

## Immigration for Same Sex Couples Where Neither Partner is Canadian and Both Partners Are Immigrating

You and your partner are both citizens of different countries. Despite the obstacles this has posed, you are determined to create a future together. You have both explored and exhausted the options of immigrating to each other's country. The only other possible option is to find a country to which both of you can immigrate and start a new life together. For many couples this predicament has led them to consider immigrating to Canada. Equality rights for gays and lesbians are well advanced in Canada. The Canadian Human Rights Act and equivalent provincial and territorial human rights legislation prohibits discrimination on the basis of sexual orientation. Although the right to marry has not yet been legally recognized, same-sex couples in Canada have access to a broad range of spousal benefits. Court challenges for the right of same-sex couples to marry are in process in three provinces and being considered by Parliament.

Canada is exceptional in allowing not only the sponsorship of common-law partners of Canadians but also recognizing the common-law partners of qualifying immigrants as dependents. ("Canadians" includes both Canadian citizens and permanent residents or landed immigrants.) Although the *Immigration and Refugee Protection Act* that came into effect on June 28, 2002 now puts this into law, Canadian immigration policy has recognized same-sex relationships for a decade. If one partner qualifies for immigration on his or her own merits, that person would be the principal applicant and their common-law partner and any dependent children would be processed as dependents. The principal applicant is assessed on points for eligibility but the dependents are only required to meet medical and criminal admissibility requirements.

"Common-law partners" are defined as persons in a conjugal relationship where the partners have cohabited for at least one year. An exception is made for persons who are unable to cohabit because of persecution or penal sanctions.

If the two partners have not had a year of cohabitation then the partner who qualifies for immigration could immigrate alone and then sponsor their partner as a "conjugal partner" after they have become a permanent resident of Canada. The "conjugal partner" category is an alternative option for Canadians to sponsor persons who do not meet the definition of common-law partners because they do not have one year of cohabitation but have been in a conjugal relationship for at least one year.

CIC does have discretion to give permanent residence to persons who cannot be considered as common-law partners on humanitarian and compassionate considerations.