic.gc.ca/english/department/times/process-in.html

5.7. Sponsors

A sponsor is a Canadian citizen or permanent resident, at least 18 years of age, who is residing in Canada and has filed an application to sponsor a member of the family class or a member of the spouse or common-law partner in Canada class [R130(1)].

For detailed information on sponsors including definitions, eligibility and financial requirements, see IP 2, Processing applications to sponsor members of the family class. These specific references may be helpful:

- A sponsor, IP 2, Section 5.9;
- Sponsors residing abroad, IP 2, Section 5.10;
- Adopted sponsors, IP 2, Section 5.11; and
- No appeal rights, IP 2, Section 5.38.

For information and references to processes, see Section 9 below.

5.8. Ineligible sponsors

Depending on the specific circumstances of each case a sponsor's ineligibility will result in either:

- the return of the application for permanent residence along with a portion of the processing fees where the sponsor has indicated on the IMM 1344AE (Application to Sponsor and Undertaking) their choice to discontinue processing if found ineligible; or
- the refusal of the application for permanent residence without the return of processing fees where the sponsor indicates their choice to continue processing to completion despite the fact that they are found ineligible to sponsor.

For further details see:

- Discontinued undertaking/refund of permanent resident application fees, IP 2, Section 5.39;
- Withdrawal of undertaking/no refund of permanent resident application fee, IP 2, Section 5.40;
- Handling a discontinued or withdrawn undertaking, IP 2, Section 12.

5.9. Dependent children

The applicant must list on the application all dependent children, whether in Canada or overseas, and indicate which dependent children are seeking permanent residence.

Note: A public policy exempts persons from the requirement of R128(b). This public policy allows the applicant to add, during processing, declared family members to the application for permanent residence. For more information, see Appendix I.

All dependent children must still be examined for admissibility at the time of the applicant's application for permanent residence (i.e., medical, security and criminality), whether or not they are processed for permanent residence. Dependent children are exempt from the excessive-demand factor.

If dependent children are not examined, they may not be sponsored at a later date. See Section 5.12 below for information on counselling regarding non-examined children.

Dependent children born after the application is submitted

The applicant is responsible for ensuring that any children born after the application is submitted are added to the application before permanent residence is granted. Applicants should advise the CPC-V in writing.

Table 4: See table below for other references to dependent children

Subject	Reference
Accompanying dependent children	Section 5.10 below
Dependent children outside Canada	Section 5.11 below
Dependent children in the sole custody of a former or separated spouse/common-law partner	Section 5.12 below
Who qualifies as a dependent child	OP 2, Section 5.13
Definitions of dependent child	OP 2, Section 6
Assessment of claim that a dependent child is a student	OP 2, Section 14

5.10. Accompanying dependent children

For purposes of in Canada processing, accompanying dependent children are children listed on the application who are applying for permanent residence and:

- reside in Canada; or
- reside outside Canada, but will join the applicant if permanent resident status is received.

5.11. Dependent children living outside Canada

For dependent children living outside Canada, the CPC-V will forward a copy of the permanent residence application listing the dependent children and their relevant contact information to the responsible visa office for verification of the relationship, once the sponsor and applicant have been assessed and approved against eligibility requirements.

The visa office will determine admissibility of dependent children outside Canada, conduct interviews if necessary and advise the CPC-V of the outcome by updating the electronic record. The CPC then informs the CIC responsible for the applicant's place of residence that permanent residence may be granted. Once the CIC has granted permanent residence to the principal applicant, it will notify the visa office, which will issue permanent resident visas to the overseas dependent children who are seeking permanent residence.

5.12. Dependent children in the sole custody of a former or separated spouse/common-law partner

The Regulations create an exception regarding the admissibility requirements for principal applicants when their children are in the sole custody of a separated or former spouse or common-law partner. Applicants must however provide documentary proof of the custody arrangements.

The CPC or the CIC may insist on a child being examined if it believes that custody arrangements are not genuine, but rather, that they were entered into in order to facilitate the applicant's permanent residence in Canada by hiding the child's inadmissibility. If an applicant lists a child in the sole custody of a separated or former spouse or common-law partner, it is appropriate to inform applicants that:

- children who are not examined cannot later be sponsored as members of the family class, despite any future changes in custody arrangements (see Section 5.26 on excluded relationships); and
- the best interests of the child might be better served by having the child examined. If this advice is declined, this should be noted.

Applicants should be counselled to:

- sign and return a statutory declaration acknowledging the above consequences; or
- inform the CPC that they want the child examined in order to preserve future sponsorship privileges.

5.13. Lock-in age for dependent children

The age of any dependent children is locked in on the date the sponsorship and permanent residence applications are jointly received, completed and signed, with the minimum requirements met as specified in the Regulations and with proof of payment of the correct processing fees.

Dependent children must be less than 22 years of age and not a spouse or common-law partner when the applications are received and must not be married or in a common-law relationship when permanent residence is confirmed. Less than 22 years means up to and including the last day before the child's 22nd birthday.

For further information see:

- When does an application exist, Section 5.4 above;
- When requirements have to be met, Section 5.15 below;
- Sponsorship application and minimum requirements, IP 2, Section 5.12; and
- Minimum requirements for applications, IP 2, Section 5.13.

5.14. Requirements to be granted permanent residence in the spouse or common-law partner in-Canada class

A potential sponsor meets requirements to be a sponsor

Under R130, a sponsor must be a Canadian citizen or permanent resident who

- is at least 18 years of age;
- resides in Canada [refer to IP 2, Section 5.10 if R130(2) applies].

Under R133, a sponsorship application shall only be approved if there is evidence that the sponsor

- is not subject to a removal order;
- is not detained in any penitentiary, reformatory or prison;
- has not been convicted of an offence of a sexual nature against any person or of an offence that results in bodily harm to a family member;
- is not in default of previous sponsorship, support payments or immigration debt;
- is not an undischarged bankrupt;
- is not in receipt of social assistance for a reason other than disability.

A foreign national meets the membership requirements of the spouse or common-law partner in Canada class [R124]

- if they are the spouse or common-law partner of a sponsor (as defined in R130) and cohabits with that sponsor in Canada;

Note: Common-law partners must have cohabited for at least one year [R1(1).

- if they have temporary resident status;

Note: The Regulations require that applicants have legal temporary resident status in Canada as visitors, students, temporary workers or be temporary resident permit holders (see section 5.17 below). However, this requirement may now be waived under the spousal policy. See section 5.27 for details about the definition of "lack of status" under the public policy.

- if they are the subject of a sponsorship application;
- if they are not excluded from the class under R125 concerning excluded relationships (see section 5.26).

A foreign national becomes a permanent resident if they meet the requirements of R72

- if a relationship was not entered into primarily for the purpose of acquiring any status or privilege under the Act [R4];
- if a relationship was not dissolved primarily to acquire any status or privilege under IRPA and was subsequently resumed [R4.1];
- if the foreign national is not the subject of enforcement proceedings or a removal order for reasons other than "lack of status" (see definition of "lack of status" under the public policy at 5.27 below). Although most persons who are under a removal order or facing enforcement proceedings for reasons other than "lack of status" **are eligible** for initial consideration under the public policy as they meet the criteria in R124, they cannot be granted permanent residence as they will be found inadmissible in the step-two examination of their case;
- if the foreign national meets the admissibility requirements; however, they are exempt from inadmissibility on health grounds due to excessive demand on health and social services. The requirement not to be inadmissible for reasons of lack of status may be waived by the spousal policy.

- if the foreign national has a valid passport or travel document by the time CIC seeks to grant permanent residence. See details below.

Passport requirements

Clients who have entered Canada without a passport

Clients are eligible for consideration under the public policy, and thus under the class, notwithstanding the fact that they are under a removal order or face enforcement proceedings for failure to enter Canada with a valid passport or required travel document as they still meet the remaining criteria under R124.

However, clients cannot be granted permanent residence under R72 if they do not obtain a valid passport or travel document by the time CIC seeks to grant permanent residence. Accordingly, clients should be given the opportunity to obtain a passport or travel document before the application for permanent residence is refused. However, cases considered under this public policy are **not eligible** for a passport waiver. Persons seeking this waiver must apply through the regular H&C route.

Requirement to have a valid passport in order to become a permanent resident

As a general rule, CIC should accept only valid and non-expired passports to grant permanent residence [R72]. This being said, the use of a passport that has expired during the processing of an application may be appropriate in some instances to fulfill the requirements of R72. Therefore, while not ideal, officers should feel free to use their judgment in accepting passports that have expired during processing when no identity issues remain.

However, under the public policy, persons will be excluded from being granted permanent residence:

- if they used a fraudulent or improperly obtained passport, travel document or visa to gain entry into Canada: **and**
- if this document was not surrendered or seized upon arrival; **and**
- the applicant used these fraudulent or improperly obtained documents to acquire temporary or permanent resident status.

Other cases may be refused for misrepresentation if there is clear evidence of misrepresentation under IRPA, in accordance with the Department's guidelines.

5.15. When requirements have to be met

Family member	When requirements have to be met
Spouse or common-law partner (applicant)	Meets the requirements of the class as set out in section 5.14 above and meets the definition of spouse or common-law partner as described in OP 2, Section 6 when the application is received **and** when a decision on permanent residence is entered into FOSS**.**
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; **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; **or** when a decision on permanent residence is entered into FOSS.
Dependent children under 22 years of age, a spouse or common-	Since becoming a spouse or common-law partner, they have been: • substantially dependent for financial support on either parent

law partner and a full-time student	(including non-sponsoring parent); **and,** • continuously enrolled and actively pursuing a course of study at an accredited post-secondary institution, without taking into account their age, when the application is received **and** at visa issuance **and** when they enter Canada **and/or** a decision on permanent residence is entered into FOSS.
Dependent children over 22 years of age and a full-time student	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 either parent (including non-sponsoring parent); **and,** • continuously enrolled and actively pursuing a course of study at an accredited post-secondary institution, when the application is received **and** at visa issuance **and** when they enter Canada **and/or** a decision on permanent residence is entered into FOSS**.**
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 has been: • substantially dependent for financial support on either parent (including non-sponsoring parent**)** when the application is received: **and,** • continues to be substantially dependent upon either parent (including non-sponsoring parent), at visa issuance **and** when they enter Canada **or** a decision on permanent residence is entered into FOSS.
Dependent children of dependent children	Is the dependent child of a dependent child when the application is received **and** at visa issuance **and** when they enter Canada **and/or** a decision on permanent residence is entered into FOSS.

5.16. Previous spouse or common-law partner

If a common-law partner has a separated or divorced spouse or a previous common-law partner, the applicant should list this spouse or common-law partner on the application. Separated or divorced spouses or previous common-law partners do not need to be examined for inadmissibility. They must, however, have been separated for at least one year and must provide proof of the separation or divorce. The Regulations prevent the applicant from later sponsoring a separated, divorced spouse or previous common-law partner who was not examined at the time of the application.

For further information, see Non-accompanying family members in OP 2, Section 5.10.

5.17. Permit holders

Holders of temporary resident permits may meet the requirements of R124 to qualify as members of the spouse or common-law partner in Canada class. However, they are holders of a temporary resident permit because of their inadmissibility and will, in general, be refused during the step-two examination of their case under R72(1)(e)(i) unless they are inadmissible only for lack of status, in which case they may qualify for positive consideration under the spousal policy (see section 5.27 for more detail).

Other limited exceptions exist for pre-IRPA **transitional** cases. For cases where IRPA provisions concerning deemed rehabilitation and medical inadmissiblity due to excessive demand may result in Minister's permit holders no longer being inadmissible, these permit holders may no longer require a permit to overcome their inadmissiblity and may regularize their status in Canada. This

should be done before the expiry of their permit by applying for permanent or temporary resident status using applicable mechanisms under IRPA.

In addition, temporary resident permit holders in Canada who are medically inadmissible may still qualify to become permanent residents under R72 as members of the spouse or common law partner in Canada class because A38(2)(a) relieves certain family members, including spouses and common-law partners, from medical inadmissibility due to exessive demand.

5.18. Spouse or common-law partner who is a refugee claimant

Under the current Regulations, a spouse or common-law partner who was issued a work or study permit when their claim was referred to the Refugee Protection Division is not a temporary resident by virtue of R202 or R218. Therefore, they do not meet the requirements of R124(b) and do not technically qualify as members of the spouse or common-law partner in Canada class.

However, under the spousal policy, the requirement to have temporary resident status in Canada for consideration under the spouse or common-law partner in Canada class may be waived. This means that refugee claimants are now eligible for consideration under the provisions of this class (although other inadmissibility grounds, not related to lack of status, continue to apply).

As is the current practice in H&C cases, clients who are inadmissible for entry into Canada without a valid passport or travel document, but who obtain such documents by the time CIC seeks to grant permanent residence, should not be refused on this ground of inadmissiblity. See section 5.14 for details.

5.19. Assessing the relationship

In assessing the eligibility for permanent residence of a spouse or common-law partner, officers must ensure that relationships between the sponsor and spouse or common-law partner and their relationships with dependent children are genuine. In ensuring that marriages or common-law partnerships are genuine, officers must consider the factors or elements that constitute a conjugal relationship. In addition, they must also consider factors that constitute a parent/child relationship and the issue of dependency between dependent children and the applicant and/or sponsor.

For other information on establishing identity and relationships, see OP 2, Section 5.15.

5.20. Conjugal relationship

In assessing applications in Canada by spouses and common-law partners, officers must be satisfied that a conjugal relationship exists. The word “conjugal” indicates:

- a significant degree of attachment, both physical and emotional;
- an exclusive relationship;
- a mutual and continuing commitment to a shared life together; and
- emotional and financial interdependency.

For further details see:

Table 5: Chapter references to conjugal relationships

Definition of conjugal relationship and characteristics of conjugal relationships	OP 2, Section 5.25
Assessment of a conjugal relationship and examples of supporting documents	OP 2, Section 5.26

5.21. Marriage

Applicants must provide evidence of the marriage.

A marriage that took place outside Canada must be legal in the country where it took place and be in accordance with Canadian federal law.

It may be necessary to consult the visa office responsible for the country to understand the requirements for legal marriage in their region of responsibility. The visa office may also have information regarding the marital status of the person at the time of the application for a temporary resident visa.

For further details see:

Table 6: Chapter references for marriage

Definition of marriage	OP 2, Section 6
Marriage in Canada	OP 2, Section 5.27
Minimum age for marriage in Canada	OP 2, Section 5.28
Valid marriage: Degrees of consanguinity	OP 2, Section 5.29
Recognition of a marriage	OP 2, Section 5.30
Persons who have undergone a sex change	OP 2, Section 5.31
Same-sex marriages in Canada	OP 2, Section 5.40
Assessment of relationship	Section 10.1 below

5.22. Divorce or annulment of a previous marriage

Officers may need to confirm the legality of a foreign divorce or annulment with the appropriate visa office. Divorce is illegal in some countries.

For further details see:

Table 7: Chapter references for divorce or annulment

Freedom to marry	OP 2, Section 5.32
Legality of foreign divorces	OP 2, Section 5.33
Other important common-law rules	OP 2, Section 5.34
Definition of annulment	OP 2, Section 6

5.23. Common-law partners

The sponsor and common-law partner must be living together in a conjugal relationship and must have cohabited for at least one year (R1(1)).

For further details see:

Table 8: Chapter references for common-law partners

Recognition of a common-law relationship	OP 2, Section 5.34
What is cohabitation?	OP 2, Section 5.35
When does a common-law relationship end?	OP 2, Section 5.37
What happens if the common-law or conjugal partner relationship breaks down and the sponsor	OP 2, Section 5.39

wants to sponsor a previously separated spouse?	
Prohibited relationships — common-law partners	OP 2, Section 5.43
Sponsor or common-law partners still married to someone else	Section 5.24 below
Definition of common-law partner	Section 6 below

5.24. Sponsor or common-law partners still married to someone else

Persons who are married to third parties may be considered common-law partners provided their marriage has broken down and they have cohabited in a conjugal relationship with the common-law partner for at least one year.

Cohabitation with a common-law partner must have started after a physical separation from the spouse. Evidence of separation from the spouse may include:

- a separation agreement;
- a signed formal declaration that the marriage has ended and that the person has entered into a common-law relationship;
- a court order regarding custody of children; and
- documents removing the legally married spouse(s) from insurance policies or wills as beneficiaries.

In this situation, the legal spouse of the principal applicant cannot subsequently be sponsored as a member of the family class.

5.25. Excluded relationships of convenience

A foreign national is not considered a spouse or a common-law partner if the marriage or relationship is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act (R4). In addition, under R4.1, a relationship between two persons that has been dissolved for the primary purpose of acquiring status or privilege under the Act and then resumed is an excluded relationship and the foreign national shall not be considered a spouse or a common-law partner under the Regulations.

For further details, see:

- Identifying a relationship of convenience, OP 2, Section 12
- Definition—Relationships of convenience, Section 6 below.

5.26. Excluded relationships

The Regulations prescribe relationships that exclude an applicant from membership in the family class.

Applicants in the following situations are not members of the class [R5, R125]:

- the spouse or common-law partner is under the age of 16;
- bigamy or polygamy – either the sponsor or the spouse was married to someone else at the time of the marriage;
- the sponsor has an existing undertaking to support a previous spouse or common-law partner;

- the sponsor and the applicant have been separated for at least a year, and either one is in a common-law relationship with another person; and

- when the sponsor applied for permanent residence, the applicant was a non-accompanying family member of the sponsor and was not examined.

Under both the previous legislation and under IRPA, the applicant and the applicant's family members, whether seeking permanent residence or not, must meet the requirements of the legislation. There are no exceptions to the requirement that family members must be declared.

R125(1)(d) and the overseas equivalent [R117(9)(d)], exclude persons from membership in the family class by virtue of their relation to the sponsor, if they were not examined as part of the sponsor's application for permanent residence (and they were required to be examined). The intent of the Regulations is to ensure that where, by decision of the applicant, a family member was not examined, the applicant cannot benefit later by sponsoring this person as a member of the family class.

The applicant should be advised that they will lose this right should their family members not be examined.

If 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 noted on the record. Officers may wish to have applicants sign a statutory declaration indicating that they understand the consequences of not having a family member examined.

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 the applicant is 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 dependent 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.

Consequences of no examination:

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

As per R125(2) the exclusion of R125(1)(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 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 sponsor, determined that it was not required that that family member be examined, and did not allow the family member to be examined or did not advise the applicant of the consequences of not having the family member examined. If the decision for non-examination was made by the officer, then R125(1)(d) does not apply in respect of that family member and that family member is not excluded.

Where CIC determines that the applicant could have been examined but was not

As per R125(3)(a), R125(1)(d) **does** apply, regarding 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 focus of choice in this situation lies with either the sponsor or the applicant (not with an officer of the Department) and, considering this, the

applicant is excluded as per R125(1)(d) for not having the family members examined as part of the sponsor's own application for permanent residence.

Pursuant to section R125(3)(b), the Regulations provide further precision about excluded family members noting that the spouse who was living separate and apart from the sponsor and was not examined, is excluded from the family class as per section R125(1)(d).

For further information on determination and assessment of relationships, see OP 2.

Note: When consulting OP 2, the following overseas versus inland equivalents should be noted:

Overseas versus Inland Provisions

R117(9)(d) → R125(1)(d)

R117(10) → R125(2)

R117(11) → R125(3)

5.27. Legal temporary resident status in Canada

Under the current Regulations, applicants in this spouse or common-law partner in Canada class must have a valid temporary resident status on the date of application and on the date they receive permanent resident status to be eligible to be members of the class.

However, under the spousal policy, applicants who lack status as defined under the public policy (see "What is lack of status under the public policy" below) may be granted permanent residence so long as they meet all the other requirements of the class (i.e., they are not inadmissible for reasons other than "lack of status.")

However, applicants who do not have temporary resident status and who cannot be granted positive consideration under the public policy can be removed at any time. Further, the spousal policy does not change the requirement to seek necessary authorization to visit Canada or to work or study here.

What is "lack of status" under the public policy?

For the purposes of the current public policy, persons with a "lack of status" refers to those in the following situations:

- persons who have overstayed a visa, visitor record, work permit, student permit or temporary resident permit;
- persons who have worked or studied without being authorized to do so as prescribed by the Act;
- persons who have entered Canada without a visa or other document required by the Regulations;
- persons who have entered Canada without a valid passport or travel document (provided valid documents are acquired by the time CIC seeks to grant permanent residence).
- persons who did not present themselves for examination when initially entering Canada but who did so subsequently.

"Lack of status" does not refer to any other inadmissibilities including, but not limited to:

- failure to obtain any required permission to enter Canada after being removed;

- persons who have entered Canada with a fraudulent or improperly obtained passport, travel document or visa and who have used the document for misrepresentation under IRPA. For greater certainty, persons will be excluded from being granted permanent residence under this public policy:

  - if they used a fraudulent or improperly obtained passport, travel document or visa to gain entry into Canada; and

  - if this document was not surrendered or seized upon arrival; and

  - if the applicant used these fraudulent or improperly obtained documents to acquire temporary or permanent resident status.

Other cases may be refused for misrepresentation if there is clear evidence of misrepresentation under IRPA, in accordance with the Department's guidelines.

See Appendix H for the full text of the spousal public policy.

5.28. Applicants who leave Canada before a final decision is taken on their application for permanent residence

An applicant's departure from Canada after the application is stamped as received or after assessment of eligibility for membership in the spouse or common-law partner in Canada class may affect their ability to become a permanent resident.

A foreign national becomes a permanent resident, if following an examination, it is established that they meet the selection criteria and other requirements applicable to that class as per R72(1)(d).

Foreign nationals are not provided with any guarantees that they will be allowed to return to or re-enter Canada. If they are unable to do so, their application for permanent residence may be refused because they are not cohabiting with their spouse or common-law partner at the time the case is finalized [R72(1)(d) and R124(a)].

It may therefore be appropriate to counsel applicants who are outside Canada to withdraw their spouse or common-law partner in Canada class application and submit a new application for a permanent resident visa to the CPC-Mississauga (CPC-M).

5.29. Dual intent

Under the concept of dual intent, the fact that a foreign national intends to apply for permanent residence does not preclude a stay of a temporary nature if the applicant intends to leave and await processing abroad. However, their reason for coming to Canada should be for a temporary purpose and officers should be satisfied that they would leave at the end of their authorized stay.

It is inappropriate to issue a temporary resident permit to an inadmissible person simply to allow them to make an application for permanent residence from within Canada.

For further details related to dual intent see the following references:

- policy on temporary residents in OP 11, Section 5.4 – Dual intent;

- policy on students in OP 12, Section 5.15 – Bona fides;

- port of entry examinations in ENF 4, Section 14 – Dual intent; and

- policy on temporary resident extensions, in IP 6, Section 5.2 – Dual intent.

5.30. Dual intent – Extension of temporary status

In cases where status will expire during processing, it is reasonable to extend temporary resident status, pending finalisation of processing, if the officer is satisfied that the applicant:

- has maintained their legal temporary status throughout their period of stay in Canada,
- has paid the appropriate work or study permit fee; and
- would leave at the end of their authorized stay, should the case be refused.

5.31. Admissibility

After determining that an applicant is a member of the spouse or common-law partner in Canada class, the CPC-V must initiate medical, criminal and security examinations to determine if the applicant and all dependent children, whether seeking permanent residence or not, are admissible. Applicants who are inadmissible or have inadmissible dependent children will be refused.

For further information see sections 5.32 and 5.33 below.

5.32. Medical examinations

The principal applicant and all dependent children must undergo medical examinations. A physical or mental condition causing excessive demand will not make them inadmissible as spouses or common-law partners and their dependent children are exempt from the requirement to not be inadmissible on grounds of excessive demand on health or social services.

For further information on medical examinations see OP 15 – Medical procedures.

5.33. Criminal and security checks

Applicants and dependent children 18 years of age or over must provide police certificates, clearances or records of no information for every country they have lived in for six months or more during the ten years preceding their application for permanent residence. If they were under the age of 18 when they lived in these countries this information is not necessary. Applications will be refused if the applicant or any dependent child is inadmissible.

For further details see:

Table 9: Chapter references for criminal and security screening

Criminal and security requirements	OP 2, Section 5.19
Security and Criminal Screening of Immigrants	IC1
Evaluating inadmissibility	ENF 2

5.34. Criteria for referral to an inland CIC

The CPC-V should refer cases to a CIC where an interview is warranted or where serious criminality is involved. Examples of situations that may be handled by an inland CIC are:

- suspected relationships of convenience, including relationships that have been dissolved for the purposes of acquiring any status or privilege under IRPA and then resumed.
- suspected misrepresentation;
- serious criminality or security, as described in A34, A35, A36(1) and A37.

5.35. Cases handled by the CPC-V without referral to CIC

The CPC-V may refuse applications without referral to CIC in the following situations:

- the sponsor does not meet requirements or definition of sponsor;
- the applicant is not a spouse or common-law partner;
- the person included in the application as a dependent child is not a dependent child;
- the common-law relationship has not existed for at least one year;
- the applicant does not meet the requirements of the class (N.B.: Under the spousal policy, cases where the client does not meet the status requirement can also be handled by the CPC-V unless expedited processing is required); or
- the applicant has committed a minor criminal offence which makes them inadmissible.

5.36. Review by local CIC

The local office of the CIC may need to interview the applicant and/or the sponsor to assess concerns raised by the CPC, including:

- the need to confirm identity and relationship;
- the authenticity of the relationship;
- possible misrepresentation, including misrepresentation in obtaining temporary resident status (note that this is *not* waived under the spousal policy).
- violation of the legislation or conditions of temporary residence; and
- inadmissibility for reasons of serious criminality or security.

The CIC should ask the applicant to bring any necessary documents to the interview. The officer should focus on the questions needed to reach a decision on the particular concern.

If a relationship of convenience is suspected, the officer should interview the applicant and the sponsor separately.

5.37. Work and study permits

Applicants who have been approved against eligibility requirements, and received an approval in principle, may apply for work or study permits pending the outcome of admissibility checks (i.e. medical, security and background checks). Officers are responsible for determining the appropriate duration of work or study permits after considering the factors specific to each case.

Such factors may include, among others:

- time frames for results related to admissibility checks;
- the probability of departure if the applicant is refused; and
- pertinent facts derived from previous experience with similar case circumstances.

It may therefore be reasonable to issue work or study permits for periods of short duration (i.e. 12 months or less).

Studies where the registered course of study is completed in its entirety in less than six months do not require a permit.

5.38. Quebec cases – Initial receipt process

An initial process occurs on receipt of every application including those involving Quebec applicants. This process includes information gathering, record creation and administrative steps to ensure that initial evaluation can begin. See Section 8 below for a listing of these steps.

5.39. Quebec Cases – Possible refund of permanent residence processing fees

Applications to sponsor and for permanent residence that move beyond initial receipt require in-depth analysis and initial review by an officer with decision-making authority. The assessment of the sponsorship takes place before the assessment of the application for permanent residence since the sponsor has a right to a refund of the permanent residence application processing fees. Refund of permanent residence processing fees is possible if:

- the sponsor indicates under Question 1 of the IMM 1344EA that they choose to withdraw their sponsorship if found ineligible to sponsor; OR
- the sponsor makes a written request to withdraw their sponsorship application; AND
- initial evaluation has not begun on the application for permanent residence.

5.40. Quebec cases – Assessment against federal sponsorship criteria and identification of ineligible sponsors

Before referring a Quebec case to MICC, officers with decision-making authority assess the sponsor against federal sponsorship eligibility requirements. If the sponsor does not meet eligibility requirements and has opted to withdraw their sponsorship application (Question 1 of IMM 1344AE), the permanent residence application and relevant processing fees would be returned to the sponsor, thus saving ineligible sponsors further federal/provincial processes and fees.

For sponsorship requirements and processing references, see Section 9 below.

5.41. Quebec cases – Forwarding to MICC

If the sponsor does not meet federal eligibility requirements and has opted to continue processing the permanent residence application or if the sponsor meets federal eligibility requirements, officers should forward the case to MICC for the provincial financial evaluation of the sponsor. However, if the sponsor does not meet federal eligibility criteria, the CPC-V can refuse without waiting for MICC's input and a copy of the application is sent to MICC for information purposes.

Evaluation of the permanent residence application is suspended pending receipt of a Quebec decision on the sponsor's financial evaluation. Therefore, sponsorship applications involving applicants who may not necessarily be members of the spouse or common-law partner in Canada class may be sent forward to MICC for provincial financial assessment.

For information about procedures – Quebec cases, see section 14 below.

6. Definitions

Common-law partner	A common-law partner means a person who is cohabiting in a conjugal relationship for a period of at least one year. "Common-law partner" refers to both opposite-sex and same-sex couples. See R1(1).

	A common-law relationship is fact-based and exists from the day in which two individuals can demonstrate that the relationship exists on the basis of the facts. In the same way, the determination of when a common-law relationship ceases to exist must also be made on the facts in each case. For further information on cohabitation, see OP 2, Section 5.34.
Dependent child	See R2 and definition in OP 2, Section 6.
Marriage	Marriage is legal matrimony in the country where the marriage took place. A previously married person must be legally divorced before they can remarry. If the marriage took place outside Canada, it must also be legal under Canadian federal law. Bigamous or polygamous relationships are not legal in Canada. See OP 2, Section 6 for a more detailed definition and further information regarding: • marriages in Canada including: Canadian federal legislation regarding requirements for marriage and same-sex marriage; • minimum age requirements; and • degrees of consanguinity; and • marriages outside Canada including: types of marriages, such as proxy or arranged marriages; and • whether they are legal in Canada.
Relationships of convenience	A relationship of convenience is a marriage, common-law relationship or adoption that is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act. Applicants in such relationships are not spouses, common-law partners or adopted children for the purpose of the Regulations and will be refused (R4)**.** Under R4.1, the dissolution of a conjugal relationship and its subsequent resumption to acquire any status or privilege under IRPA is an excluded relationship.
Spouse	A spouse is a married person. For further information on spouses, see the definitions of conjugal relationships, marriage and common-law partners in OP 2, section 6.

7. Roles and responsibilities

7.1. Roles and responsibilities of sponsors

For all sponsorship applications, sponsors must:

- read instructions and all information provided in the sponsorship package and ensure that they meet sponsorship criteria and eligibility requirements and are sponsoring a relative that is a member of the spouse or common-law partner in Canada class;
- complete the undertaking, the sponsorship agreement and all schedules in accordance with instructions and information provided in the guide;
- respond to the self-declaration schedules related to sponsorship eligibility and their relationship with sponsored persons, including the length of the relationship;

- include bank or HPM receipt for payment of all applicable fees (including fees for sponsorship application and applicable processing fees for all sponsored family members). Right of permanent residence fee (RPRF) may be deferred. Dependent children are exempt from payment of the RPRF. See Part 19 of the IRP Regulations for more information on required fees;

- state whether application should be discontinued if sponsorship requirements are not met;

- ensure that their spouse or common-law partner completes the tasks listed under section 7.2 below; and

- submit correctly completed and signed sponsorship and permanent residence application forms, with all required schedules and all required supporting documents to the CPC-V.

7.2. Roles and responsibilities of the spouse or common-law partner

The spouse or common-law partner should:

- ensure that the sponsor completes all sponsorship tasks as described in section 7.1 above;

- review the application guide and instructions to ensure that they meet eligibility requirements;

- correctly complete and sign the application for permanent residence, the sponsorship agreement and all schedules in accordance with instructions and information provided in the guide;

- list all dependent children, and indicate which are in Canada and which are overseas, and whether they are included in the application for permanent residence or are not seeking permanent residence; and

- ensure that their completed application for permanent residence, all required schedules and all required supporting documents are given to the sponsor and are included in the envelope with the sponsorship application addressed to the CPC-V.

7.3. Roles and responsibilities of the CPC-V

The CPC-V

- reviews both the sponsorship and permanent residence applications to ensure that they are correctly completed and signed and contain the minimum requirements stipulated in the Regulations;

- ensures that the application includes proof of payment of applicable fees at a Canadian bank. Fees include:

  - sponsorship processing fee (non-refundable);

  - application processing fee for each person included in the application (refundable in certain circumstances); and

  - Right of Permanent Residence Fee (RPRF) (may be deferred, or is refundable if permanent residence not received).

- processes the sponsorship application and assesses sponsors against sponsorship criteria and eligibility requirements including reviewing the application against the spousal policy criteria as needed;

- processes the application for permanent residence and assesses the applicant against eligibility requirements, including reviewing the application against the spousal policy criteria as needed;

- refuses the application or grants “approval in principle” based on sponsorship eligibility requirements;

- requests admissibility assessment for family members residing overseas from appropriate visa office, providing visa office with a copy of the application listing the names and addresses of these individuals;

- initiates request for background/security checks for applicant and in-Canada dependent children through an electronic download of required information with appropriate policing authority (i.e., RCMP, CSIS);

- refers to local CIC any cases requiring in depth investigation;

- updates electronic records in FOSS and forwards copy of application to local CIC for final processing stage of permanent residence, or advises applicant of refusal;

- completes admissibility checks (i.e. medical, security and background) and updates electronic record in FOSS. Once these updates are completed in FOSS, the local CIC will contact the applicant for a permanent residence interview and complete the permanent residence process.

For further information on processing the sponsorship application, see IP 2

8. Initial receipt and coding

An initial process occurs on receipt of every application, including those involving Quebec applicants. This process includes information gathering, record creation and administrative steps to ensure that initial evaluation can begin. This process includes, among others, the following steps:

- verification for completeness;

- return to sponsor, if application is not complete, or acceptance by date stamp receipt;

- creation of both a paper and electronic file;

- acknowledgement;

- request for any support documents or information that may be missing;

- verification of and possible printing of the FOSS and/or CAIPS record; and

- electronic transfer of biodata information to CPIC.

IP 8 Spouse or Common-law partner in Canada Class

8.1. Coding – Immigration category

Codes for FOSS/CAIPS systems	
Spouse / *Conjoint*	FC1 / CF1
Dependent children in Canada / *Enfants à charge à l'intérieur du Canada*	FC1 / CF1
Dependent children outside Canada / *Enfants à charge à l'extérieur du Canada*	FC1 / CF1
Common-law partner / *Conjoint de fait*	FCC / CFC
Dependent children in Canada / *Enfants à charge à l'intérieur du Canada*	FCC / CFC
Dependent children outside Canada / *Enfants à charge à l'extérieur du Canada*	FCC / CFC
Cases accepted or refused under the public policy / *Cas acceptés/refusés dans le cadre de la politique d'intérêt public*	FCH / CFC

8.2. Coding – Family Status

FOSS Codes for Family Status/*Situation de famille*	
Spouse *Conjoint*	1 - Principal *Demandeur principal*
Dependent children inside/outside Canada *Enfants à charge à l'intérieur/à l'extérieur du Canada*	3 - Other *Autre*
Dependent children of a dependent child inside/outside Canada *Enfants à charge d'un enfant à charge à l'intérieur/à l'extérieur du Canada*	4 - Other dependant *Autre personne à charge*
Common-law partner *Conjoint de fait*	1 - Principal *Demandeur principal*
Dependent children inside/outside Canada *Enfants à charge à l'intérieur/à l'extérieur du Canada*	3 - Other *Autre*
Dependent children of a dependent child inside/outside Canada *Enfants à charge d'un enfant à charge à l'intérieur/à l'extérieur du Canada*	4 - Other dependant *Autre personne à charge*

9. Processing of sponsorship application

9.1. Sponsorship requirements

Sponsors of this class are subject to the same requirements and bars as sponsors of spouses and common-law partners living abroad.

The minimum income requirement (LICO) does not apply to sponsorship of a spouse or common-law partner or to any dependent children who have no dependent children or their own.

Sponsors must, however, sign an undertaking and an agreement, promising to provide for the basic requirements of the sponsored applicant so that the sponsored person does not need social assistance.

Sponsored 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, i.e., if there is no approved undertaking in effect.

For information on sponsorship, see referenced sections in table below.

Table 10: Sponsorships requirements and processing

For information on:	See Policy/Definition in:	Procedures in:
Sponsorship application guide and forms	IP 2, Section 6.10	IP 2, Section 11
Sponsorship application and minimum requirements	IP 2, Section 5.12	IP 2, Section 11.1
Sponsor's eligibility requirements	IP 2, Section 5.9	IP 2, Section 13
Sponsorship bars	IP 2, Sections 5.28 and 5.29	IP 2, Section 14
Undertaking	IP 2, Sections 5.18 to 5.23	IP 2, Section 15
Minimum income requirement	IP 2, Sections 5.30 to 5.34 and 6.6	IP 2, Section 17
Reassessment of income		IP 2, Section 22
Sponsorship Agreement	IP 2, Section 5.24	IP 2, Section 16
Sponsors residing abroad and Adopted sponsors	IP 2, Sections 5.10 and 5.11	
Discontinued or withdrawn sponsorships	IP 2, Sections 5.39 and 5.40	IP 2, Section 12
Suspension of processing	IP 2, Section 5.36	IP 2, Section 23
Quebec cases	IP 2, Sections 5.41, and 5.42	IP 2, Section 24

9.2. Sponsorship requirement: Filed an application in respect of a member of the spouse or common-law partner in Canada class

One of the eligibility requirements for sponsorship is that the sponsor has filed an application in respect of a member of the spouse or common-law partner in Canada class.

This requirement is assessed through an evaluation of the declarations presented on the Application to Sponsor and Undertaking (IMM 1344AE). In general, officers may assume that, for purposes of evaluating the sponsor, this requirement has been met since, at this point of the evaluation, assessment of the application for permanent residence has not begun (See sample letter in Appendix D).

Under the spousal policy, the CPC-V officers will be assessing both applications made with the Spouse or Common-law Partner in Canada kit or the humanitarian and compassionate kit. In both cases, an Application to Sponsor and Undertaking, must be submitted for the application to be complete. This application may either be submitted voluntarily or in response to a CIC request, depending on the specifics of the case.

However, it is possible that a specific declaration by the sponsor may lead the officer to conclude that the sponsor chose the wrong application kit or is not eligible. For example, on the IMM 1344AE in Section C – Person being sponsored and his or her family members:

- the sponsor states that the person being sponsored is their sister; or
- the sponsor provides a date of birth indicating that the person being sponsored is less than 16 years of age.

In these situations, it may be appropriate to compare the information provided by the sponsor to the information provided by the applicant on the application for permanent residence. Although a comparison of specific statements by the sponsor and the applicant is not considered an assessment of the application for permanent residence, it may be considered sufficient to assess sponsorship declarations. As such, the officer may form an opinion that the sponsor has not met the requirement to file a sponsorship application on behalf of a member of the spouse or common-law partner in Canada class.

Since assessment of the application for permanent residence has not begun, it may be cost effective to the sponsor for the officer to refuse the sponsor for ineligibility and return the application for permanent residence along with the corresponding processing fee. A return of the application for permanent residence and the corresponding processing fee is only possible if:

- the sponsor has indicated in Question 1 of the IMM 1344EA that they wish to discontinue their sponsorship application if found ineligible to sponsor; or
- the sponsor is informed of the officer's findings and the sponsor then chooses to write a letter indicating that they want to withdraw their sponsorship application and processing has not begun.

See sample text in Appendix D for ”Letter to applicant/Sponsorship withdrawal accepted/File closed.”

9.3. Co-signers

A sponsor cannot have a co-signer on an application in the spouse or common-law partner in Canada class.

10. Assessing applicants

10.1. Assessment of relationship

The applicant must be the spouse or common-law partner of the sponsor and living with the sponsor as per R124. Excluded relationships are listed in R125.The application kit requires that applicants submit certain documents as proof of the relationship. Officers must also be satisfied that the applicant is living with the sponsor in Canada. The following table indicates the type of evidence that is acceptable.

Table 11: Evidence of relationships

Relationship	Evidence:
Spouse	Documentary evidence can include: • a marriage certificate; • proof of divorce if either the applicant or spouse was previously married; and • evidence that the applicant lives with the sponsor, e.g., mortgage, lease, other documents showing the same address for both. Evidence may also include: • wedding invitations and photos; and • documents from other institutions or other government authorities, such as the Canada Revenue Agency, indicating a marital relationship.
Common-law partner	In the case of a common-law partner, documentary evidence should include: • a statutory declaration of common-law relationship (included in the application package); • proof of separation from a former spouse if either the sponsor or the applicant were previously married; and • evidence that they have been living together for at least one year (e.g. documents showing the same address for both). Evidence may also include: • documents from other institutions or other government authorities, such as the Canada Revenue Agency, indicating a marital or common-law relationship; • documents indicating joint ownership of property (mortgages, leases); • joint bank accounts; and • insurance policies.
Cohabitation	One of the eligibility criteria in R124 is cohabitation with the sponsor in Canada. Documents provided as proof of the relationship should also establish that the spouse or common-law partner and the sponsor are living together. If this is not clear from the evidence available, the CPC-V should request further documents or refer to a CIC for an interview (see sample letter in Appendix F – Invitation to Examination Interview). Persons who are not cohabiting with their sponsor at the time CIC seeks to grant permanent residence (persons who have been removed or who have left Canada voluntarily), are not eligible to be granted permanent residence in the Spouse or common-law partner class and may apply in the family class (overseas).

10.2. Assessing for relationship of convenience

Officers should be satisfied that a genuine relationship exists. A marriage, common-law or dependent child relationship that is not genuine and that is undertaken primarily for the purpose of acquiring any status or privilege, will be refused (R4). Similarly, under R4.1, the dissolution of a relationship between two persons to acquire any status or privilege under the Act and its subsequent resumption will result in the relationship being excluded. This means that the foreign national will not be considered a spouse, common-law partner or conjugal partner under the

Regulations. Officers should carefully examine the documents submitted as proof of the relationship to ensure that they are not fraudulent.

If the documents provided do not give adequate proof of a genuine marital or conjugal relationship, or if officers doubt that the applicant is living with the sponsor, the CPC should refer the case to an inland CIC for investigation.

- The CIC may need to interview the sponsor and the applicant separately to establish whether the relationship is genuine. Factors that may be considered during this interview are listed in OP 2, Section 12.

Officers should give the applicant and sponsor the opportunity to respond to any concerns. In the event of refusal, officers should record all questions and answers in the interview.

10.3. Assessing dependent children

If the spouse or common-law partner has dependent children, they must be listed on the application and be examined to ensure they are admissible. See policy in Sections 5.9, 5.10, 5.11, 5.12, 5.13 and 5.15 above.

Applicants must provide proof of the relationship, normally a birth certificate.

Dependent children are exempt from paying the Right of Permanent Residence fee.

Table 12: Factors to consider for dependent children:

Ineligible dependent children included in the application (e.g., over 22 years of age and not full-time students)	The CPC-V: • should inform the applicant of the findings; • should advise the applicant of the opportunity to provide more information or their choice to apply for a refund of the Right of Permanent Residence fee, if already paid; and • are not required to examine ineligible dependent children.
Dependent children in Canada included on the application	The CPC-V or the local CIC: • may consult the visa office that issued the temporary residence visa if there are concerns about documents provided as proof of relationship: • will provide medical instructions to dependent children at the same time as to the applicants; and • is responsible for ensuring that dependent children meet admissibility requirements.
Students aged 22 years and over included on the application	The CPC-V or the local CIC: • should establish that students aged 22 and above have been enrolled in a full-time course of study in an accredited institution since before the age of 22; • may refer the application for an interview if there are doubts about the documents or the nature of the studies; • should give the principal applicant an opportunity to respond to concerns and interview the dependent child about the course of study; • may review the Federal Court of Appeal decision in the *Sandhu* case which provides guidance in assessing full-time students

	based on the following factors: • record of attendance; • grades achieved; • ability to discuss the subjects studied; • satisfactory progress in an academic program; • a genuine effort to assimilate the knowledge in the courses being studied. • the student need not be expected to pass every course, but the above factors should permit a determination of whether the child is a *bona fide* student. • may check Web sites on provincial ministries of education for listings of accredited institutions, if students are in Canada.
Student who is a spouse or common-law partner included in the application	The CPC-V or the local CIC: • should ensure that a student, who became a spouse or common-law partner before the age of 22, has been financially supported by a parent since before the child's marriage or common-law relationship.
Financially dependent	The CPC-V or the local CIC: • should carefully examine documents provided as proof that the student is substantially dependent on either parent for financial support; • may consider the cost of tuition and whether the child is living in residence or at home; • may consider evidence of financial support such as: cancelled cheques for tuition, residence, or room and board.
Dependent children outside Canada included on the application	The CPC-V: • will forward the application and relevant contact information to the responsible visa office, after approving eligibility and listing the application for background and security checks. Visa office: • is responsible for verifying the relationship, determining admissibility and *bona fides* of full-time student status, and informing the CPC-V of the result; and • will issue permanent resident visas to the dependent children, once permanent residence has been granted to the principal applicant.

10.4. Admissibility assessment

The applicant and all dependent children must meet all admissibility requirements including criminal, security and medical examinations (see A34 to A42).

Criminal and security checks

Applicants and dependent children in Canada who are 18 years of age and over must include police certificates, clearances or records of no information with their application.

The CPC-V should:

For applicants and dependent children over 18 in Canada:

- check FOSS and CPIC for any report on inadmissibility or criminal activity;
- initiate criminal and security checks through an electronic transfer of information with the appropriate policing authority; and
- update the electronic record entering results of criminal and security checks for applicants and dependent children.

For dependent children 18 years of age or older who are outside Canada:

- request admissibility checks (medical (see below), criminal and security) from appropriate visa office;
- forward a copy of the application listing all family members residing abroad to the visa office; and
- update the electronic record entering results of medical, criminal and security checks for applicants and dependent children.

Medical examinations

Applicants and their dependent children must undergo medical examinations within the 12 months prior to permanent residence. If the validity of the medical results expires before permanent residence is confirmed, then medical examinations must be redone. The visa office is responsible for sending the medical instructions to any dependent children overseas. The sponsor's spouse or common-law partner and dependent children are not inadmissible on health grounds owing to excessive demand on health or social services (A38(2)(a)).

10.5. Assessment of adequate arrangements

Sponsors of spouses and common-law partners 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.

A sponsor who does not have sufficient income is still eligible to sponsor, unless the sponsored spouse or common-law partner has dependent children who have dependent children of their own. 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.

11. Assessment of application for permanent residence

Once it has been determined that the sponsor is eligible and meets all requirements, the CPC-V will process the application for permanent residence.

This includes several steps:

1. assessing the applicant's eligibility against the criteria for the class including their eligibility under the spousal policy;

2. verifying the relationship of any dependent children; and

3. determining the admissibility of the applicant and the applicant's dependent children.

11.1. Suspension of processing

Where criminal charges against the applicant are outstanding and the case is otherwise complete, officers should delay scheduling an appointment for confirmation of permanent residence until there is a final disposition of the criminal charges.

Where information regarding outstanding criminal charges comes to light at the interview, officers should note the information and postpone or reschedule the interview until there is a final disposition of the criminal charges. This is so that an informed and appropriate decision can be made. Such delays are justifiable and prudent as a conviction may make the applicant criminally inadmissible and ineligible for permanent residence.

12. Legal status in Canada

The current Regulations require that to be eligible for the spouse or common-law partner in Canada class, the applicant have temporary legal status in Canada. However, under the spousal policy, persons who are otherwise eligible for consideration under this class (and who are not inadmissible for reasons other than "lack of status") including those who have applied for consideration on H&C grounds and submitted a sponsorship, may have this requirement waived.

This does not mean however that there is no longer any requirement to have legal status in Canada. **Persons who wish to study or work in Canada must still seek to obtain and maintain the required permits. Applicants who do not have legal status in Canada may be removed from Canada at any time.**

Other than for lack of status, applicants must not be in any other violation of the Act or Regulations or be subject to a removal order.

Many applicants will benefit from a regulatory stay of removal because they have requested a pre-removal risk assessment (PRRA) or will receive an administrative deferral of removal under the public policy. Many applicants will receive a step-one decision on their case before any further action is taken towards removal from Canada. Further details on "deferral" and "stay of removal" are found in the public policy at Appendix H.

Application for restoration/extension of status is received with the application for permanent residence

The CPC-V may receive an application for permanent residence together with an application for restoration or extension of status from some applicants. As such, the CPC-V may need to maintain and place both applications together until the application for permanent residence process has reached the initial decision phase.

In these circumstances, the CPC-V will:

- ensure that all applications including sponsorship, permanent residence and restoration or extension meet the requirements of a complete application;

- assess the sponsorship application and begin initial assessment of the application for permanent residence once sponsorship is approved; and

if initial decision on the application for permanent residence is "Approval in principle,"

- process restoration or extension of status to approval providing temporary legal status for a period equal to the time required to complete the processing, interview and final stages of permanent residence;
- advise the applicant of restored or extended status pending completion of the application for permanent residence;
- complete processing of the application for permanent residence; or

if initial decision is "Refusal,"

- process restoration or extension of status to refusal;
- advise the applicant of refusal to restore or extend status and refusal of the application for permanent residence, and advise applicant to leave Canada by the end of their period of authorized stay;
- complete all paper and electronic files to indicate that the application is refused.

Application has reached initial decision phase and applicant's temporary status has expired AND although applicant is eligible for restored status, applicant has not applied for restoration

Applicants may have temporary resident status when the application for permanent residence is received but may no longer have temporary resident status when the application for permanent residence reaches the initial decision phase.

Clients may still qualify for restoration of status; however, under the spousal policy, for the purposes of processing applications for permanent residence to a positive decision for permanent residence, it is no longer necessary to contact the client or their representative to find out if they intend to apply for restoration of status. Nor is it necessary to interrupt the processing of the application for permanent residence pending receipt from the client of the application for restoration.

However, for those clients who are refused at step one for their application for permanent residence, they will still have to apply for restoration of status to maintain their temporary resident status in Canada.

13. Initial stage of approval

If the applicant meets the eligibility requirements (i.e.,criteria in R124, taking into account the provisions of the spousal policy), the CPC-V may approve the application pending the outcome of admissibility checks (i.e., medical, security and background).

Applicants who have been approved against eligibility requirements will be advised by the CPC-V that they may apply for work or study permits. Officers are responsible for determining the appropriate duration of work or study permits after considering the factors specific to each case. Such factors may include: time frames for results on admissibility checks, validity of an existing work or study permit, the probability of departure if the applicant is refused and pertinent facts derived from previous experience with similar case circumstances. It may therefore be reasonable to issue work or study permits for periods of short duration (i.e.,12 months or less).

Studies where the entire course of study is completed in less than six months do not require a permit.

14. Procedures - Quebec Cases

14.1. Question 1- IMM 1344EA: Choice is "To withdraw your sponsorship" if found ineligible to sponsor

- The CPC-V performs administrative processes as per Section 7.3 above, assesses the sponsorship application against federal sponsorship eligibility requirements and

IF	The sponsor does not meet federal financial and eligibility requirements
THEN the CPC-V	• retains the sponsorship processing fee, refunds the permanent resident processing fee and the RPRF, if applicable; • advises the sponsor of ineligibility decision; and • completes the electronic record as "Discontinued." No further processing will occur if the sponsor has opted to discontinue if found ineligible.

IF	During the assessment of the sponsorship application, the CPC-V becomes aware of information indicating that the applicant is not a member of the spouse or common-law partner in Canada class. (See Section 9.2 above for possible applicant issues that would be obvious during sponsorship assessment.)
THEN the CPC-V	• retains the sponsorship processing fee; refunds the permanent resident processing fee and the RPRF, if applicable; • advises the sponsor of ineligibility decision; and • completes the electronic record as "Discontinued." No further processing will occur if the sponsor has opted to discontinue if found ineligible.

IF	The sponsor meets federal eligibility requirements
THEN the CPC-V	• processes fees, enters the sponsorship decision in the electronic record; • lists the application for background checks and advises the sponsor of the referral to MICC and the suspension of processing pending a decision from the province; and • refers the case to MICC for provincial sponsorship assessment and suspends initial evaluation and assessment of the application for permanent residence pending receipt of the decision from MICC; then

MICC	• approves or refuses the sponsor based on Quebec provincial financial sponsorship criteria and advises the sponsor and the CPC-V of the decision.

IF	MICC approves the sponsor
THEN the CPC-V	• begins initial evaluation procedures on the application for permanent residence and assesses the applicant against eligibility and admissibility requirements;

	• completes the electronic record, entering decisions rendered on requirements, and advises sponsor and applicant of initial decision on the application; • refers the case to inland CIC for permanent residence interview and updates electronic record showing transfer and initial approval; • OR • where authorized, refuses the application and updates the electronic record showing refusal decision. Following a review of the file information and a permanent residence interview, the inland CIC makes a final decision and updates the electronic records as "APPROVED" or "REFUSED."

IF	MICC does not approve the sponsor
THEN the CPC-V	• retains the sponsorship processing fee, returns the application for permanent residence, and refunds the permanent resident processing fees ($475) and the RPRF, if paid; • advises the sponsor that he has been found ineligible to sponsor and that the application for permanent residence cannot be considered; and • completes the electronic record as "Discontinued."

14.2. Question 1- IMM 1344AE: Choice is "To proceed with the application for permanent residence" if found ineligible to sponsor

The CPC-V performs administrative processes and assesses the sponsorship application against federal sponsorship criteria and

IF	The sponsor meets federal eligibility requirements or the sponsor does not meet federal eligibility requirements
THEN the CPC-V	• processes fees, enters the sponsorship decision in the electronic record; • lists the application for background checks and advises the sponsor of the federal sponsorship decision, the referral to MICC and the suspension of processing pending a decision from the province; and • refers the case to MICC for provincial sponsorship assessment and, if applicable, can refuse without waiting for MICC's input. Otherwise, suspends initial evaluation and assessment of the application for permanent residence pending receipt of the decision from MICC; then

MICC	approves or refuses the sponsor based on Quebec provincial financial sponsorship criteria and advises the sponsor and the CPC-V of the decision.

IF	MICC approves the sponsor
THEN the CPC-V	• begins initial evaluation procedures on the application for permanent residence and assesses the applicant against eligibility and admissibility requirements; • completes the electronic record, entering decisions rendered on requirements and advises sponsor and applicant of initial decision on the application; • refers the case to inland CIC for permanent residence interview and updates

	electronic record showing transfer and initial approval; • OR • where authorized, refuses the application and updates the electronic record showing refusal decision. Following a review of the file information and a permanent residence interview, the inland CIC makes a final decision and updates the electronic records as "APPROVED" or "REFUSED."

IF	MICC does not approve the sponsor
THEN the CPC-V	• begins initial evaluation procedures on the application for permanent residence and assesses the applicant against eligibility and admissibility requirements; • completes the electronic record, entering decisions rendered on requirements, and advises sponsor and applicant of the final decision on the application; and • refuses the application and updates the electronic record showing the refusal decision.

15. Final approval

Once the CPC-V (or the CIC) has information indicating that the applicant and any family members included in the application have met admissibility requirements (aside from the requirement to have temporary legal status in Canada), the applicant and dependent children may become permanent residents.

If a dependent child is **inadmissible,** the applicant **may not** become a permanent resident. However, if a dependent child is found **ineligible**, the applicant may still receive permanent resident status if they drop the ineligible dependent child from their application. **Example:** A child over 22 years of age, who is no longer a full-time student, is not a dependent child. See: OP 2, Section 16 for assessment of eligibility before visa issuance.

Table 13: Roles and responsibilities in the final approval process.

Role	Responsibilities:
the CPC-V	• updates FOSS electronic record, entering information related to medical, security and background results on the applicant and dependent children; and • sends paper record to the inland CIC for final stage of processing.
CIC	• convokes the applicant and family members in Canada for permanent residence interview; • ensures dependent children are still eligible; • verifies that the Right of Permanent Residence Fee has been paid; • completes process for permanent residence and issues confirmation of permanent residence document; • initiates transfer of information for the Permanent Resident Card process; and • sends a message to the visa office that is processing any overseas family members that permanent residence has been approved for principal applicant.

The visa office	• verifies that medical results and background checks are still valid; • verifies that dependent children are still eligible; • verifies that the Right of Permanent Residence Fee has been paid, if applicable; and • issues permanent resident visas to eligible dependent children living abroad.

16. Refusal

If either the applicant or the dependent children do not meet requirements, the CPC-V will either refuse the application, or refer the case to an inland CIC.

Table 14: Possible reasons for refusal

Reason for refusal	Consult chapter reference	Act/Regulations
Sponsor is not eligible (if sponsor chose to proceed)	Section 9 above for references to IP 2	A11(2), R130 to R134
Sponsor does not meet financial requirements	Sections 5.14, 9.1, 10.5 above	A39
Sponsor withdraws sponsorship/undertaking	IP 2, Sections 5.39 and 5.40	
Applicant is not eligible (the status eligibility requirement of R124(b) may be waived using the spousal policy)	Section 5.14 above	R124
Applicant is not a spouse or common-law partner on the date of the application or on the date that a decision on permanent residence is entered into FOSS.	Sections 5.14 to 5.26 and Section 10.1 above	R124, R1(1) and R1(2)
Applicant is not living with the sponsor in Canada	Section 5.14 above	R124
Applicant is not the subject of a sponsorship application	Section 5.14 above	R124, R127
Relationship is one of convenience or is one that was dissolved for the primary purpose of acquiring a status or privilege under IRPA and then resumed	Sections 5.25 and 10.2 above	R4, R4.1
Relationship is described under excluded relationships	Section 5.26 above	R5, R125
Applicant is inadmissible (lack of status inadmissibilities may be waived by the spousal policy)	Sections 5.27, 5.31 to 5.33 and 10.4 above	A34 to A42; R72(1)(e)(i)
Dependent child is inadmissible	Sections 5.9 to 5.13, 5.15, 10.4 above	A42(a); R129

16.1. Refusal by the CPC-V

See cases handled by the CPC-V without referral to CIC, Section 5.35 above, for situations where the CPC-V is authorized to refuse.

The CPC-V will send a refusal letter explaining clearly the reason(s) for refusal. (See sample text in Appendices C and E.)

16.2. Refusal by CIC

See criteria for referral to an inland CIC, Section 5.34 above, for situations referred to an inland CIC.

The CIC may interview the applicant to review the reasons for refusal.

The CIC will send a letter to the applicant explaining clearly the reasons for refusal.

16.3. Refusals of dependent children of sponsored spouse or common-law partner

Dependent children who are not eligible cannot receive permanent resident status. **Example:** A child over the age of 22 who cannot provide satisfactory evidence of full-time studies is not a dependent child.

The CIC will issue permanent resident status to the principal applicant and any eligible dependent children, and include a letter explaining why ineligible dependent children cannot be included.

16.4. Response to enquiries after refusal

Applicants or their representatives often submit information after a refusal. Officers should not acknowledge receipt of nor consider this information when responding.To do so could open the refusal decision for review beyond the time limits for applying for judicial review (30 days after the date of the refusal letter). Also, when the response states the refusal decision was reviewed by someone other than the officer who made it, the courts may look on the review as a new decision.Applicants or their representatives should be invited to submit new information with a new application. OP1 Appendix B contains a sample letter of response to this effect.

16.5. Applying for RPRF refunds

A sponsor of a refused applicant may apply to the CPC-V for a refund of the Right of Permanent Residence Fee.

IP 8 Spouse or Common-law partner in Canada Class

Appendix A—In-Canada processing flowchart

1. STEP ONE: SPONSORSHIP EVALUATION (cost: $75) → ELIGIBILITY CHECK

Q1: IS PR / SPONSORSHIP APPLICATION COMPLETE? (**R10** & **R11**)

- YES → **SPONSORSHIP APPLICATION**
- NO → **APPLICATION & FEES RETURNED TO CLIENT**

SPONSORSHIP APPLICATION

Q2: DOES THE SPONSOR SATISFY **R130** REQUIREMENTS?

- ☑ Canadian citizen or permanent resident
- ☑ at least 18 years of age
- ☑ residing in Canada [unless R130(2) applies]

NO → **REFUSE:** Sponsor does not meet R130

Applicant notified
Letter in **Appendix C** + **insert I** from **Appendix E**

If sponsor chose to discontinue - refund issued

Q3: DOES THE SPONSOR SATISFY **R133*** REQUIREMENTS?

- ☑ not under removal order
- ☑ not detained in penitentiary, jail or reformatory
- ☑ not convicted of an offence of a sexual nature against any person or of an offence that results in bodily harm against a family member
- ☑ not in default of previous sponsorship, support payments or immigration debt
- ☑ not an undischarged bankrupt
- ☑ not on social assistance (aside from disability)

Sponsor ineligible but opts to proceed

NO → **REFUSE:** Sponsor does not meet R133

Applicant notified
Letter in **Appendix C** + **insert J** from **Appendix E**

If sponsor chose to discontinue - refund issued

YES → **APR**

Q4: IS FOREIGN NATIONAL A MEMBER OF THE CLASS? (**R124**)

- ☑ spouse or common-law partner of a sponsor
- ☑ cohabitating with sponsor in Canada
- ☑ (temporary resident status)*
- ☑ sponsorship submitted (and approved)
- ☑ Is FN excluded from the class due to R125 provisions– excluded relationships?

* *May be waived using public policy, However, status still needed to work or study in Canada*

YES → **APROVAL IN PRINCIPLE**

Applicant notified

Letter in **Appendix B**

NO → **REFUSE**: FN not a member of the class (R124 or R125)

Applicant notified
Letter in **Appendix C** + **inserts A-H** from **Appendix E**

No refund issued

YES → **SPONSORSHIP APPROVED**

Sponsor notified
Letter in **Appendix G**

Q5: HAS THE SPONSOR WITHDRAWN THEIR SPONSORSHIP? (*anytime during process*)

YES → **REFUSE:** No sponsorship exists

Applicant notified

Letter in **Appendix D**

Refund issued if assessment of PR not yet begun

2. STEP TWO: ADMISSIBILITY CHECK (cost: $475)

Q6: IS FOREIGN NATIONAL INADMISSIBLE? (AS PER DIVISION 4 OF PART 1 OF ACT)

Are there concerns about the applicant including:

- ☑ Security?
- ☑ Human or international rights violation?
- ☑ Financial reasons?*
- ☑ Criminality/Serious criminality?
- ☑ Security?
- ☑ Health grounds?*
- ☑ Misrepresentation?
- ☑ Inadmissible family member?

**Taking into account relevant exceptions made for the in-Canada class (e.g. excessive demand provisions)*

NO → **INVITATION TO EXAMINATION INTERVIEW:** Subject to interview outcome, PR is approved.

Letter in **Appendix F**

YES → **REFUSE:** FN is inadmissible

Applicant notified.
Letter in **Appendix C** + **insert J** from **Appendix E**

Appendix B—Letter to applicant/Approval letter/Eligibility

PRELIMINARY/INITIAL APPROVAL TEMPLATE DRAFT

This letter acknowledges receipt of your application for permanent resident status in Canada.

It has been determined that you meet the eligibility requirements to apply for permanent resident status as a member of the spouse or common-law partner in Canada class. However, a final decision will not be made until all remaining requirements for becoming a permanent resident have been met. These requirements include medical, security and background checks for you and, if applicable, all of your family members, both in Canada and abroad, even if they are not applying to join you in Canada at this time. You cannot become a permanent resident until you and all your family members have met these requirements.

If you are not already in possession of a valid work permit or you have a work permit but wish to work elsewhere, or do not possess a valid study permit and you wish to attend school for more than six months, you may apply for either or both.

If you wish to apply for a study permit, be sure to include a letter from the educational institution you plan to attend. The letter should outline the type of course or program you are registered for, the start date and the expected completion date.

The client number shown in the upper right corner of this letter is your personal identification number. This number provides access to information on your file and, as such, for your own protection, you should not allow any other person to use this number. Please include your personal identification number in any correspondence with Citizenship and Immigration Canada. Failure to include this number could result in the return of your correspondence unanswered.

If you require further assistance, please telephone the Call Centre at 1- 888- 242-2100 (Toll Free). Be prepared to quote your client number and your date of birth. General information and application kits may also be obtained through our Web site at http://www.cic.gc.ca.

Appendix C—Letter to applicant/Refusal letter/Permanent residence

Spouse or common-law partner in Canada class

This refers to your application for permanent resident status under the spouse or common-law partner in Canada class.

In order to become a permanent resident under the spouse or common-law partner in Canada class, you must comply with requirements as specified in *the Immigration and Refugee Protection Regulations*.

[CHOOSE APPROPRIATE REFUSAL INSERT PARAGRAPH (AT APPENDIX E)]

Since you or your sponsor have/has not provided evidence that [**provide specifics of situation leading to a refusal**], you do not meet the requirements of the class. Your application for permanent residence as a member of the spouse or common-law partner in Canada class is, therefore, refused.

You and your family members, if any, are required to leave Canada on or before the expiry of your current document. Failure to leave Canada could result in removal action being taken against you.

The client number shown in the upper right corner of this letter is your personal identification number. This number provides access to information on your file and, as such, for your own protection, you should not allow any other person to use this number. Please include your personal identification number in any correspondence with Citizenship and Immigration Canada. Failure to include this number could result in the return of your correspondence unanswered.

If you require further assistance, please telephone the Call Centre at 1 -888 -242-2100 (Toll Free). Be prepared to quote your client number and your date of birth. General information and application kits may also be obtained through our Web site at http://www.cic.gc.ca.

Appendix D—Letter to applicant/Sponsorship withdrawal accepted/File closed

This refers to the Undertaking submitted by (name of sponsor) in support of your application for permanent residence from within Canada under the spouse or common-law partner in Canada class.

We received your sponsor's correspondence of (date) indicating their desire to withdraw or cancel their Undertaking.

USE EITHER OF PARAGRAPH (A) OR (B)

(A) NO DECISION MADE ON SPONSORSHIP UNDERTAKING OR PERMANENT RESIDENCE APPLICATION

Although your permanent residence application and your sponsor's Undertaking were received, no decisions were made on either matter at the time your sponsor contacted this office to withdraw their Undertaking. **As a result, the request to withdraw or cancel the Undertaking of Assistance in support of your application was accepted.**

(B) UNDERTAKING APPROVED BUT NO DECISION MADE ON PERMANENT RESIDENCE APPLICATION

Although the Undertaking by (name of sponsor) in support of your application was approved on (date), no decision had been made on your application for permanent residence at the time your sponsor contacted this office to withdraw their Undertaking. **As a result, the request to withdraw or cancel the Undertaking of Assistance in support of your application for permanent residence was accepted.**

Section 126 of the *Immigration and Refugee Protection Regulations* states:

> *"A decision shall not be made on an application for permanent residence by a foreign national as a member of the spouse or common-law partner in Canada class if the sponsor withdraws their sponsorship application in respect of that foreign national."*

I am therefore not able to make a decision on your application and your file has been closed. No further processing will take place.

You and your family members, if any, are required to leave Canada on or before the expiry of your current temporary document. Failure to leave Canada could result in removal action being taken against you.

For additional information concerning the withdrawal of the Undertaking, please contact your sponsor. If you require any other information about your application for permanent residence, please telephone the Call Centre at 1 -888- 242-2100 (Toll Free). Be prepared to quote your client number and your date of birth. General information and application kits may also be obtained through our Web site at http://www.cic.gc.ca.

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Appendix E—Refusal inserts draft

Spouse or Common-law partner in Canada Class

INSERT APPROPRIATE REGULATION

A) Member of the class - R124(a)

Regulation 124(a*)* requires that in order to qualify to become a member of the spouse or common-law partner in Canada class, you must demonstrate that you are *"the spouse or common-law partner of a sponsor and that you cohabit with that sponsor in Canada"*

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

B) Member of the class - R124(c)

Regulation 124(c*)* requires that in order to qualify to become a member of the spouse or common-law partner in Canada class, you must be "*the subject of a sponsorship application*."

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

C) Excluded relationship - Regulation 125(1)(a)

Regulation 125(1)(a) states:

> *"A foreign national shall not be considered a member of the spouse or common-law partner in Canada class by virtue of their relationship to the sponsor if*
>
> (a) *the foreign national is the sponsor's spouse or common-law partner and is under 16 years of age"*

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

D) Excluded relationship - R125(1)(b)

Regulation 125(1)(b) states:

> "*A foreign national shall not be considered a member of the spouse or common-law partner in Canada class by virtue of their relationship to the sponsor if*
>
> (b) *the foreign national is the sponsor's spouse or common-law partner, the sponsor has an existing sponsorship undertaking in respect of a spouse or common-law partner and the period referred to in subsection 132(1) in respect of that undertaking has not ended"*

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

E) Excluded relationship - R125(1)(c)(i)

Regulation 125(1)(c)(i) states:

> *"A foreign national shall not be considered a member of the spouse or common-law partner in Canada class by virtue of their relationship to the sponsor if*

(c) *the foreign national is the sponsor's spouse and*

(i) *the sponsor or the spouse was, at the time of their marriage, the spouse of another person"*

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

F) Excluded relationship – see R125 (1)(c)(ii)(A)

Regulation 125(1)(c)(ii)(A) states;

"A foreign national shall not be considered a member of the spouse or common-law partner in Canada class by virtue of their relationship to the sponsor if

(c) *the foreign national is the sponsor's spouse and*

(ii) *the sponsor has lived separate and apart from the foreign national for at least one year and*

(A) *the sponsor is the common-law partner of another person or the conjugal partner of another foreign national"*

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

G) Excluded relationship - see R125(1)(c)(ii)(B)

Regulation 125(1)(c)(ii)(b) states:

"A foreign national shall not be considered a member of the spouse or common-law partner in Canada class by virtue of their relationship to the sponsor if

(c) *the foreign national is the sponsor's spouse and*

(ii) *the sponsor has lived separate and apart from the foreign national for at least one year and*

(B) *the foreign national is the common-law partner of another person or the conjugal partner of another sponsor"*

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

H) Excluded relationship - R125(1)(d)

Regulation 125(1)(d) states:

"*A foreign national shall not be considered a member of the spouse or common-law partner in Canada class by virtue of their relationship to the sponsor if,*

(d) *subject to subsection (2), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined*".

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

I) Potential sponsor does not meet the requirements to be a sponsor - R130

Regulation 130(1) states:

> *"Subject to subsection (2), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of the family class or an application to remain in Canada as a member of the spouse or common-law partner in Canada class under subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who*
>
> *(a) is at least 18 years of age;*
>
> *(b) resides in Canada; and*
>
> *(c) has filed a sponsorship application in respect of a member of the family class or the spouse or common-law partner in Canada class in accordance with section 10."*

In your case, you have not shown that your potential sponsor meets these requirements because **[enter particulars of the situation]**.

J) Sponsor does not meet or continue to meet requirements of section R133 and R137 – R127

Regulation 127 states:

". . . a foreign national who makes an application as a member of the spouse or common-law partner in Canada class and their accompanying family members shall not become a permanent resident unless a sponsorship undertaking in respect of the foreign national and those family members is in effect and the sponsor who gave that undertaking still meets the requirements of section 133 [of the Regulations] and, if applicable, 137 [of the Regulations]".

In your case, you have not shown that you/your sponsor meet(s) this requirement because **[enter particulars of the situation]**.

K) Inadmissibility - R72(1)(e)(i)

Regulation 72(1)(e)(i) states:

"A *foreign national in Canada becomes a permanent resident if, following an examination, it is established that*

(e) *except in the case of a foreign national who has submitted a document accepted under subsection 178(2) [of the Regulations] or of a member of the protected temporary residents class,*

(i) *they and their family members, whether accompanying or not, are not inadmissible."*

In your case, you have not shown that you meet this requirement because **[enter particulars of the situation]**.

The section of the *Immigration and Refugee Protection Act* that describes grounds for inadmissibility to Canada is Division 4 of Part I. The text of this Division is attached to this letter.

Appendix F—Letter to applicant/Invitation to examination interview

This refers to your application for permanent residence submitted within Canada under the **spouse or common-law partner in Canada class.**

Previous correspondence informed you that you had met the eligibility requirements to apply for permanent resident status as a member of the **spouse or common-law partner in Canada class.** It also informed you that a final decision would not be made until you and, if applicable, all your family members both in Canada and abroad met all other requirements of the *Immigration and Refugee Protection Act* as they relate to health, security and criminality screening.

FOR the CPC-V:

Your application has been referred to the Canada Immigration Centre in (city/town). You will receive a letter from that office when they have scheduled your examination interview.

FOR CICs

A final determination on whether you meet statutory requirements can only be made at an examination interview. An interview has been scheduled for you on (date and time)at the Canada Immigration Centre,(address).

- **If you cannot attend this interview, please write to this office immediately, explaining why.**
- **Failure to appear for this interview may be perceived as lack of interest in permanent residence and your application could be refused.**
- **If you are currently in receipt of welfare or social services benefits, please write to this office as soon as possible explaining your situation.**

Please ensure that your sponsor attends the interview with you as there may be a requirement to question them.

Please note **that** if you believe you will require the services of an interpreter, it is your responsibility to hire/find an interpreter and ensure that he/she attends the interview with you.

Please bring with you:

- A valid passport, identity or travel document.
- The Right of Permanent Residence Fee (RPRF) (If not already submitted)
- A photograph for each person in your family that is being processed for permanent residence in Canada. These photos must meet the specifications outlined in Appendix C of the Application Guide [IMM 5289].

If you require clarification, more information, or wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site or telephone the Call Centre at 1- 888- 242-2100 (Toll Free)

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Appendix G—Letter to sponsor/Approval letter/Sponsorship eligibility

Office Client #

Address

City Date

Sponsor Name

Address

City

This letter refers to the application to sponsor a member of the spouse or common-law partner in Canada class you submitted to this office on behalf of **(Type name of applicant here)** and family.

You have met the requirements for eligibility as a sponsor. The application for permanent residence will be processed separately and the applicant will hear from this office shortly.

Your sponsorship agreement is a formal agreement between you and your family member. As a sponsor, you have made a commitment to provide for the lodging, care and support of your family member in the event that they are unable or unwilling to support themselves.

If your family member's application for permanent residence is approved, your obligation will begin the day on which your family member becomes a permanent resident of Canada. If your family member entered Canada on a temporary resident permit following an application for permanent residence, your obligation will begin on the date of that entry into Canada. Your obligations for your family member will end as follows:

Spouse, common-law partner.	Three years from the date on which permanent resident status is granted.
Dependent child of spouse or common-law partners, who is less than 22 years of age on the date permanent resident status is granted.	Ten years from the date on which permanent residence status is granted OR until the age of 25, whichever comes first.
Dependent child of spouses or common-law partners who is 22 years of age or older on the date permanent residence status is granted.	Three years from the date on which permanent residence status is granted.

Your obligations during this entire length of time are to provide your family member with:

- an adequate place to live.
- appropriate utilities for their accommodation.
- adequate food, clothing, household supplies, and personal requirements for day-to-day living.
- dental care, eye care and other health services not provided by public health care.

- financial assistance to ensure financial support is not required from any federal or provincial assistance program. This includes social assistance from any municipal program.

Be advised that if payments are made to your family member from any federal, provincial or municipal assistance program:

- you have not honoured your obligations as a sponsor and you will be in default of your sponsorship.

- all social assistance paid to the sponsored person or their family members becomes a debt owed by you and may be recovered through enforcement action by the Minister and the Province as appropriate.

- you will not be allowed to sponsor any other family member to Canada until the debt is repaid in full.

This letter is an outline of the basic requirements of the undertaking that you have signed as a sponsor and your formal obligations under that agreement. Please retain this letter for your personal records.

The client number shown in the upper right corner of this letter is your personal identification number. This number provides access to information on your file and as such, for your own protection, you should not allow any other person to use this number. If sending correspondence to Citizenship and Immigration Canada please include your personal identification number. Failure to include this number could result in the return of your correspondence unanswered.

If you require further assistance, please telephone the Call Centre at 1-888-242-2100 (Toll Free) and be prepared to quote your client number and your date of birth. General information and application kits may also be obtained through our Internet Web site at http://www.cic.gc.ca.

Please note that in keeping with the privacy laws, Citizenship and Immigration Canada representatives will only discuss your sponsorship application with you or the individual identified as your representative for whom you have submitted a signed consent allowing the release of your information.

In closing, ensure that you report any address changes for yourself or your spouse or common-law partner immediately to the Call Centre or change it through our on-line service. An incorrect or an old address may result in delays in the processing of your application.

Officer

Office

City

Appendix H—Public Policy Under 25(1) of IRPA to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class

1. Purpose

The Minister has established a public policy under subsection 25(1) of the *Immigration and Refugee Protection Act* (IRPA), setting the criteria under which spouses and common-law partners of Canadian citizens and permanent residents in Canada who do not have legal immigration status will be assessed for permanent residence. The objective of this policy is to facilitate family reunification and facilitate processing in cases where spouses and common-law partners are already living together in Canada.

2. Acts and Regulations

IRPA subsections 21(1) (relating to status only) and 25(1); IRP *Regulations* subsections 124(b) and 72(1)(e)(i) (relating to status only).

3. Policy

CIC is committed to family reunification and facilitating processing in cases of genuine spouses and common-law partners already living together in Canada. CIC is also committed to preventing the hardship resulting from the separation of spouses and common-law partners together in Canada, where possible.

This means that spouses or common-law partners in Canada, regardless of their immigration status, are now able to apply for permanent residence from within Canada in accordance with the same criteria as members of the *Spouse or Common-law Partner in Canada* class. This facilitative policy applies **only to relationships in which undertakings of support have been submitted.**

Undertakings are a requirement under this public policy largely because undertakings can be an indication of the applicant's links with relatives in Canada, which is, in turn, a factor that adds to the degree of hardship involved in the separation of spouses and common-law partners. Undertakings are also a requirement in the *Spouse or Common-law Partner in Canada* class.

A25 is being used to facilitate the processing of all genuine out-of-status spouses or common-law partners in the *Spouse or Common-law Partner in Canada* class where an undertaking has been submitted. Pending H&C spousal applications with undertakings will also be processed through this class[1]. **The effect of the policy is to exempt applicants from the requirement under R124(b) to be in status and the requirements under A21(1) and R72(1)(e)(i) to not be inadmissible due to a lack of status; however, all other requirements of the class apply** and applicants will be processed based on guidelines in IP2 and IP8.

[1] See Appendices A and B for further information on how to process pending cases.

Lack of Status

For the purposes of the current public policy only, persons with a "lack of status" refers to those in the following situations:

- persons who have overstayed a visa, visitor record, work permit or student permit;
- persons who have worked or studied without being authorized to do so under the Act;
- persons who have entered Canada without the required visa or other document required under the Regulations;
- persons who have entered Canada without a valid passport or travel document (provided valid documents are acquired by the time CIC seeks to grant permanent residence).

NOTE: If a valid passport or travel document is not acquired by the applicant by the time of grant of permanent residence, the applicant may be found inadmissible to Canada. Cases considered under this public policy are **not eligible** for a passport waiver. Persons seeking this waiver must apply through the regular H&C stream.

As a general rule, CIC should accept only validly issued and non-expired passports for the purposes of the grant of permanent residence in R72. This having been said, the use of a passport which has expired during the processing of an application may be appropriate to fulfill the R72 requirements when no identity issues remain.

"Lack of status" does not refer to any other inadmissibilities including:

- failure to obtain permission to enter Canada after being deported.
- persons who have entered Canada with a fraudulent or improperly obtained passport, travel document or visa and who have used the document for misrepresentation under IRPA.

NOTE: For greater certainty, persons will be excluded from being granted permanent residence under this public policy if they used a fraudulent or improperly obtained passport, travel document or visa to gain entry to Canada and this document was not surrendered or seized upon arrival and the applicant used these fraudulent or improperly obtained documents to acquire temporary or permanent resident status. Other cases may be refused for misrepresentation if there is clear evidence of misrepresentation under IRPA in accordance with the Department's guidelines.

- persons under removal orders or facing enforcement proceedings for reasons other than the above-noted lack of status reasons.

NOTE: Most persons who are under a removal order or facing enforcement proceedings **are eligible** for initial consideration under the public policy as they meet the criteria in R124... They cannot however receive a positive **final decision or acceptance** of their case (i.e., grant of permanent residence) as they will be found inadmissible in the step two examination of their case.

Applicants who do not have an undertaking of support submitted by their Canadian citizen or permanent resident spouse or partner do not qualify to be processed under this public policy. These applicants have to be processed under general H&C provisions, as outlined in IP5, and are required to demonstrate unusual and undeserved or disproportionate hardship, if required to

leave Canada and apply for processing abroad. They also do not benefit from priority processing or other exemptions available in the *Spouse or Common-law Partner in Canada* class.

The Government of Canada remains vigilant in identifying fraudulent relationships, and identifying those involved in such relationships for enforcement action.

4. Public interest

The Minister has determined that it is in the public interest to assess all foreign nationals, regardless of status (in spousal or common-law relationships with Canadian citizens or permanent residents), under the provisions of the *Spouse or Common-law Partner in Canada* class if they meet the following conditions:

- Have made an application for permanent residence either on H&C grounds or via the *Spouse or Common-law Partner in Canada* class;
- Are the subjects of a sponsorship undertaking that is made by their spouse or common-law partner.

Note: This initial step is only an administrative screening step to determine in which stream the applicant should be assessed—H&C or in the *Spouse or Common-law Partner in Canada* class. At this point, officers are **not** assessing the validity of the sponsorship or the *bona fides* of the relationship. These assessments will be done under the general provisions of the *Spouse or Common-law Partner in Canada* class, as outlined in IP2 and IP8.

Accordingly, the Minister has decided to use his power under A25 to exempt a foreign national from having to meet the requirements in A21(1) and R72(1)(e)(i), only as they relate to inadmissibility for lack of status (and related documents), and R124(b), so as to enable such foreign nationals to become permanent residents **if and only if** they meet all other requirements of the *Spouse or Common-law Partner in Canada* class and are not otherwise inadmissible. These requirements consist of:

- A determination that the sponsor meets eligibility requirements including having submitted a valid sponsorship;
- A *bona fide* relationship; and
- Cohabitation with the sponsor.

Once applicants are determined to meet these criteria, they are eligible to apply for work and study permits.

Applicants who meet these criteria will be processed as members of the *Spouse or Common-law Partner in Canada* class and will benefit from all applicable exemptions. This includes an exemption from the requirement not to be inadmissible on health grounds when there is a risk that their health condition will cause excessive demand (EDE) on health or social services (A38(1)(c)/R1(1)) and the sponsor's requirement to meet minimum necessary income (also known as LICO). These applicants also have the ability to include family members here and abroad on their applications (concurrent processing).

However, other inadmissibility grounds of IRPA continue to apply. Criminal and security prohibitions are not waived under this public policy, nor is the public health risk assessment.

5. Procedures

A. APPLICATIONS:

i. Previously refused applications

Because the legal principle of *functus officio* does not permit the Department, in the present context, to revisit finalized applications, this change is not retroactive; therefore, foreign nationals previously refused under H&C or in the *Spouse or Common-law Partner in Canada* class will have to reapply in the *Spouse or Common-law Partner in Canada* class. These applicants will be required to pay the appropriate processing fee.

ii. H&C assessments not completed prior to removal

Cases involving spouses or common-law partners in which the H&C assessment was not completed prior to removal (i.e. the foreign national partner is now overseas awaiting a final H&C decision), will also be facilitated in a manner consistent with this policy intent. In these situations, as long as a valid undertaking has been submitted (voluntarily or in response to a CIC request), the case will fall under this public policy: the existence of a marriage or common-law relationship will be a determinative hardship factor.

In cases where undertakings have not been submitted, officers should contact the applicant, inform of the existence of this public policy, and provide an opportunity for the applicant to have a sponsorship submitted by the sponsor.

For cases accepted under this public policy, officers should follow procedures in **IP5 – 14.5 – Process for positive H&C decision after removal**.

iii. Pending applications (received prior to February 18, 2005)

This public policy applies to all pending spousal applications that meet the criteria, both H&C and applications in the *Spouse or Common-law Partner in Canada* class. This includes applications for which the assessment has not yet started and all applications where the refusal letter has not yet been sent out, whether at the CPC-Vegreville or at any of the regional offices. No additional fees are required to assess existing cases under the provisions of the public policy.

H&C
In order for an application to be processed under this public policy, the person must have made an application pursuant to subsection 25(1) of IRPA and have submitted an undertaking. Pursuant to section 66 of the *Regulations*, the application must be made in writing and accompanied by an application to remain in Canada as a permanent resident. Applicants in Canada will have submitted their application using the form IMM 5001.

Spouse or Common-law Partner in Canada class
Pending applications made under the provisions of the *Spouse or Common-law Partner in Canada* class in which the applicant does not have valid immigration status will also be eligible for this public policy. In these cases, provided the applicant meets all other provisions of the class, requirements of status in A21(1), R124(b), and R72(1)(e)(i) will be waived through the public policy by A25(1). No additional H&C application is required.

iv. New applications (received on or after February 18, 2005)

New spousal applicants, **whether with valid immigration status or without status**, are instructed to apply using the *Spouse or Common-law Partner in Canada* class application kit if they meet the criteria for this public policy and wish to be considered under this policy. In cases where spousal applicants do not meet the criteria, they will be instructed to apply in the regular H&C stream.

In cases where spouses mistakenly apply using the H&C kit, provisions of this public policy will apply as long as applicants meet the criteria (including a valid sponsorship) and confirm that they wish to have their applications assessed under the provisions of the *Spouse or Common-law*

Partner in Canada class. Please see the section entitled **Appendix: Case Type List for Application of the Public Policy** for a summary of case types and associated guidelines.

B. CONFIRMATION OF SPONSORSHIP SUBMITTED:

To determine if an H&C spousal applicant should be considered under this policy, it must first be determined if the sponsor has submitted a (3-year) sponsorship on behalf of the applicant. Both HC1 and HC2 cases are eligible for consideration.

In HC1 spousal cases, officers should contact the applicant and inform him/her of the public policy and provide the applicant with a reasonable time to submit a sponsorship, if the applicant wishes. If a sponsorship is still not submitted:

Scenario	Action
Applicant chose not to submit a sponsorship	Assess these applicants under general H&C provisions in IP5 (separation from a partner **not** automatic hardship).
Applicant wanted to submit a sponsorship, but sponsor was ineligible	Assess these applicants under general H&C provisions in IP5 (separation from a partner **not** automatic hardship). Please note that, because of the desire to sponsor, and depending on the circumstances of the case, these applicants may warrant favourable consideration.

If it is determined that a sponsorship has been submitted, the officer will:

- Assess the applicant following normal procedures in IP2 and IP8 on the *Spouse or Common-law Partner in Canada* class; and

- If it is determined that the applicant meets the other requirements of the *Spouse or Common-law Partner in Canada* class (a determination that the sponsor meets eligibility requirements, a bona fide relationship, and cohabitation with the sponsor), the requirement for the applicant to have valid immigration status (R124(b)) and the requirement not to be inadmissible for lack of status (A21(1) and R(72)(1)(e)(i)) is waived by A25 under this public policy.

- Other inadmissibility grounds of IRPA continue to apply. Therefore, once the lack of status has been waived, assess the applicant following general admissibility procedures in IP2 and IP8. For further information, see **Section D – APPLICANTS WHO MEET THE ELIGIBILITY REQUIREMENTS FOR THIS PUBLIC POLICY.**

NOTE: TRP holders holding a TRP because of lack of status also qualify for this public policy. This also applies in cases where applicants with pending applications in the *Spouse or Common-law Partner in Canada* class were given a TRP at a mission abroad or at a port of entry for lack of status.

C. APPLICANTS WHO DO NOT MEET THE ELIGIBILITY REQUIREMENTS FOR THIS PUBLIC POLICY:

i. Pending H&C applications

Applicants who do not meet the eligibility requirements, or where sponsors do not meet the sponsorship eligibility criteria, do not qualify to be processed under this public policy. These applicants will continue to be required to demonstrate unusual and undeserved or disproportionate hardship if required to leave Canada to apply from processing abroad. They will also not benefit from priority processing.

Note: In some cases, officers may begin assessing H&C applicants in the *Spouse or Common-law Partner in Canada* class, and then determine that the applicant does not meet the requirements of the *Spouse or Common-law Partner in Canada* class (e.g., sponsor not eligible). In these cases, because the applicant originally applied for H&C consideration, the applicant is still entitled to an H&C decision.

Therefore, officers should reassess these cases using general procedures in IP5. Because these applicants then do not meet the requirements of this public policy, they will be required to demonstrate unusual and undeserved or disproportionate hardship to the H&C decision-maker.

Some applicants may wish to have a sponsorship submitted to support their application but their sponsor is not eligible (e.g., on social assistance). In some cases, depending on the circumstances of the case and the reasons for sponsorship ineligibility, while they will not qualify under this public policy, the indication of support by a spouse or common-law partner may be considered a positive H&C factor.

ii. New H&C applications

In order to benefit from this public policy, applicants should have applied in the *Spouse or Common-law Partner in Canada* class. Therefore, officers should contact new applicants who apply under H&C to determine if they wish to be considered under this public policy.

If the applicant does not wish to be considered under this public policy, the application should be assessed using the general provisions of IP5 (separation from a partner not automatic hardship).

If the applicant wishes to have the application assessed under this public policy, the officer should assess the application under the provisions of the *Spouse or Common-law Partner in Canada* class. If it is determined that the applicant meets all requirements of the class, the requirement for the applicant to have valid immigration status (R124(b)) and the requirement not to be inadmissible for lack of status (A21(1) and R(72)(1)(e)(i)) are waived by A25 under this public policy.

However, if, after the A25 waiver, these applicants are refused for not meeting the requirements of the *Spouse or Common-law Partner in Canada* class, they are not entitled to a reassessment on H&C grounds, but may reapply for H&C consideration.

iii. New and Pending *Spouse or Common-law Partner in Canada* class applications

For applicants in status, applications should be assessed using normal procedures in IP2 and IP8. For applicants out of status, if the only issue preventing acceptance of the case is the applicant's lack of status:

- Assess using normal procedures in IP2 and IP8.
- If the applicant meets all other requirements of the *Spouse or Common-law Partner in Canada* class, their requirements for status and the inadmissibility related to the lack of status is waived by this public policy under A25.
- If these applicants are refused for not meeting the requirements of the *Spouse or Common-law Partner in Canada* class, they are **not** entitled to a reassessment on H&C grounds, but may reapply for H&C consideration.

For a detailed listing of case types and associated guidelines, please see the table entitled **Appendix: Case Type List** at the end of this document.

iv. Fraudulent Relationships

Applicants whom CIC determines entered into a fraudulent relationship (R4) or dissolved a relationship (R4.1) for the purpose of gaining immigration status in Canada will be refused. These cases will be flagged and sent to CBSA on a priority basis for enforcement action.

D. APPLICANTS WHO MEET ELIGIBILITY REQUIREMENTS FOR THIS PUBLIC POLICY:

Once the officer has confirmed the existence of an application supported by a sponsorship, the officer will assess the application to remain in Canada as a permanent resident according to the *Regulations* of the *Spouse or Common-law Partner in Canada* class. The officer will ensure the applicant has an eligible sponsor and valid sponsorship, and then determine whether the applicant and any family members are inadmissible.

Because these applicants are being assessed according to the *Regulations* of the *Spouse or Common-law Partner in Canada* class, inadmissibility based on excessive demand on health and social services related to health (A38(1)(c)/R1(1)) for the applicant and family members who qualify under this public policy do not apply. The minimum necessary income (LICO) exemption also applies. Lastly, these applicants will benefit from the fee remission option available to this class if applicable. See Appendix A for details.

These applicants will also benefit from priority processing and the ability to concurrently process family members overseas subject to examination requirements as outlined in IP8 (see section 5.33).

Other inadmissibility grounds of IRPA continue to apply. Criminal and security prohibitions are not waived under this public policy, nor is the public health risk assessment. The applicant must intend to continue to reside in Canada with their spouse or partner and be able and willing to support themselves and any accompanying family members.

If the applicant and any family members are determined not to be otherwise inadmissible, the application to remain in Canada as a permanent resident will be approved. If the applicant and any family members are determined to be inadmissible (other than from a lack of status), the application must be refused.

i. Quebec

Eligible applicants who reside in the province of Quebec are treated according to the *Regulations* of the *Spouse or Common-law Partner in Canada* class. They must meet Quebec's sponsorship requirements.

Applicants who are **not** successful in the *Spouse or Common-law Partner in Canada* class but request permanent residence under H&C and reside in the province of Quebec must meet the province's selection criteria pursuant to 25(2) of IRPA.

In these two cases, the officer should forward the file to MICC. The officer should continue processing the file once the province of Quebec has made a decision within their jurisdiction.

E. PRIORITY PROCESSING

CIC has committed to processing all spousal applications, including the ones under this public policy, on a priority basis.

F. ADMINISTRATIVE DEFERRAL OF REMOVAL

The Canada Border Services Agency has agreed to grant a temporary administrative deferral of removal to applicants who qualify under this public policy. The deferral will not be granted to applicants who:

- Are inadmissible for security (A34), human or international rights violations (A35), serious criminality and criminality (A36), or organized criminality (A37);
- Are excluded by the Refugee Protection Division under Article F of the Geneva Convention;
- Have charges pending or in those cases where charges have been laid but dropped by the Crown, if these charges were dropped to effect a removal order;

- Have already benefited from an administrative deferral of removal emanating from an H&C spousal application;
- Have a warrant outstanding for removal;
- Have previously hindered or delayed removal; and
- Have been previously deported from Canada and have not obtained permission to return.

For those applicants who are receiving a pre-removal risk assessment (PRRA), the administrative deferral for processing applicants under this H&C public policy will be in effect for the time required to complete the PRRA (R232). Applicants who have waived a PRRA or who are not entitled to a PRRA will receive an administrative deferral of removal of 60 days.

Applicants who apply under this public policy after they are deemed removal ready by CBSA will not benefit from the administrative deferral of removal except in the limited circumstances outlined below (transitional cases).

When is a client removal ready?

For the purposes of this public policy, by the time an applicant attends a pre-removal interview, he/she is generally removal ready. This means that a client who has been called to a pre-removal interview by any means (letter, call etc.) and who has not already applied as a spousal H&C applicant or a *Spouse or Common-law Partner in Canada* class applicant, cannot, from the point they are called to the interview forward, benefit from an administrative deferral of removal as outlined in this public policy except in the limited circumstances outlined below (transitional cases).

As is the case now, clients with a pending H&C application who are removed from Canada while their application is being considered will be able to return to Canada if a positive decision is rendered.

Treatment of the deferral of removal for clients who have waived or are not eligible for a PRRA

Type of Case	Eligible for deferral?	Comments	Deferral counted from which day?
Client attended a pre-removal interview **after** February 18, 2005 and applied for permanent residence **after** February 18, 2005 but **before** attending the pre-removal interview.	Yes if sponsorship application received at CIC by the time client is called for a pre-removal interview. Clients in this group for whom CIC has received an application for permanent residence but not a sponsorship application by the time they are invited to their pre-removal interview are not eligible for a deferral (i.e., HC1 applicants). Clients in this group who apply under this public policy after they are deemed removal ready by CBSA will not benefit from the administrative deferral of removal.	CIC will contact all HC1 clients with a spousal connection to see if they want to submit a sponsorship and all H&C clients with a spousal connection to see if they wish to be considered under the public policy. See Appendix A for details.	The calculation of the 60 days begins the day the client attends their pre-removal interview and is given the option to have a PRRA but waives or is not eligible for a PRRA.
Client attended pre-removal interview **after** February 18, 2005 and applied for permanent residence **after** February 18, 2005 and **after** attending the pre-removal interview.	**No**. Clients in this group are deemed removal ready by CBSA will **not** benefit from the administrative deferral of removal.		No deferral
Client attended a pre-removal interview **after** February 18, 2005 and applied for permanent residence **before** February 18, 2005	Yes if CIC has received a sponsorship application or if CIC has not yet contacted the client to see if they want to submit a sponsorship (applicable only to HC1 cases). This means that HC1 cases with a spousal connection received before February 18, 2005 will be eligible for the deferral even if there is no sponsorship on file. See exception in comments section.	If the notes to file indicate that the client has been contacted (in HC1 cases) and does not wish to submit a sponsorship or has failed to respond to CIC's request for a sponsorship within the specified time period the deferral would **not** apply.	The calculation of the 60 days begins the day the client attends their pre-removal interview and is given the option to have a PRRA but waives or is not eligible for a PRRA.

Transitional Cases (clients invited for pre-removal interview before February 18, 2005)

Type of Case	Eligible for deferral?	Comments	Deferral counted from which day?
Client attended a pre-removal interview **before** February 18, 2005 and applied for permanent residence **before** February 18, 2005 (transitional case)	Yes. These transitional case clients will be able to benefit from an administrative deferral of removal even if they are removal ready (and have already benefited from a PRRA) if eligible for deferral of removal. These clients are eligible for the deferral of removal both if CIC has received a sponsorship application or if CIC has not yet contacted the client to see if they want to submit a sponsorship (applicable only to HC1 cases). This means that HC1 cases with a spousal connection received before February 18, 2005 will be eligible for the deferral even if there is no sponsorship on file. See exception in comments section.	"Transitional cases" are those for which the clients attended a pre-removal interview before the announcement of the public policy on February 18, 2005. CIC will contact clients as needed to see if they want to submit a sponsorship or be considered under the public policy. See Appendix A for details. If the notes to file indicate that the client has been contacted (in HC1 cases) and does not wish to submit a sponsorship or has failed to respond to CIC's request for a sponsorship within the specified time period the deferral would **not** apply.	The calculation of the 60 days begins from the "cut-off" date August 26, 2005.
Client attended a pre-removal interview **before** February 18, 2005 and applied for permanent residence **after** February 18, 2005 (transitional case)	These transitional case clients may be able to benefit from an administrative deferral of removal even if they are removal ready (and have already benefited from a PRRA). However, they are only eligible to benefit if CIC has received an application for permanent residence and a sponsorship application before the cut off date August 26, 2005. Otherwise they are not eligible for the deferral of removal.	"Transitional cases" are those for which the clients attended a pre-removal interview before the announcement of the public policy on February 18, 2005. CIC will contact clients as needed to see if they want to submit a sponsorship or be considered under the public policy. See Appendix A for details. If the notes to file indicate that the client has been contacted (in HC1 cases) and does not wish to submit a sponsorship or has failed to respond to CIC's request for a sponsorship within the specified time period the deferral would **not** apply.	The calculation begins from the cut off date August 26, 2005 if the client has applied by that date. Otherwise they are not eligible for the deferral.

Individuals should keep copies of their application forms, fee remittances and mail receipt as applicable, as proof they have filed an application. Such proof in no way guarantees the grant of a deferral of removal (where relevant) however.

Where the deferral period applies, CIC will make best efforts to process spousal sponsorship cases to a step-one decision within 60-day period. (A step-one decision occurs after CIC has received an application which contains evidence that the applicant is married or in a common-law relationship with an eligible sponsor, is living with that sponsor and that the sponsorship submitted is a valid one.). After a positive step-one decision, the R233 stay will be invoked until such time as

CIC makes a final decision on whether to grant permanent residence. More details on the regulatory stay are found below.

Regulatory Stay of Removal

The regulatory stay outlined in R233 will apply to cases considered under the public policy after a positive "step one" or "approval in principle" decision has been made under the regular procedures for the *Spouse or Common-law Partner* class.

This regulatory stay applies to removal orders if the Minister is of the opinion under subsection 25(1) of the Act that H&C or public policy considerations exist. For cases considered under the public policy, once a positive step one decision is made under the regular procedures for the class (i.e., CIC has received an application which contains evidence that the applicant is married or in a common-law relationship with an eligible sponsor, is living with that sponsor and that the sponsorship submitted is a valid one), an R233 stay will be invoked and will remain in place until a decision on whether to grant permanent residence is made.

6. Codes

Applications processed under this public policy (accepted or refused) must be coded in FOSS as FCH. Applications that are not approved under this public policy but are later approved on H&C grounds should be coded HC1, or, in rare instances, HC2 (depending on if a sponsorship has been submitted). For statistical purposes, cases coded FCH should be counted as H&C cases for grant of permanent residence. However, FCH cases are considered family class cases for all other purposes including sponsorship enforcement.

7. Questions

Questions on this public policy may be directed to Rell DeShaw at Selection Branch at (613) 954-9153.

8. Appendix A: Case Type List for Application of the Public Policy

Code	Meaning
HC1	H&C - no sponsorship
HC2	H&C - with sponsorship
FC1	Family Class – Spouse
FCC	Family Class – Common-law Partner
FCH	Cases accepted/refused under this public policy

A. H&C CASES

Type of Case	Action
Previously refused HC1 or HC2 spousal case	• Because the legal principle of *functus officio* does not permit the Department, in the present context, to revisit finalized applications, this change is not retroactive; therefore, refused applicants may re-apply.
Pending HC1 application with spousal connection	• Contact client to inform of public policy: if sponsorship is submitted, applicant eligible for consideration according to the regulations of the Spouse or Common-law Partner in Canada class (FCH). • If sponsorship submitted and applicant otherwise meets eligibility criteria, assess under provisions of Spouse or Common-law Partner in Canada class.

Type of Case	Action
	• If sponsorship not subsequently submitted, there are two possible scenarios: • Applicant chose not to submit a sponsorship. Assess these applicants under general H&C provisions in IP5 (separation from a partner not automatic hardship). (HC1) • Applicant wanted to submit a sponsorship, but sponsor was ineligible. Assess these applicants under general H&C provisions in IP5 (separation from a partner not automatic hardship). However, because of the desire to sponsor, these applicants may warrant favourable consideration. This is depending on the circumstances of the case and up to the officer's discretion. (HC1) • If it initially appears that the applicant meets the requirements of the Spouse or Common-law Partner in Canada class, but it is later determined that the applicant is ineligible for the class (e.g. invalid sponsorship), reassess the application under general IP5 provisions. This is because the applicant originally applied for H&C consideration. However, because these applicants do not meet the requirements of this public policy, they are required to demonstrate unusual and undeserved or disproportionate hardship to the H&C decision-maker. (HC1) • Refused applicants who were considered both under public policy provisions and general H&C procedures should be informed of this fact in the refusal letter. • Clients are **not** eligible for the refund provision.
Pending HC2 application	• If sponsorship submitted and applicant otherwise meets eligibility criteria, assess under provisions of *Spouse or Common-law Partner in Canada* class. (FCH) • If it initially appears that the applicant meets the requirements of the *Spouse or Common-law Partner in Canada* class, but it is later determined that the applicant is ineligible for the class (e.g. invalid sponsorship), reassess the application under general IP5 provisions. This is because the applicant originally applied for H&C consideration. However, because these applicants do not meet the requirements of this public policy, they are required to demonstrate unusual and undeserved or disproportionate hardship to the H&C decision-maker. (HC1) • Refused applicants who were considered both under public policy provisions and general H&C procedures should be informed of this fact in the refusal letter. • Clients are **not** eligible for the refund provision.
New HC1 spousal application	• Contact client to inform of public policy: if the applicant agrees to have the application assessed under the provisions of the *Spouse or Common-law Partner in Canada* class, and submits a sponsorship, applicant is eligible for consideration. • If valid sponsorship submitted and the applicant agrees to be assessed under the provisions of the *Spouse or Common-law Partner in Canada* class, assess under provisions of this class. • If the applicant is found ineligible for the *Spouse or Common-law Partner in Canada* class (i.e. invalid sponsorship), refuse the application. Clients are not eligible for the refund provision. If they wish, they may reapply for H&C consideration. Because they agreed to be assessed under the provisions of the *Spouse or Common-law Partner in Canada* class, they

Type of Case	Action
	are not entitled to an H&C reassessment. • If valid sponsorship not submitted or the applicant does not agree to have the application assessed under the provisions of the *Spouse or Common-law Partner in Canada* class, assess under general H&C provisions (separation from a partner **not** automatic hardship). • For those applicants who wished to submit a sponsorship but did not qualify to do so, or who submitted a sponsorship but were found to be ineligible (i.e. invalid sponsorship), this may be considered a positive H&C factor, depending on the reasons for ineligibility. (HC1)
New HC2 spousal application	• Contact client to determine if the applicant wishes to be assessed under the provisions of the *Spouse or Common-law Partner in Canada*. • If the applicant does not wish to be considered under the provisions of the *Spouse or Common-law Partner in Canada*, the applicant is not eligible for this public policy and should be assessed under general IP5 guidelines. (HC2) • If applicant wishes to be considered under the public policy, assess the application under the provisions of the *Spouse or Common-law Partner in Canada* class. (FCH) • If the applicant is found ineligible under the regulations of the *Spouse or Common-law Partner in Canada* class (i.e. invalid sponsorship), refuse the application. If they wish, they may reapply for H&C consideration. (HC1) Because they agreed to be assessed under the provisions of the *Spouse or Common-law Partner in Canada* class, they are not entitled to an H&C reassessment. Client is eligible for refund provision.

B. SPOUSE OR COMMON-LAW PARTNER IN CANADA CLASS CASES

In all types of cases, clients are eligible for refund provision if they have elected for this option.

Type of Case	Action
Previously refused FC1/FCC cases for being out of status	• Because the legal principle of *functus officio* does not permit the Department, in the present context, to revisit finalized applications, this change is not retroactive; therefore, applicants may re-apply for H&C consideration or in the *Spouse or Common-law Partner in Canada* class depending on the case.
Pending FC1/FCC case (in status)	• Assess using normal procedures in IP2 and IP8. • If these applicants are refused for not meeting the other requirements of the *Spouse or Common-law Partner in Canada* class, they are not entitled to a reassessment on H&C grounds, but may reapply for H&C consideration.
Pending FC1/FCC case (out of status)	• Assess using normal procedures in IP2 and IP8.

Type of Case	Action
	• If the applicant meets all other requirements of the *Spouse or Common-law Partner in Canada* class, their requirements for status and the inadmissibility related to the lack of status will be waived by the public policy under A25. (FCH) • If the applicant does not meet the other requirements of the *Spouse or Common-law Partner in Canada* class, refuse the application. These applicants are not entitled to a reassessment on H&C grounds, but may reapply for H&C consideration.
New FC1/FCC case (in status)	• Assess using normal procedures in IP2 and IP8. • If the applicant does not meet the other requirements of the *Spouse or Common-law Partner in Canada* class, refuse the application. These applicants are not entitled to a reassessment on H&C grounds, but may reapply for H&C consideration.
New FC1/FCC case (out-of-status)	• Assess using normal procedures in IP2 and IP8. • If the applicant meets all other requirements of the *Spouse or Common-law Partner in Canada* class, their requirements for status and the inadmissibility related to the lack of status will be waived by the public policy under A25. (FCH) • If the applicant does not meet the other requirements of the *Spouse or Common-law Partner in Canada* class, refuse the application. These applicants are not entitled to a reassessment on H&C grounds, but may reapply for H&C consideration.

9. Appendix B – Treatment of Pending H&C Cases (received prior to February 18, 2005)

Officers should use a broad interpretation of the term “pending” under this public policy. This means that the term pending should potentially include **all** cases pending either an H&C decision (step one) or a final decision (step two) provided the application was received prior to February 18, 2005. The rationale behind this broad interpretation relates to the Department’s goal to process as many eligible clients as possible under the provisions of the public policy and its commitment to consider all pending H&C applications with sponsorships under the public policy.

For administrative simplicity however, it is recommended that officers not disturb existing positive H&C (step one) decisions to revisit them under the public policy unless it is clear that the client will either:

- be refused on an admissibility ground (at step two) from which they would otherwise be exempted under the provisions of the *Spouse or Common-law Partner in Canada* class (i.e., excessive demand and minimum necessary income requirement) and thus benefit under the public policy or

- benefit from the concurrent processing of family members under the public policy.

What this means in practical terms is that for clients who have already received a step one or H&C decision, officers should continue to process these cases to completion using the guidance

in IP5 unless it is clear that the client would receive a benefit (as outlined above) by being processed under the public policy (*Spouse or Common-law Partner in Canada* class provisions)

Appendix I—Public Policy to allow applicants in the Spouse or Common-law Partner in Canada Class to add, during processing, declared family members to their application for permanent residence (Regulation 128(b))

1. Purpose

In April of 2004, amendments to the *Immigration and Refugee Protection Regulations* (IRP Regulations) were implemented, including an amendment deleting regulation 121(b).

This regulation, related to overseas Family Class processing, was removed as it was inconsistent with other classes and it was also an impediment to family reunification. R121(b) prevented persons who are listed as non-accompanying family members on overseas Family Class applications for permanent residence from becoming accompanying family members during the course of processing.

The Department neglected to delete the inland equivalent of R121(b) - Regulation 128(b). This oversight is intended to be corrected in an upcoming round of regulatory changes but, in the meantime, a public policy is needed to effect this equivalent change.

The Minister has therefore established by this public policy under subsection 25(1) of the *Immigration and Refugee Protection Act* (IRPA) that applicants will be exempt from the criteria of regulation 128(b) of the IRP Regulations.

2. Acts and Regulations

IRPA subsection A25(1); IRP Regulations subsection 128(b).

3. Policy

For applicants in the Spouse or Common-law Partner in Canada Class, the Minister will grant an exemption from the requirement of Regulation 128(b) that persons must have requested permanent residence **at the time** of application by the principal applicant. This means that in situations where family members requested permanent residence status **during processing** of the application, the family members may also be considered for permanent residence.

Note that this public policy does not remove the requirement to have all family members declared and examined at the time of the principal applicant's application for permanent residence.

4. Definitions

Given the definition of "family member" under Regulation 1(3), the term "family member" under Regulation 128(b) would mean:

a) a dependent child of the principal applicant; and,

b) a dependent child of a dependent child referred to in a).

5. Procedures

i. Previously refused applications

The legal principle of *functus officio* does not permit the Department, in the present context, to revisit finalized applications. Family members previously prevented from requesting permanent residence during processing of the principal applicant's application for permanent residence must

apply for a new for permanent residence. Once the principal applicant becomes a permanent resident, the family member may apply to be sponsored in the overseas family class or apply to immigrate through other means. Normal rules relating to dependency continue to apply.

ii. Pending applications

All pending applications should be processed under this public policy. Pending applications are defined as those for which permanent residence has not yet been granted.

6. Questions

Questions on this public policy may be directed to Social Policy and Programs, Immigration Branch.