Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

IP 8

Spouse or Common-law partner in Canada Class

Canada

Updates to chapter 4
Listing by date: 4
1 What this chapter is about 8
1.1 Where to find information on related procedures 8
1.2 Which CIC offices this chapter involves 8
2 Program objectives 8
3 The Act and Regulations 9
3.1 Forms related to the spouse or common-law partner in Canada class 11
4 Instruments and delegations 12
5 Departmental policies 12
5.1 Joint applications for sponsorship and permanent residence 12
5.2 Generic application form for Canada [IMM 0008E] and who must complete it 12
5.3 Application made 13
5.4 When does an application exist? 13
5.5 Application transfer 13
5.6 Application processing times 13
5.7 Sponsors 13
5.8 Ineligible sponsors 14
5.9 Dependent children 14
5.10 Accompanying dependent children 16
5.11 Dependent children living outside Canada 16
5.12 Dependent children in the sole custody of a former or separated spouse/common-law partner 16
5.13 Lock-in age for dependent children 18
5.14 Requirements to be granted permanent residence in the spouse or common-law partner in-Canada class 20
5.15 When requirements have to be met 22
5.16 Previous spouse or common-law partner 23
5.17 Permit holders 24
5.18 Spouse or common-law partner who is a refugee claimant 24
5.19 Assessing the relationship 25
5.20 Conjugal relationship 25
5.21 Marriage 26
5.22 Divorce or annulment of a previous marriage 26
5.23 Common-law partners 27
5.24 Sponsor or common-law partners still married to someone else 27
5.25 Excluded relationships of convenience 27
5.26 Excluded relationships 28
5.27 Lawful temporary resident status in Canada 31
5.28 Applicants who leave Canada before a final decision is taken on their application for permanent residence 32
5.29 Dual intent 33
5.30 Dual intent – Extension of temporary status 33
5.31 Admissibility 33
5.32 Medical examinations 33
5.33 Criminal and security checks 34
5.34 Criteria for referral to an inland CIC 34
5.35 Cases handled by CPC-M without referral to CIC 34
5.36 Review by local CIC 35
5.37 Work and study permits 35
5.38 Withdrawal of Sponsorship undertaking 36

5.39 Quebec cases – Federal sponsorship criteria not met 36
5.40 Quebec cases – Federal sponsorship criteria met 37
6 Definitions 38
7 Roles and responsibilities 38
7.1 Roles and responsibilities of sponsors 38
7.2 Roles and responsibilities of the spouse or common-law partner 38
7.3 Roles and responsibilities of the CPC-M 39
8 Initial receipt and coding 40
8.1 Coding – Immigration category and codes for GCMS 40
9 Processing of sponsorship application 41
9.1 Sponsorship requirements 41
9.2 Sponsorship requirement: Filed an application in respect of a member of the Spouse or Common-law partner in Canada class 42
9.3 Co-signers 43
10 Assessing applicants 43
10.1 Assessment of relationship 43
10.2 Assessing for relationship of convenience 45
10.3 Assessing dependent children 46
10.4 Admissibility assessment 48
10.5 Assessment of adequate arrangements 50
11 Assessment of application for permanent residence 50
11.1 Suspension of processing 51
12 Legal temporary resident status in Canada 51
13 Initial stage of approval 53
14 Procedures - Quebec Cases 53
14.1 Question 1- IMM 1344EA: Choice is "To withdraw your sponsorship" if found ineligible to sponsor 53
14.2 Question 1- IMM 1344AE: Choice is “To proceed with the application for permanent residence” if found ineligible to sponsor 55
15 Humanitarian and Compassionate Consideration is Requested 56
15.1 Applications processed in the Spouse or Common-law Partner in Canada class 56
15.2 Decision-making 58
15.3 Applications not processed under the Spouse or Common-law Partner in Canada class 59
15.4 GCMS Coding 59
16 Final approval 60
17 Refusal 60
17.1 Refusal by the CPC-M 61
17.2 Refusal by local CIC office 61
17.3 Deletion of children listed as dependants of sponsored spouse or common-law partner 62
17.4 Response to enquiries after refusal 62
17.5 Applying for RPRF refunds 63
Appendix A—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 64
Appendix B—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*)] 80

Updates to chapter

Listing by date:

2015-05-15

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

The following changes have been made:

- Responsibility for processing applications under the *Spouse or Common-law Partner in Canada Class* transferred from the Case Processing Centre in Vegreville to the Case Processing Centre-Mississauga
- Updated or new application forms, kits and guides
- Section 5.9 updated to reflect changes to the definition of dependent children in R2, from under 22 years to under 19 years, eliminating eligibility for overage children who are studying full-time, but continuing to recognize children 19 years or over with a physical or mental condition as eligible dependants
- Section 5.12 expanded to outline the requirements for dependent children (whether accompanying or non-accompanying) to be examined, the measures to be taken to ensure their compliance, and the procedures for assessing admissibility A42 and R23 and for determining whether a relationship is excluded R117(9)(*d*)
- Section 5.13 expanded to explain transitional provisions allowing the pre-August 1, 2014, R2 definition of dependent child to be applied to applications received before that date, and circumstances under which humanitarian and compassionate grounds should be considered where non-accompanying children are unable or unwilling to be examined
- Section 5.14 expanded to reflect changes to R133(1)(*e*) barring an individual from sponsoring if they have a criminal conviction, which has been broadened to include offences of a sexual, violent nature against close relatives or their family members
- Section 5.15 updated to reflect changes to the R2 definition of dependent children
- Section 5.26 expanded to include additional instructions on the requirement for all family members to be examined (and failure to comply), as well as the Conditional Permanent Resident measure
- Section 5.37 expanded to reflect the December 2014, introduction of a one-year pilot to issue open work permits to spouse or common-law partner in Canada class applicants prior to approval-in-principle
- Section 5.38 added to include instructions on sponsorship withdrawal
- Section 7.3 updated to provide more details concerning the roles and responsibilities of the case processing centre in processing spouse or common-law partner in Canada class applications
- Section 8.1 updated to reflect new sub-category codes for spouse or common-law partner in Canada class applications
- Sections 10.1 and 10.2 updated to reflect new, more comprehensive measures involved in assessing the genuineness of spouse/partner relationships
- Section 10.3 updated to include instructions for assessing dependent children based on the new R2 definition of dependent child as well as transitional provisions allowing the pre-amendment definition for applications received before August 1, 2014

- Section 10.4 expanded to provide additional instruction on medical examinations
- Sections 14.1 and 14.2 updated to reflect changes in processing procedures at the case processing centre
- Section 15 added to reflect changes in the processing of applications on humanitarian and compassionate grounds
- Section 17.4 expanded to provide new, more detailed instructions on measures to apply when an applicant or their representative request that an officer reconsider a negative decision

2006-10-16

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 A and Appendix B respectively.

Major changes as a result of the public policies include:

- Section 5.9 has been updated to reflect changes under the spousal policy which 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 excluded 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.

2003-07-17

We have made both minor and substantive changes and clarifications 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
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 MIDI	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 A); 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 Humanitarian and compassionate consideration
Information on adoptions	See OP 3
Authorized representatives	See IP 9
Public policy under A25(1) to facilitate processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class	Appendix A
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 B

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-MCPC-MCPC-Mississauga (CPC-M).

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 (Appendix A).

Sponsored spouses or common-law partners may 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 was passed on November 1, 2001 and took effect June 28, 2002. Since that date, various amendments have been made to both the Act and the Regulations.

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

Provision	Act or Regulations
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)
Requirements to remain in Canada	A20
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 **Note***: This regulatory requirement may be waived under the spousal policy.* • be the subject of sponsorship application.	R124
No decision if sponsorship withdrawn or discontinued	R126
No approval if sponsorship not in effect and requirements not met	R127,R130, R137
Requirements for family members	R128, R129
Excluded relationships	R5, R117(9,10), R117(11) and R125
Bad faith relationships • was entered into primarily for the purpose of acquiring any status or privilege under the Act; or, • is not genuine • new conjugal relationship with that person after a previous marriage, common-law partnership or conjugal partner	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(*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	R11(3)

Case Processing Centre	
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 **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.	R72, R65.1
Family members may be included in application	R72(4)
Inadmissibility grounds	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, R201, R207
Study permits	R216, R217

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

Title	Form number
Generic Application Form for Canada	IMM 0008E
Additional Dependants/Declaration Form	IMM 0008 DEPE
Application to Sponsor, Sponsorship Agreement and Undertaking	IMM 1344E

Spouse/Common-Law Questionnaire	IMM 5285E
Additional Family Information	IMM 5406E
Statutory Declaration of Common-Law Union	IMM 5409E
Document Checklist – Spouse or Common-Law Partner in Canada	IMM 5443E
Use of a Representative	IMM 5476E
Sponsorship Evaluation	IMM 5481E
Schedule A Background/Declaration	IMM 5669E

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.

5 Departmental policies

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, Sponsorship Agreement and Undertaking (IMM 1344E), the Generic Application Form for Canada (IMM 0008E) as well as the forms and supporting documents identified in the application guide and the appropriate fees.

CPC-M is responsible for processing and assessing both applications.

5.2 Generic application form for Canada [IMM 0008E] and who must complete it

All principal applicants, regardless of age, must complete an IMM 0008E. Dependent children over 18 years of age who are in Canada and are seeking permanent residence must complete an IMM 0008 DEPE.

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 CPC-M. The CPC-M date stamps an application as received once they have determined that the application is complete (see Section 5.4, below).

Under the spousal public 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-M 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-M 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-M of a properly completed and signed Application to Sponsor, Sponsorship Agreement and Undertaking [IMM 1344E], a properly completed and signed Generic Application Form for Canada [IMM 0008E] including the Schedule A Background/Declaration [IMM 5669E] 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 submitted under this class are processed in Canada. They cannot 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,

5.7 Sponsors

For the purpose of sponsoring a foreign national who makes an application to remain in Canada as a member of the Spouse or Common-law Partner in Canada Class, a sponsor must be 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 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; 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 refund of the fees for processing of the permanent resident application, where the sponsor has indicated on the IMM 1344E (Application to Sponsor, Sponsorship Agreement 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;
- Handling a discontinued or withdrawn undertaking, IP 2, Section 12.

If humanitarian and compassionate consideration is requested with reference to overcoming sponsorship requirements, refer to the guidelines in Section 15.

5.9 Dependent children

On August 1, 2014 new regulations came into force, amending the definition of "dependent child" to mean a child who:

- is less than 19 years of age and is not a spouse or common law partner; or,

- is 19 years of age or older and has depended substantially on the financial support of the parent since before the age of 19 and is unable to be financially self-supporting due to a physical or mental condition.

For permanent resident applications submitted prior to August 1, 2014, transitional provisions allow for the pre-amendment definition of dependent child to be applied. For these cases, the age of the dependent child is locked in on the date on which CIC receives the complete permanent resident application from the principal applicant.

The applicant must list on the application all dependent children, whether in Canada or overseas, and indicate which dependent children are seeking permanent residence. All dependents, whether in Canada or abroad, accompanying or non-accompanying, must be identified on the Additional Family Information form (IMM 5406E) must be completed for.

Note: The Public Policy to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class 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 B.

Section 42 of the Act states that if accompanying family members and non-accompanying family members in circumstances described in Section 23 of the Regulations are inadmissible, the principal applicant and all accompanying family members are also inadmissible. Therefore, all dependent children (accompanying and non-accompanying) must be examined for admissibility at the time of the processing of the application for permanent residence (i.e., medical, security and criminality), whether or not they are being processed for permanent residence.

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 are exempt from the subsection 38(1)(*c*) excessive-demand requirement. Please refer to Section 5.33 for information on the criminality and security requirements pertaining to dependent children who are 18 years of age or older and Section 10.3 for information on assessing dependent children.

See Section 5.12 below for information on processing applications including non-accompanying dependent child such as dependent children in the sole custody of a former or separated spouse or partner and counselling applicants regarding the consequences of not having their dependent children examined. See Section 5.26 for information on excluded relationships.

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-M in writing of dependent children born after the initial filing of the application.

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-M 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, including the bona fides of the relationship.

The visa office will assess the admissibility of dependent children outside Canada, conduct interviews if necessary and advise the CPC-M of the outcome by updating the application in GCMS. The CPC-M 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.

Under section 42 of the *Act*, if an accompanying family member is inadmissible, the principal applicant and all other accompanying family members are also inadmissible. However, only non-accompanying family members described in Section 23 of the Regulations will affect the admissibility of the principal applicant and accompanying family members.

All family members, whether accompanying the principal applicant or not, must be examined. This includes non-accompanying dependent children who are in the sole legal custody or guardianship of someone other than the applicant. If a non-accompanying child is not examined, the applicant will not be able to sponsor that child at a later date as a member of the family class.

A non-accompanying child who is overage at the time CIC receives the permanent resident application does not need to be medically examined. Their inadmissibility would not render the

principal applicant inadmissible under R23 because they do not meet the definition of dependent child.

If the applicant attempts to sponsor a non-accompanying dependent child who was not examined, that child will not meet the definition of a member of the family class as they will be described under sub-section 117(9)(*d*) of the Immigration and Refugee Protection Regulations which stipulates the following:

> 117(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if:
>
> (*d*) subject to subsection (10), 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.

Under Section 23 of the Regulations, the inadmissibility of a non-accompanying dependent child, or non-accompanying dependent child of a dependent child will only affect the admissibility of the principal applicant if the principal applicant or an accompanying dependent has custody of the child, or is empowered to act on behalf of that child by virtue of a court order or written agreement, or by operation of law.

In order to establish that the principal applicant or an accompanying family member neither has custody, nor is empowered to act on behalf of an inadmissible non-accompanying dependent child or an inadmissible non-accompanying dependent child of a dependent child, by virtue of a court order or written agreement, applicants must provide documentary proof of the existing custody arrangements for the child.

Officers should inform the applicant that it is their responsibility to make every reasonable effort to have non-accompanying family members examined, even if the applicant demonstrates that the child is in the sole custody of a separated or former spouse or common-law partner, or an individual other than the applicant or an accompanying family member.

The onus is on the applicant to provide sufficient evidence to satisfy the officer that reasonable effort was made, without success, to have a non-accompanying child examined. Some scenarios where this may occur include where an ex-spouse refuses to allow a child to be examined or an overage dependant refuses to be examined. Proceeding with an application where a dependent child has not been examined should be an exceptional measure. The applicant cannot simply choose not to have a family member examined.

In cases where an applicant is genuinely unable to make a non-accompanying dependent child available for examination, as an exceptional measure, an officer can grant an exemption from the requirement for the dependant to be examined and the application can proceed. In such cases, to ensure they are fully aware of and accept the consequences of not having the child examined, applicant should be counselled 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, a record should be entered into GCMS notes.

As there are no set parameters or criteria for determining what is reasonable, officers should examine the particular circumstances of the case and exercise good judgment in assessing the full range of circumstances and making a decision whether or not to grant an exemption and proceed with the application. If an officer 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, they should insist on the child being examined.

5.13 Lock-in age for dependent children

The age of a dependent child, accompanying or non-accompanying, 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. However, dependency is not locked in.

On August 1, 2014, new regulations came into effect changing the definition of dependent child (see OB 588 Change in the definition of a dependent child). A child who is less than 19 years of age and not a spouse or common-law partner at the time of "age lock-in" continues to be a dependent child even if they attain the age of 19 during the processing of the application, as long as they are still unmarried and not in a common-law relationship when permanent residence is confirmed. (Less than 19 years means up to and including the last day before the child's 19th birthday).

Dependent children who are 19 years of age or older when their application is received must continue to be dependent on the parent due to a physical or mental condition, when a final decision is made on the application and when permanent residence in Canada is confirmed.

Note: By fully examining non-accompanying children as part of their application, an applicant can ensure that their child is eligible to be sponsored in the future in the event that by the time they reach the age of 19 they are dependent by virtue of being unable to be financially self-supporting due to a physical or mental condition;

- processing of the principal applicant's—and any accompanying family member's—permanent resident application is, or could be, unfairly delayed due to the need to examine a dependent child who has no intention of coming to Canada and has no future prospect of being sponsored as a dependent child under the family class.

Dependent children whose age was locked in prior to August 1, 2014

Children whose age is locked in prior to August 1, 2014 (see 5.9 Dependent children) continue to be described under the R2 definition of dependent child that was in effect prior to that date. This age remains locked in for the duration of processing of the principal applicant's application. These children, whether accompanying or not, must continue to meet the requirements of the

Act and Regulations, and are required to be examined to ensure that they do not render the principal applicant inadmissible under A42.

Example: A dependent child whose age was locked in prior to August 1, 2014 who is 22 years of age or older and a full-time student, must continue to satisfy an officer that they have been continuously enrolled in and attending an accredited post-secondary institution on a full-time basis, from the date of receipt of the application up until a decision is made.

Non-accompanying children 19 years of age or older who meet the R2 definition of dependent child in place prior to August 1, 2014, must be examined. This is required even though they will not be eligible to be sponsored by the principal applicant in the future, at which time they will not be under 19 so will not meet the current R2 definition of dependent child. For these children, their need to be examined is dictated by their age at lock-in.

If non-accompanying dependent children are unable or unwilling to provide police certificates, there may be some flexibility for an officer to decide that they are satisfied that the dependent children are not inadmissible. Although there are various regulatory requirements that specify that applicants and their family members must not be inadmissible, under A42 and R23, non-accompanying family members who are inadmissible on criminality or security grounds do not render the principal applicant inadmissible. However, there is no such flexibility regarding the need to be medically examined, because under A30, non-accompanying family members who are inadmissible on medical grounds render the principal applicant inadmissible, except where that inadmissibility is solely for reasons of excessive demand [A38(1)(*c*)].

Where non-accompanying children are unable or unwilling to be examined, an officer may consider waiving requirements for them to be examined, on humanitarian and compassionate (H&C) grounds. In some cases where an applicant has a non-accompanying child 19 years or over whose age was locked in as a dependent child prior to August 1, 2014, their ineligibility to be sponsored as a dependent child in the future serves as a disincentive to being medically examined as part of the parent's application.

In such cases, if an officer chooses to consider H&C grounds, they must assess the full range of circumstances and determine whether a waiver is warranted, on a case-by-case basis. For a waiver to be approved, the officer must clearly establish that:

- significant H&C factors exist;
- the child will not accompany;
- the principal applicant is aware that the child will likely be found ineligible to be sponsored in the future because they were not examined as part of the sponsor's application to become a permanent resident [R117(9)(d)] and they are unlikely to meet the definition of dependent child in a future application.
- processing of the principal applicant's – and any accompanying family member's permanent resident application is, or could be, unfairly delayed due to the need to examine a dependent child who has no intention of coming to Canada and who has no future prospect of being sponsored as a dependent child under the family class.

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; Minimum requirements for applications, IP 2, Section 5.13; and,
- Refusals of dependent children of a sponsored spouse or common-law partner, Section 17.3 below

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

Legislative requirements for the 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 , a violent criminal offence, an offence against a specific group of people that results in bodily harm, or an attempt or threat to commit any such offences—depending on circumstances such as the nature of the offence, how long ago it occurred and whether a pardon was issued; (Please refer to R133.(1)(e) for complete details);
- is not in default of previous sponsorship, support payments or immigration debt;
- is not an undischarged bankrupt; and
- is not in receipt of social assistance for a reason other than disability.

Legislative requirements for the sponsor:

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: This requirement may be waived under the spousal public policy (Appendix A). 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; and

- if they are not excluded from the class under R125 concerning excluded relationships (see section 5.26).

Other requirements applicable to a foreign national, who applies to remain in Canada as a member of the Spouse or Common-law Partner in Canada Class

- a foreign national shall not be considered a spouse or common-law partner if the marriage or common-law partnership is not genuine or was entered into primarily for the purpose of acquiring any status or privilege under the *Act* [R4](see Section 5.25);
- a foreign national shall not be considered a spouse or common-law partner if a new conjugal relationship was begun after a previous marriage or common-law partnership with that person was dissolved primarily to acquire any status or privilege under IRPA [R4.1] (see Section 5.25);
- a foreign national must not be the subject of enforcement proceedings or a removal order for reasons other than "lack of status" (see definition of "lack of status" under the spousal public policy (Appendix A) 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;
- a foreign national becomes a permanent resident if they meet the requirements of R 72
- a foreign national and their family members must meet admissibility requirements (R72); however, they are exempt from inadmissibility on health grounds due to excessive demand on health and social services.

Note: The requirement not to be inadmissible for reasons of lack of status may be waived by the spousal public policy (see Appendix A).

- a foreign national must have a valid passport or travel document by the time CIC seeks to grant permanent residence (R72).

Passport requirements
Clients who have entered Canada without a passport

Clients who are under a removal order or face enforcement proceedings for failure to enter Canada with a valid passport or required travel document, are eligible for consideration under the spousal public policy (Appendix A), and can become members of the class, if they meet the remaining criteria under R124 (See section 5.27 for further information on lack on lack of status)

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 refusing the application for permanent residence on those grounds. It should be noted, however, that the criteria under the spousal public policy do not include an exemption from the passport requirement. Section 15 provides instructions on processing applications in this class accompanied by a request for humanitarian and compassionate consideration.

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, if there is clear evidence of misrepresentation under IRPA, in accordance with the Department's guidelines, officers may choose to refuse the application.

Applicants being processed under the public policy (see Appendix A) will be excluded from being granted permanent residence in the following cases:

- 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 subsequently used these fraudulent or improperly obtained documents to acquire temporary or permanent resident status.

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 final decision on the application for permanent residence is entered into GCMS.
Dependent children under 19 years of age	• is under 19 years of age and not a spouse or common-law partner when the application is received; **and**, • without taking into account their age, is not married or not involved in a common-law relationship when a visa is issued **and** when they enter Canada **or** when a final decision on the application for permanent residence is entered into GCMS.
Dependent children 19 years of age or older and unable to be financially self-supporting due to a physical or mental condition	Since before the age of 19 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), when a visa is issued **and** when they

	enter Canada **or** when a final decision on the application for permanent residence is entered into GCMS.
For applications received prior to August 1, 2014 **and subject to a transitional provision (see OB 588)**: Dependent children under 22 years of age, a spouse or common-law partner and a full-time student	Since becoming a spouse or common-law partner, has 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, without taking into account their age, when the application is received **and** when a visa is issued **and** when they enter Canada **and/or** a decision on the application for permanent residence is entered into GCMS.
For applications received prior to August 1, 2014 **and subject to a transitional provision (see OB 588)**: Dependent children 22 years of age and older 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 or common-law partner, has 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** when a visa is issued **and** when they enter Canada **and/or** a decision on the application for permanent residence is entered into GCMS.
Dependent children of dependent children	Is the dependent child of a dependent child when the application is received **and** when a visa is issued **and** when they enter Canada **and/or** a decision on the application for permanent residence is entered into GCMS.

5.16 Previous spouse or common-law partner

If a common-law partner being sponsored as a member of this class has a separated or divorced spouse or a previous common-law partner, they should list their former spouse or common-law partner on their application. Separated or divorced spouses or previous common-law partners of

the applicant do not need to be examined for inadmissibility. However, the applicant must demonstrate that they have been separated for at least one year and must provide proof of the separation or divorce. R125(1)(*d*) prevents the applicant from later sponsoring a separated, divorced spouse or previous common-law partner because that person 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, temporary resident permits are issued to persons who are inadmissible or otherwise fail to meet the requirements of the Act. As a result they will, in general, be refused during the step-two examination of their case under R72(1)(*e*)(i). If they are inadmissible only for lack of status, they may qualify for positive consideration under the spousal policy (see Appendix A).

For further information, see Section 5.27.

In addition, temporary resident permit holders in Canada whose health condition might reasonably be expected to cause excessive demand on health or social services [A38(1)(*c*)] 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*) exempts certain family members, including spouses and common-law partners, from medical inadmissibility due to excessive demand.

See Sections 5.31 and 5.32 for further information on admissibility and medical examinations.

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

Under the current regulations, work permits or study permits issued to refugee claimants do not confer status. Therefore, 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. As a result, they do not meet the requirements of R124(*b*) and do not qualify as members of the spouse or common-law partner in Canada class.

However, the requirement to have temporary resident status in Canada for consideration under the spouse or common-law partner in Canada class may be waived under the spousal policy. This means that refugee claimants who do not have temporary resident status in Canada are eligible for consideration under the provisions of this class provided they continue to meet the requirements specific to inadmissibility grounds other than lack of status.

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 on requirements of the class and Appendix A for details on the spousal public policy.

See Section 5.27 for further information on lawful temporary resident status.

See Section 15 for further information on processing applications when H&C consideration is requested.

5.19 Assessing the relationship

In assessing the eligibility for permanent residence of a spouse or common-law partner, officers must assess the relationship between the sponsor and spouse or common-law partner. In accordance with subsection 4(1) of the Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership:

(a) was entered into primarily for the purpose of acquiring any status or privilege under the *Act*; or
(b) is not genuine

If there is evidence that the relationship is not genuine or evidence that it was entered into primarily for the purpose of acquiring any status or privilege under the Act, the application must be refused.

In assessing whether the relationship is genuine, officers must consider the factors or elements that constitute a conjugal relationship. See Section 5.25 on excluded relationships of convenience.

Officers must also assess the relationship between the applicant and any dependent children, to establish proof of parentage and dependency.

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 both legal in the country where it took place and in accordance with Canadian federal law, specifically the Marriage (Prohibited degrees) Act, the Civil Marriage Act and prohibitions included in the Criminal Code (for example, prohibition of polygamy). There is no requirement that a marriage comply with provincial laws, which govern administrative processes. However, in some countries, there may be a requirement for a marriage to be registered in order to be valid under the laws of that country.

It may be necessary to consult the visa office responsible for the country in which the marriage took place to gain a better understanding of the requirements for legal marriage there. 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 wants to sponsor a previously separated spouse?	OP 2, Section 5.39
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 is 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:

- Relationships of convenience
- Definition—Relationships of convenience, Section 6 below.

5.26 Excluded relationships

The Regulations exclude persons from membership in the family class by virtue of their relationship 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 Regulations prescribe relationships that exclude an applicant from membership in the family class.

Applicants in the following situations are not members of the family 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 and the three-year duration of the undertaking referred to in subsection 132(1) of the Regulations in respect of that undertaking has not yet ended (see IP2, Section 5.7);
- 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 [R125(1)(d), subject to R125(2) and (3)].

The intent of R125(1)(*d*) is to ensure that family members, who were not examined during the processing of the sponsor’s own application for permanent residence (either because they were not declared or because arrangements could not be made for their examination), do not benefit from later sponsorship as a member of the family class.

In accordance with R125(1)(*d*), individuals are not considered to be members of the family class under the following circumstances:

- they were not declared as a family member on the application when their sponsor applied for permanent residence in Canada and consequently were not examined; or
- they were declared to be non-accompanying family members on the application when their sponsor applied for permanent residence in Canada, but were not examined at that time.

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

R125(2) provides an exception to R125(1)(*d*). However, it should be noted that R125(2) and (3) apply exclusively to persons who were not required to be examined under IRPA or under the former Act.

Under the former Act, certain non-accompanying family members either did not have to be examined within the application process or could not be examined due to an administrative policy.

Two groups of persons fall into this category:

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

Under subsection 30(1)(*e*) of the IRPR, the following persons are not required to submit to a medical examination:

- a family member of a protected person who is not included in the protected person’s application to remain in Canada as a permanent resident, or
- a non-accompanying family member of a foreign national who has applied for refugee protection outside Canada.

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

Since family members in these circumstances were not required to be examined under the IRPA or the former Act, they satisfy the exception provisions of R125(2); they are not excluded from the family class in a subsequent sponsorship, unless R125(3) applies. The guiding principle in this scenario is that it was the officer who, being fully advised of the existence of the family member through the truthful declaration of the sponsor, determined that the applicant was not required to be examined under the provisions of the Act or former Act.

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

As per R125(3)(*a*), R125(1)(*d*) is applied in situations where an officer determines that the 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. An applicant is excluded as per R125(1)(*d*) in the situation where it was the choice of the sponsor or the applicant not to have the family member examined.

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.

Applicants 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.

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

Note: When consulting OP 2, note that there are specific regulations governing excluded relationships in the context of family class priority applications for spouses and partners processed overseas.

Conditional Permanent Residence

On October 25, 2012, CIC introduced regulatory amendments which specify that spouses, common-law or conjugal partners who are in a relationship with their sponsor for two years or less and have no children in common with their sponsor at the time of the sponsorship application are subject to a period of conditional permanent residence. The condition is set out in R72.1 and requires the sponsored spouse or partner to cohabit in a conjugal relationship with their sponsor for a period of two years after.

The conditional measure only applies to permanent residents whose applications were received by CIC on or after October 25, 2012.

Assessing if the condition applies to applicants processed in the spouse or common-law partner in Canada class

Condition applies if:	At the time the sponsorship application was received: • the applicant has been the spouse, common-law partner or conjugal partner of the sponsor for two years or less; **and** • they did not have any children in common
Condition does not apply if:	At the time the sponsorship application was received • the applicant has been the spouse, common-law partner or conjugal partner of the sponsor for more than two years; **or** • they had children in common.

5.27 Lawful 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 become members of the class.

However, applicants who lack status as defined under the spousal public policy (see Appendix A) 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".

Applicants who do not have temporary resident status and who cannot be granted positive consideration under the spousal 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.

If the applicant cannot be exempted from the legal temporary resident status requirement under the spousal public policy (Appendix A) and request an exemption from the requirement to have temporary resident status in Canada based on H&C consideration, please refer to Section 15.

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

For the purposes of the spousal public policy (see Appendix A), persons with a "lack of status" refers to those in the following situations:

- persons who have overstayed a visa, visitor record, work permit, study 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 elude examination upon entry to Canada. In these cases, officers should assess the bona fides of the relationship. If it is deemed to be a relationship of convenience, the application should be refused. If the relationship is deemed bona fide, the application should not be refused on the grounds that the person did not present himself at the port of entry for examination upon entry.

Note: Lack of status may also refer to persons who have overstayed a temporary resident permit.

"Lack of status" for the purposes of the spousal public policy (Appendix A), does not refer to any other inadmissibilities including, but not limited to:

- failure to obtain authorization to return to Canada, where required, after removal or after a removal order has been otherwise enforced;
- 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 subsequently 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 A 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

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*). Members of the Spouse or Common-law Partner in Canada class must satisfy subsection R124(*a*) in that they must be the spouse or common-law partner of a sponsor and must be co-habiting with that sponsor in Canada.

Foreign nationals who have left Canada after submitting an application under the Spouse or Common-law Partner in Canada class, 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, with the sponsor, submit a new Application to Sponsor, Sponsorship Agreement and Undertaking 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 to allow them to make an application for permanent residence from within Canada, unless extenuating circumstances exist.

For further details related to dual intent, see port of entry examinations in ENF 4, Section 14 – Dual intent.

5.30 Dual intent – Extension of temporary status

In cases where the applicant's temporary resident 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 legal temporary resident status throughout their period of stay in Canada,
- has paid the appropriate work or study permit fee; and
- will 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-M 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 family members, whether accompanying or not, do not meet the requirements for permanent residence [R72(1)(*e*)(i)].

Refer to section 5.12 for further information concerning the circumstances under which a non-accompanying dependent child in the sole custody of a former or separated spouse/common-law partner does not render the applicant inadmissible.

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 which might reasonably be expected to cause excessive demand will

not render spouses or common-law partners and their dependent children inadmissible; they are exempt from the A38(1)(c)requirement.

For further information on medical examinations see Immigration Medical Exam (IME).

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 since the age of 18. 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.

Note: In certain circumstances an inadmissible dependent child who is not seeking permanent residence may not render the principal applicant inadmissible. See Section 5.12 above.

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	IC 1
Evaluating inadmissibility	ENF 2

5.34 Criteria for referral to an inland CIC

The CPC-M 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:
    - security (A34)
    - human or international rights violations (A35)
    - serious criminality [A36(1)]
    - organized criminality (A37)
    - medical inadmissibility [A38(1)(*a*) or (*b*)]

5.35 Cases handled by CPC-M without referral to CIC

The CPC-M 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 common-law relationship has not existed for at least one year;

- the applicant has committed a minor criminal offence which makes them inadmissible; or,
- the applicant does not meet the requirements of the class

The CPC-M may also process applications without referral to a local CIC in the following situations:

- a person included in the application as a dependent child does not meet the R2 definition of a "dependent child". In such cases, the applicant is informed and given the opportunity to provide additional information to establish dependence as defined in R2, within 60 days of the date of their letter. If additional information is not provided within this time frame, processing of the application continues for the applicant and any eligible family member(s) included. Right of Landing Fees submitted for ineligible family members are refunded.
- the applicant does not meet the status requirement of the class but meets the criteria regarding lack of status for processing under the spousal public policy (unless expedited processing is required);
- the applicant has requested H&C consideration and a positive decision can be made without referral to a local CIC (see Section 15) .

5.36 Review by local CIC

The local CIC office 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:** Persons who have used a fraudulent or improperly obtained passport, travel document or visa to gain entry to Canada will be excluded from being granted permanent residence under the spousal public policy if the document was not surrendered or seized upon arrival and the applicant subsequently used these fraudulent or improperly obtained documents to acquire temporary or permanent resident status. See Appendix A for further details on the spousal public policy);
- violation of the legislation or conditions of temporary residence;
- inadmissibility for reasons of serious criminality or security; and,
- a request was submitted by the applicant for H&C consideration and a positive H&C decision could not be made at the CPC (See Section 15 for guidelines on processing cases when the applicant has requested H&C consideration).

The local CIC office should instruct the applicant to bring any necessary documents to the interview. When asking questions, the officer should focus on identified areas of concern that will assist in reaching a decision.

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

5.37 Work and study permits

As of December 22, 2014, on a pilot basis, applicants under this class are eligible to be issued an open work permit if they meet the following requirements:

- a permanent resident application has been submitted pursuant to the Spouse or Common-law partner in Canada class;
- the applicant resides at the same address as the sponsor;
- the applicant has valid temporary resident status (as a visitor, student or worker); and,
- a Canadian citizen or permanent resident spouse has submitted a sponsorship application on their behalf.

This pilot will be reviewed at the end of one year to determine if it will be continued.

Note: Applicants being processed for permanent residence under the spousal public policy on the basis that they do not have valid temporary resident status are not eligible to be issued an open work permit under these measures. They will be required to wait until they have met eligibility requirements, and received approval in principle, in order to be eligible to apply for an open WP.

The CPC-M will advise applicants in writing when they are eligible to apply for a study permit.

An applicant already in possession of a work or study permit who wishes to maintain their temporary resident status as a student may complete and submit an Application to Change Conditions, Extend my Stay or Remain in Canada as a Student form [IMM 5709] and submit it as per instruction provided in the guide.

5.38 Withdrawal of Sponsorship undertaking

This process applies to all applications, including Quebec cases.

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. If a sponsor withdraws their undertaking before the processing of the application for permanent residence has commenced, the sponsor has a right to a refund of the permanent residence application processing fees. For greater clarity, a refund of permanent residence processing fees is possible if

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

For further information, see IP 2, Section 5.40 - Withdrawal of undertaking/no refund of permanent residence application fee.

5.39 Quebec cases – Federal sponsorship criteria not met

Before referring a Quebec case to le Ministère de l'immigration, Diversité et Inclusion (MIDI), officers with decision-making authority assess the sponsor against federal sponsorship eligibility requirements. If the sponsor does not meet federal eligibility requirements, a copy of the sponsorship application is not sent to the MIDI.

If the sponsor does not meet federal eligibility requirements and has opted to withdraw their sponsorship application (Question 1 of IMM 1344), the permanent residence application and relevant processing fees would be returned to the sponsor.

If the sponsor opts to proceed with the application in circumstances where they do not meet eligibility requirements, the officer makes a decision on the permanent resident application of the sponsored applicant. In such cases, there is no refund of the processing fees.

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

For information on initial receipt process and coding, see Section 8 below.

For information on the refund of permanent residence processing fees when the sponsor withdraws the undertaking, see Section 5.38 above.

5.40 Quebec cases – Federal sponsorship criteria met

If the sponsor meets federal eligibility requirements, the CPC-M will inform the sponsor by letter and instruct them to download the MIDI undertaking kit, complete it and submit it to the MIDI along with a copy of the letter issued by the CPC. Evaluation of the permanent residence application is suspended pending receipt of a decision from Quebec on the sponsorship undertaking.

Since the sponsorship undertaking is assessed before the eligibility requirements for the class are assessed, sponsorship applications involving applicants who may not satisfy the requirements for membership in the spouse or common-law partner in Canada class may be sent forward to the MIDI for a provincial assessment.

If federal eligibility requirements are met but the MIDI refuses the sponsorship undertaking, the permanent residence application and relevant processing fees are returned to the sponsor if the sponsor opts to withdraw their sponsorship application if found ineligible to sponsor.

If federal eligibility requirements are met but the MIDI refuses the sponsorship undertaking, the application for permanent residence is refused by CIC, if the sponsor opts to proceed with the application in circumstances where they do not meet eligibility requirements,

In cases where the sponsor appeals the refusal of the MIDI to issue a CSQ and the MIDI approves the appeal and issues a CSQ, the sponsor must submit a new sponsorship application to CIC.

In cases where federal eligibility requirements are met and the MIDI issues a CSQ, the permanent residence application is assessed.

A refund of permanent residence processing fees is possible if:

- the sponsor indicates under Question 1 of the IMM 1344E 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.

6 Definitions

Please refer to Section 6 of OP 2 for definitions of the following terms:

- Common-law partner
- Dependent child
- Marriage
- Relationships of convenience
- Spouse

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 **Application to Sponsor, Sponsorship Agreement and Undertaking** and all forms and 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). The Right of permanent residence fee (RPRF) may be deferred. Dependent children are exempt from payment of the RPRF. See Part 19 of the Regulations for more information on required fees;
- state whether the 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-M.

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 to Sponsor, Sponsorship Agreement and Undertaking**, forms 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 forms and schedules and all required supporting documents are included in the envelope with the sponsorship application addressed to the CPC-M.

7.3 Roles and responsibilities of the CPC-M

The CPC-M

- 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 (R10);
- ensures that the application includes proof of payment of applicable fees, either online or at a financial institution. 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 is not received).

- processes the sponsorship application, assesses sponsors against sponsorship criteria and eligibility requirements and records the sponsorship determination decision in GCMS;
- if sponsorship requirements are not met, informs the sponsor of an ineligibility determination – when the sponsor has indicated on the IMM 1344E that they chose to withdraw if found to be ineligible, closes the file without making a decision on the application for permanent residence of the sponsored applicant in accordance with R126;
- if the sponsor meets eligibility requirements, or if the sponsor has indicated on the IMM 1344E that they chose to proceed if found ineligible to sponsor, processes the application for permanent residence; assesses the applicant against requirements for membership in the class (R124), including reviewing the application against the spousal public policy (Appendix A) criteria as needed;
- if R124 class requirements are not met ("Step 1" determination), refuses the application;
- grants "approval in principle" at "Step 1" determination when the sponsorship eligibility and R124 requirements are met and a positive assessment is made on the bona fides of the relationship;
- determines if the conditional permanent resident measure applies;

- informs the applicant when approval in principle is granted ("Step 1" determination) and notifies them that a final decision will not be made until an assessment of all admissibility requirements has been completed;
- contacts the appropriate visa office, providing necessary GCMS case information and requesting admissibility assessments for family members residing overseas;
- 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);
- as required, refers any cases requiring in depth investigation to a local CIC office;
- completes admissibility checks (i.e. medical, security and background) and updates the application in GCMS;
- if approved, assigns case to the local CIC office based on the postal code for the applicant's place of residence for the final processing of the permanent residence application – once these updates are completed in GCMS, the local CIC office will contact the applicant for a permanent residence interview and complete the permanent residence process;
- if refused, advises the applicant in writing of the refusal of the application;
- 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;
- when the sponsor submits a request to withdraw the sponsorship before a decision is made on the application for permanent residence of the applicant, closes the permanent residence application without making a decision, as required by R126 – informs the applicant of the sponsorship withdrawal, refunds the Right of Permanent Residence fee (if submitted) and, if processing had not commenced, refunds the processing fees for the permanent residence application.

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 of receipt of the application;
- request for any supporting documents or information that may be missing;
- verification, and possible printing of the GCMS record; and
- electronic transfer of biodata to CPIC.

8.1 Coding – Immigration category and codes for GCMS

Codes for GCMS	

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 / CFH
Cases with a request for H&C consideration - accepted or refused / **Cas avec une demande CH acceptée ou refusée**	FCH / CFH

Subcategory coding – Family Class Spousal Applications

Codes for GCMS	
FC1 or FCC case processed within Canada under the Spouse and Common-law Partner in Canada class	CDA
FC1 or FCC case processed overseas (including CPC-O)	OVS*
FCH cases processed within Canada under the spousal public policy	PP

*****It is not necessary to enter subcategory "OVS". By default, GCMS will recognize any family class spousal case not coded subcategory "CDA" or "PP" as an overseas case.

For more information, see OB 571

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 [R133 (4)].

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. Quebec sponsors are informed to submit their undertaking to the MIDI in Quebec after being informed by CPC-M that the federal sponsorship requirements have been met.

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 of a member of the spouse or common-law partner in Canada class is that the sponsor files a sponsorship application in respect of the

spouse or common-law partner applying to remain in Canada as a member of the class. [R130 (1) (c) and R 10]

This requirement is assessed through an evaluation of the declarations presented on the Application to Sponsor, Sponsorship Agreement and Undertaking (IMM 1344) which must be submitted for the application to be complete.

In situations where the declaration of the sponsor leads the officer to conclude that the sponsor chose the wrong application kit or is not eligible, it may be appropriate to compare the information provided by the sponsor with the information provided by the applicant on the application for permanent residence. A comparison of specific statements made by the sponsor and the applicant may be sufficient for the officer to assess the sponsorship declarations and to form an opinion that the sponsor has or 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.

As review of the permanent residence application for this purpose is not considered an assessment of the application for permanent residence, processing fees may be refunded if the sponsor is found to be ineligible.

It should also be noted that R124(c) also requires that the applicant be the subject of a sponsorship application to be eligible for processing as a member of the class.

For information on cases which may be handled by CPC-M without referral to a local CIC office, please see Section 5.35,

For information on finalizing a case when the sponsor is not eligible, please see Section 5.8.

For information on the roles and responsibilities of CPC-M, please see Section 7.3.

9.3 Co-signers

A sponsor cannot have a co-signer on an application when sponsoring a member of 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 completed Spouse/Common-law Partner Questionnaire (IMM5285) (included in the application package);
	• a marriage certificate;
	• proof of divorce if either the applicant or spouse was previously married; and,
	• evidence that the applicant lives with the sponsor, such as
	  • mortgage, lease
	  • other documents showing the same address for both, e.g. government-issued identification documents, driver's license, insurance policies.
	• If the applicant and sponsor have children in common, long-form birth certificates or adoption records listing the names of both parents
	
	Evidence may also include:
	
	• wedding invitations and photos;
	• Proof of joint bank accounts, e.g. bank statement or a letter from a financial institution;
	• documents from other institutions or other government authorities, such as the Canada Revenue Agency, that indicate a marital relationship.

Common-law partner	In the case of a common-law partner, documentary evidence should include • a completed Spouse/Common-law Partner Questionnaire (IMM5285) (included in the application package) • 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, that indicate a marital or common-law relationship; • documents indicating joint ownership of property (mortgages, leases); • joint bank accounts; and • insurance policies.
Co-habitation	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 (see Section 5.35 of OP 2 for more information on cohabitation). If this is not clear from the evidence available, the CPC-M should request further documents or refer to a CIC for an interview. Evidence of cohabitation may include • joint bank accounts or credit cards; • joint ownership of residential property; • joint residential leases; • joint rental receipts; • joint utilities accounts (electricity, gas, telephone); • joint management of household expenditures; • evidence of joint purchases, especially for household items; • correspondence addressed to either or both parties at the same address; • important documents of both parties show the same address, for example, identification documents, driver's licenses, insurance policies; • shared responsibility for household management, household chores; • children of one or both partners are residing with the couple; • record of telephone calls. 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

For applications received by CIC on or after October 25, 2012, officers are required to conduct an assessment to determine if the conditional permanent resident measure applies.

Officers should be satisfied that a genuine relationship exists. A spousal relationship or common-law partnership that is not genuine or that was entered into 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 submitted do not provide adequate proof of a genuine conjugal relationship within the context of a marriage or common-law 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 local CIC office may need to interview the sponsor and the applicant separately to establish whether the relationship is genuine. Please see Relationships of convenience for factors that may be considered during this interview.

Officers should exercise procedural fairness when concerns arise that are material to the decision (see OP 1, Section 8). If an interview is conducted to address such concerns, officers should record all questions posed and answers given in the interview. Where applicable, the interview notes may then be used to substantiate the decision made on the application.

Sponsored spouses can voluntarily provide consent – on forms IMM 5490 (Sponsored Spouse/Partner Questionnaire) and IMM 5285 (Spouse/Common-Law Questionnaire) – for CIC to release to the sponsor any information obtained in connection with an investigation of marriage fraud. If they provide consent on either of these forms, a spouse is free to revoke it at any time by advising CPC-M in writing.

10.3 Assessing dependent children

If the spouse or common-law partner has dependent children, they must be listed on the application, whether accompanying or not. They must also meet the R2 definition of dependent child and must be examined to ensure they are admissible and that the requirements of A42 are met. 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., 19 years of age or older and not dependent due to a physical or mental condition)	The CPC-M • should inform the applicant of the findings; • should advise the applicant to provide more information or apply for a refund of the Right of Permanent Residence fee, if already paid; and • is not required to examine ineligible dependent children.
Dependent children in Canada included on the application	The CPC-M 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 the principal applicant, if not completed upfront; and • is responsible for ensuring that dependent children meet admissibility requirements.
For applications received prior to August 1, 2014 **and subject to a transitional provision (see OB 588)**: Students aged 22 years and over included on the application	The CPC-M or the local CIC • should establish that students aged 22 and older 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 of provincial ministries of education for listings of accredited institutions, if students are in Canada.
For applications received prior to August 1, 2014 **and subject to a transitional provision (see OB**	The CPC-M or the local CIC • should ensure that a student, who became a spouse or common-law partner before the age of 22, has

588): Student who is a spouse or common-law partner included in the application	been financially supported by a parent since before the child's marriage or common-law relationship.
For applications received prior to August 1, 2014 **and subject to a transitional provision (see OB 588)**: Financially dependent student	The CPC-M 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.
Child 19 years of age or older and dependent due to a physical or mental condition	The CPC-M or the local CIC • should carefully examine documents provided as proof that the child has, since before the age of 19 – and continues to have – a physical or mental condition that renders him or her incapable of supporting themselves and dependent on either parent for financial support.
Dependent children outside Canada (accompanying and non-accompanying)	The CPC-M • 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-M 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-M should

For applicants and dependent children over 18 in Canada

- check GCMS 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 application by entering results of criminal and security checks for applicants and dependent children in GCMS.

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

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

Medical examinations

Applicants and their dependent children must undergo medical examinations. In accordance with R30 (3), medical examinations must be conducted within the 12 months of acquiring 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*)].

In certain cases, the validity of the medical examination may be extended. For further information on medical procedures, see OP15.

In accordance with A42, if a dependent child or a dependent child of a dependent child is inadmissible, the applicant may not become a permanent resident, unless a request for H&C consideration pertaining to the inadmissibility has been granted.

R23 describes the prescribed circumstances in which an applicant is made inadmissible on the grounds of an inadmissible non-accompanying family member for the purposes of A42.

The prescribed circumstances in which the foreign national is inadmissible on grounds of an inadmissible non-accompanying dependent child or dependent child of a dependent child are that

- the foreign national has made an application for a permanent resident visa or to remain in Canada as a permanent resident; and
- either the foreign national or an accompanying family member of the foreign national has custody of the non-accompanying dependent child, or dependent child of a dependent child, or is empowered to act on behalf of that child by virtue of a court order or written agreement or by operation of law.

In accordance with R23, a non-accompanying dependent child or dependent child of a dependent child who is inadmissible, but who is in the sole custody of a separated or former spouse or common-law partner, or an individual other than the applicant or an accompanying family member does not render the applicant inadmissible for the purposes of A42. For further information in this regard, please refer to Section 5.12 of this chapter and Section 5.11 of OP2.

However, if a dependent child is found to be **ineligible** in that the child does not meet the R2 definition of a dependent child – or the pre-amendment definition of dependent child in cases where that applies based on a transitional provision (see OB 588) – the applicant may still receive permanent resident status if they remove the ineligible dependent child from their application. Example: A child 19 years of age or older who is not financially dependent due to a physical or mental condition, is not a dependent child. See: OP 2, Section 16 for assessment of eligibility before visa issuance.

10.5 Assessment of adequate arrangements

Sponsors must undertake to provide for the basic necessities of the sponsored applicants and their dependants so that they will not require social assistance. However, sponsors of spouses and common-law partners do not have to meet minimum necessary income requirements for the purpose of R133 (1) (j), unless the sponsored spouse or common-law partner has dependent children who have dependent children of their own.

Since sponsors of spouses and common-law partners do not need to meet the minimum necessary income requirements, a sponsorship application can be approved, even if the sponsor’s income is below the LICO amount for the number of persons for whom the sponsor is financially responsible. In such situations, the applicant could be refused under A39, if the information provided indicates that they are unable or unwilling to support themselves and their dependent children and adequate arrangements have not been made for their care and support.

When documentation presented leads an officer to believe that adequate arrangements have not been made for the care and support of foreign nationals seeking to remain in Canada as permanent residents, 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-M 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 (Appendix A);
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 temporary resident status in Canada

Subsection (R124 (b)) of the Regulations require that the applicant have temporary legal status in Canada to be eligible for processing as a member of the Spouse or Common-law Partner in Canada class. However, under the spousal public policy (Appendix A), persons who are otherwise eligible for consideration under this class, in that they meet the R124 (a) and R124(c) requirements, (and who are not inadmissible for reasons other than "lack of status" as described in Appendix A), may have the legal status requirement waived

Applicants not covered under the spousal public policy (Appendix A), who have requested H&C consideration to exempt them from the requirement to have temporary legal status in Canada may also be processed as members of the class if they satisfy the eligibility requirements set out in R124(a) and (c). Please refer to Section 15 for guidelines on processing applications which include a request for H&C consideration

However, this does not mean 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 subject to removal proceedings at any time for failing to have or to maintain legal status in Canada.**

Many applicants will benefit from a regulatory stay of removal because they have requested a Pre-removal Risk Assessment (PRRA) [R232]. Applicants, subject to a removal order, who qualify for processing under the spousal public policy and satisfy the conditions outlined in Section F of the policy, and who have submitted an application before the scheduling of their removal interview with the CBSA will receive an administrative deferral of removal for 60 days. CIC will make its best efforts to render a decision on eligibility for permanent residence, within the 60 days.

Where a positive eligibility assessment has been made in relation to an application for permanent residence assessed under the spousal public policy (Appendix A), the regulatory stay of removal

outlined in section 233 of the Regulations applies, until such time as the person is granted or refused permanent residence.

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

The CPC-M may receive an application for permanent residence together with an application for restoration or extension of status from some applicants. As such, the CPC-M 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-M 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 the eligibility assessment on the application for permanent residence is positive

- 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 the eligibility assessment is negative

- 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 the eligibility stage of processing and the applicant's temporary resident 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. These applicants may still qualify for restoration of status, however, under the spousal public policy (Appendix A); the applicant may be exempted from the legal status requirement. It is therefore not necessary for applicants who do not meet R124(*b*) to restore their status in order to be processed as a member of the class.

However, applicants who do not meet the eligibility requirements to apply for permanent resident status as a member of the Spouse or Common-law Partner in Canada class will still have

to apply for restoration of status to maintain their temporary resident status in Canada. Although their permanent resident applications will be refused, they may still qualify for restoration of temporary resident status.

Note: Many applicants may benefit from a regulatory stay of removal because they have requested a pre-removal risk assessment (PRRA) or may receive an administrative deferral of removal under the spousal public policy (Appendix A). Many applicants will receive a step-one decision on their case before any action is taken towards removal from Canada. 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 in Canada class.

This regulatory stay applies to removal orders if the Minister is of the opinion under section 25(1) of the Act that H&C or public policy considerations exist.

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-M 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-M 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). Where the entire course of study is completed in less than six months, applicants 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-M 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-M	• retains the sponsorship processing fee, refunds the permanent resident processing fee and the RPRF, if applicable; • advises the sponsor of the ineligibility decision; and • enters "Discontinued" in the application in GCMS If the sponsor has opted to discontinue if found ineligible, no further processing will

	occur.
If	During the assessment of the sponsorship application, the CPC-M 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 issues that would be obvious during sponsorship assessment.)
Then the CPC-M	• retains the sponsorship processing fee; refunds the permanent resident processing fee and the RPRF, if applicable; • advises the sponsor of the ineligibility decision; and • enters "Discontinued" in the application in GCMS If sponsor opted to discontinue if found ineligible, no further processing will occur.
If	The sponsor meets federal eligibility requirements
Then the CPC-M	• processes fees, enters the sponsorship decision in GCMS; • lists the application for background checks and sends a letter to the sponsor instructing them to download the MIDI undertaking kit, complete and submit it to the MIDI along with a copy of the letter issued by the CPC; and, • refers the case to MIDI for provincial sponsorship assessment and suspends initial evaluation and assessment of the application for permanent residence pending receipt of the decision from MIDI; then
MIDI	• approves or refuses the sponsor based on Quebec provincial financial sponsorship criteria and advises the sponsor and the CPC-M of the decision.
If	MIDI approves the sponsor
Then the CPC-M	• begins initial evaluation procedures on the application for permanent residence and assesses the applicant against eligibility and admissibility requirements; • enters decisions rendered on requirements in GCMS and advises sponsor and applicant of initial decision on the application; • refers the case to a local CIC office for permanent residence interview and updates the application in GCMS to reflect file transfer and initial approval; OR • where authorized, refuses the application and updates the application in GCMS to indicate a refusal decision. Following a review of the file information and a permanent residence interview, the local CIC office CIC makes a final decision and updates the application in GCMS to

	indicate "APPROVED" or "REFUSED."
If	MIDI does not approve the sponsor
Then the CPC-M	• 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 • enters "Discontinued" in the application in GCMS

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

The CPC-M performs administrative processes and assesses the sponsorship application against federal sponsorship criteria and whether or not the sponsor meets federal eligibility requirements

Then the CPC-M	• processes fees, enters the sponsorship decision in GCMS; • lists the application for background checks and advises the sponsor of the federal sponsorship decision, the referral to MIDI and the suspension of processing pending a decision from the province; and • refers the client to MIDI for provincial sponsorship assessment – if federal eligibility requirements are not met, 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 MIDI
MIDI	• approves or refuses the sponsor based on Quebec provincial financial sponsorship criteria and advises the sponsor and the CPC-M of the decision.
If	MIDI approves the sponsor
Then the CPC-M	• begins initial evaluation procedures on the application for permanent residence and assesses the applicant against eligibility and admissibility requirements; • enters decisions rendered on requirements in GCMS and advises sponsor and applicant of initial decision on the application; • refers the case to a local CIC office for permanent residence interview and updates the application in GCMS to reflect file transfer and initial approval; OR • where authorized, refuses the application and updates the application in

	GCMS to indicate a refusal decision. Following a review of the file information and a permanent residence interview, the local CIC office makes a final decision and updates the application in GCMS to indicate "APPROVED" or "REFUSED."
IF	MIDI does not approve the sponsor
Then the CPC-M	• begins initial evaluation procedures on the application for permanent residence and assesses the applicant against eligibility and admissibility requirements; • Enters decisions rendered on requirements in GCMS, and advises sponsor and applicant of the final decision on the application; and • refuses the application and updates the application in GCMS to indicate a refusal decision.

15 Humanitarian and Compassionate Consideration is Requested

While applicants requesting H&C consideration under A25(1) are generally encouraged to complete an H&C application form and pay the H&C processing fee, they may also include a request for H&C consideration with an application for permanent residence as members of the Spouse or Common-Law Partner in Canada class.

Applicants may request H&C consideration under A25(1) to overcome most applicable criteria or obligation of the Act. However, some applications will be processed in the class while others will be transferred to the H&C queue for processing (see 15.1 and 15.3 for further information).

Applicants who are processed as members of the class will benefit from the concurrent processing of overseas dependants as well as an exemption from both R133(4), the minimum necessary income requirement and A38(2), the medical requirement with respect to excessive demand on health and social services, if their application is successful.

Applicants may request H&C consideration at any time before a final decision is made on their application. However, applicants must provide all information that they wish CIC to consider. It is the applicant who bears the onus of satisfying the decision-maker that the H&C factors present in their individual circumstances justify an exemption from any applicable criteria or obligation of the Act.

15.1 Applications processed in the Spouse or Common-law Partner in Canada class

Applicants under the Spouse or Common-law Partner in Canada class, who have requested H&C consideration to overcome inadmissibilities or other applicable requirements, such as the requirement to have temporary resident status, a passport or other documentation, will

be processed in the Spouse or Common-law Partner in Canada class if they meet the following eligibility requirements of the class:

- they are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada [R124(a)]; and
- they are the subject of a sponsorship application [R124(c)].

In relation to the requirement to have temporary resident status in Canada [R124(b)], the spousal public policy (Appendix A) facilitates the processing of genuine out-of-status spouses or common-law partners in the Spouse or Common-law Partner in Canada class who meet the other eligibility requirements of the class. Applicants who are covered under the public policy should be processed according to the provisions of the spousal public policy articulated in Appendix A.

Applicants who do not have temporary resident status in Canada and who are not covered under the spousal public policy (Appendix A) may be exempted from R124(b) under A25(1) if, in the opinion of the Minister's delegate, it is justified by humanitarian and compassionate considerations relating to the applicant. Applicants will need to demonstrate that not being granted the requested exemption would constitute **"unusual and undeserved or disproportionate' hardship"**.

Processing requests for H&C consideration to overcome inadmissibilities and other applicable requirements

If justified based on H&C consideration, Spouse or Common-law Partner in Canada class applicants may be granted an exemption from more serious inadmissibilities than those currently covered by the spousal public policy (Appendix A). They will not, however, benefit from the temporary administrative deferral of removal afforded to those eligible under the spousal public policy (Appendix A). Please refer to the section below on Administrative deferral of removal for more information).

For greater clarity, applicants who meet the specified eligibility requirements of R124(a) and R124(c) may request an exemption from the requirement to have temporary residence status, a valid passport/travel document, authorization to enter Canada after being deported, or other applicable requirements (criminality, security, medical, misrepresentation, etc.). They are not required to re-apply through the regular H&C stream.

Applicants who meet the specified eligibility requirements for membership in the class (R124 (a) and R124(c)) and who request an exemption from requirements not covered under the spousal public policy (Appendix A), based on H&C consideration, bear the onus of satisfying the decision-maker that an exemption from an inadmissibility or other applicable requirement is justified based on humanitarian and compassionate considerations. They will need to demonstrate that not being granted the requested exemption would constitute **"unusual and undeserved or disproportionate' hardship"**.

The policy regarding an administrative deferral of removal pertaining to applicants whose applications are assessed under the spousal public policy (Appendix A) remains unchanged (see section F of Appendix A). Only applicants who qualify for processing under the spousal public policy (Appendix A) may be eligible for an administrative deferral of removal. In other words, applicants in the Spouse or Common-law Partner in Canada class may only qualify for an administrative deferral of removal when the criteria outlined in Section F of Appendix A are met.

Note: Applicants who request H&C consideration for inadmissibilities not covered under the spousal public policy (Appendix A) are not eligible for an administrative deferral of removal as described in Section F of Appendix A.

15.2 Decision-making

Officers will consider requests for H&C consideration for inadmissibilities within the scope of their delegated authority (Refer to IL 3 – column 1, item 29 – for IRPA section A25 (1) delegation). Requests for H&C consideration for an exemption from an inadmissibility which the officer is not delegated to grant should be referred to Case Management Branch in accordance with current procedures. See section 4 of IP5 for further information on delegated authorities.

The decision-maker considers the applicant's request for H&C consideration in light of all the information known to the officer. The decision-maker must also consider the applicant’s criminal, medical and security admissibility, as applicable. Upon examination of the applicant’s particular circumstances, an exemption from the applicable criteria or obligation of the Act may be granted if the officer is of the opinion that it is justified by humanitarian and compassionate considerations relating to the applicant.

While processing a Spouse or Common-law Partner in Canada class application accompanied by a written request for an exemption based on H&C considerations, if a further inadmissibility is discovered and an exemption is requested by the applicant from the newly discovered inadmissibility, the decision-maker must consider the new request. If a request is not made by the applicant, A25.1(1) also provides discretionary authority to the Minister/Minister's delegate to exempt the applicant from any requirement on their own initiative, if they are of the opinion that it is justified by humanitarian and compassionate considerations.

If the officer is of the view that clarification with respect to the applicant’s H&C request is necessary, a request to the applicant for clarification may be appropriate.

If the applicant does not satisfy the officer that the H&C factors present in their individual circumstances justify granting the requested exemption, the officer may refuse to grant an exemption and render a negative decision on the application.

If the officer is considering extrinsic information (i.e. information from a source other than the applicant or information to which the applicant does not have access or is not aware is

being used in the decision), this information must be shared with the applicant and submissions on the information should be invited before being used in the decision.

15.3 Applications not processed under the Spouse or Common-law Partner in Canada class

Specified eligibility requirements of the Spouse or Common-law Partner in Canada class are not met

All applicants under the Spouse or Common-law Partner in Canada class who request H&C consideration but who do not meet the requirements of R124(a) or R124(c) will be placed in the H&C queue, based on the date of receipt, and processed in accordance with existing H&C procedures. Applications identified at the eligibility screening stage will be transferred to the H&C queue by the case analyst at the Case Processing Centre in Mississauga (CPC-M). Those identified later will be transferred by the officer responsible for the processing of the case. Applicants will be informed by letter that their application has been transferred to the H&C queue for processing.

Eligibility requirements of the Spouse or Common-law Partner in Canada class are not met due to a change in circumstances after the first stage eligibility approval

After they have been determined to meet the eligibility requirements of the class (first stage approval), applicants who request H&C consideration due to a change in circumstances related to the R124(a) and R124(c) eligibility requirements, will be transferred to the H&C stream for processing. Since, at this point in time, these applicants would no longer satisfy R124(a) and/or R124(c), they would therefore not be eligible to apply for permanent residence from within Canada as a member of the Spouse or Common-law Partner in Canada class. However, their first stage approval will not be revisited pending re examination in the H&C stream, unless the change in circumstances involves misrepresentation or fraud (see ENF 2/OP 18 Evaluating Inadmissibility).

This will allow most individuals who have received first stage eligibility approval to benefit from a stay of their removal and to be able to apply for a work permit while their application await processing in the H&C queue. Since these applications will be processed in accordance with existing H&C procedures, applicants will need to demonstrate that not being granted the requested exemption would constitute "unusual and undeserved or disproportionate" hardship. These applicants will be informed by letter that their application has been transferred to the H&C queue for processing.

15.4 GCMS Coding

The existing coding for applications with a request for H&C consideration will be applied to these cases (see Section 8.1).

For more information on applications which have been transferred to the H&C queue for processing, please see Humanitarian and compassionate consideration.

16 Final approval

Once the CPC-M (or the local CIC office) has information indicating that the applicant and any family members included in the application have met admissibility requirements, taking into account the provisions of the spousal public policy (Appendix A) and requests under A25(1), the officer responsible for finalizing the application must assess whether or not the applicant is subject to the two-year conditional permanent residence measure.

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:
CPC-M	• updates GCMS record, entering information related to medical, security and background results on the applicant and dependent children; • assesses whether or not the two-year condition applies and enters this information in GCMS; and, • sends the record the local CIC office for the final stage of processing.
Local CIC office	• convokes the applicant and family members in Canada for permanent residence interview; • ensures dependent children are still eligible, i.e. that medical results and background checks are still valid); • verifies that the Right of Permanent Residence Fee has been paid; • completes the 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 the principal applicant.
The visa office	• issues permanent resident visas to eligible dependent children living abroad

17 Refusal

If either the applicant or the dependent children do not meet requirements, the CPC-M 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 with the application for permanent residence)	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	A39
Sponsor withdraws sponsorship/undertaking	IP 2, Sections 5.39 and 5.40	R126
Applicant is not eligible – the status eligibility requirement of R124(b) may be waived using the spousal policy	Section 5.14	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 GCMS	Sections 5.14 to 5.26 and Section 10.1	R124, R1(1) and R1(2)
Applicant is not living with the sponsor in Canada	Section 5.14	R124
Applicant is not the subject of a sponsorship application	Section 5.14	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	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	A34 to A42; R72(1)(*e*)(i)
Dependent child is inadmissible	Sections 5.9 to 5.13, 5.15, 10.4	A42(*a*); R129

17.1 Refusal by the CPC-M

See cases handled by CPC-M without referral to CIC, Section 5.35 above, for situations where the CPC-M is authorized to refuse. The CPC-M will send a refusal letter explaining clearly the reason(s) for refusal.

17.2 Refusal by local CIC office

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

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.

17.3 Deletion of children listed as dependants of sponsored spouse or common-law partner

Dependent children who are not eligible, in that they do not meet the R2 definition of a dependent child, cannot be granted permanent residence in Canada.

Example: A child who is 19 years of age or older when the application is received is not a dependent child if they do not provide satisfactory evidence of substantial dependence on the financial support of the parent since before the age of 19 due to mental or physical condition.

The local CIC office may grant permanent resident status to the principal applicant and any eligible dependent children. The applicant will be informed by letter why ineligible dependent children were removed from the application.

17.4 Response to enquiries after refusal

Applicants or their representatives often submit information after a refusal and request that an officer reconsider the decision. If an office receives a request to reconsider a decision, an officer must consider the request and decide whether or not to exercise their discretion to reconsider the previous decision. The legal doctrine of *functus officio* does not automatically bar reconsideration of final decisions (MCI v. Kurukkal, 2010 FCA 230).

The decision maker may exercise discretion to reconsider, or refuse to reconsider the applicant's request for reopening a previous decision. However, a decision to reopen and reassess an application should only be undertaken where warranted, on an exceptional basis. An applicant's dissatisfaction or disagreement with the decision does not by itself qualify as an exceptional case.

The onus is on the applicant to satisfy the officer that reconsideration is warranted. The decision-maker should consider all relevant factors and circumstances to determine whether an application merits reconsideration. The decision whether or not to reconsider the application must be recorded in GCMS and communicated to the applicant. The applicant's correspondence requesting reconsideration and any supporting documents should be retained on file.

The following is a non-exhaustive list of factors that may be relevant to consider:

- whether the decision-maker failed to comply with the principles of procedural fairness when the decision was made.
- whether the applicant has requested correction of a clerical or other error (e.g. a decision was made by an officer who did not have the delegated authority).
- if new evidence is submitted by an applicant, is the evidence based on new facts (i.e. facts that arose after the original decision was made and communicated to the applicant) and is it material and reliable. Decide whether that evidence would be more appropriately considered in the context of a new application.

- when additional evidence is presented that was available at the time of the original decision, why it was not submitted at the time of the original application – determine whether that evidence is material and reliable.
- the passage of time between the date of the original decision and the date of the reconsideration.
- whether there were any concerns regarding fraud or misrepresentation relating to a material fact, in the original decision or with the new submissions.

It is preferable that the initial decision-maker review any request for reconsideration. However, where that is not possible, a request for reconsideration can be reviewed by a different decision-maker as long as that person has authority to make decisions of the type under review.

Officers rendering a decision on whether or not to reconsider should ensure that the following information is entered in GCMS notes:

- the name of the officer rendering a decision on the reconsideration request;
- the reconsideration decision;
- the date of the reconsideration decision;
- the reasons for the reconsideration decision
- the date the reconsideration decision was communicated to the applicant

Note: The decision whether or not to reconsider is subject to the possibility of judicial review. Taking the above measures will ensure that, in the event a refused applicant submits a leave to appeal to the Federal Court, there is an official record and supporting information on file to reflect that CIC received, assessed and rendered a decision on a reconsideration request.

17.5 Applying for RPRF refunds

A sponsor of a refused applicant may apply to the CPC-M for a refund of the Right of Permanent Residence Fee, by email (preferred), mail or fax. For more information see Right of Permanent resident Fee (RPRF) Refund.

Note: Once established, information in a public policy may not be amended. To ensure they follow the most up-to-date and definitive instructions concerning applications being processed under the spousal public policy, officers should refer to information in the appropriate section in the main body of IP 8.

Appendix A—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); IRPR 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 IP 2 and IP 8.

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.

Note: 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. CriVminal 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 them 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-M 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 them 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 MIDI. 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, they are 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	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.

	apply under this public policy after they are deemed removal ready by CBSA will not benefit from the administrative deferral of removal.		
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	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	"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	The calculation of the 60 days begins from the "cut-off" date August 26, 2005.

(transitional case).	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.	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.	
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 Frazer Fowler at Selection Branch at (613) 437-6645 or .Fraser.Fowler@cic.gc.ca

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. • 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 IP 5 (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 IP 5 (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 IP 5 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 IP 5 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 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 IP 5 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 IP 2 and IP 8. • 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 IP 2 and IP 8. • 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 IP 2 and IP 8. • 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 IP 2 and IP 8. • 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 IP 5 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)

Note: Once established, information in a public policy may not be amended. To ensure they follow the most up-to-date and definitive instructions concerning the addition of declared family members to an application during processing, officers should refer to information in the appropriate section in the main body of IP 8.

Appendix B—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 request for permanent residence must apply for a new 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.