

Immigration for Same Sex Couples Where One Partner is Canadian and One Partner is Immigrating

So, you've met the love of your life and have a great thing going, but there's just one little catch. Your partner happens to come from a different country and you can't figure out how to deal with immigration. For thousands of lesbian and gay Canadians with non-Canadian partners, this issue determines the survival of their relationships. ("Canadians" includes both Canadian citizens and permanent residents or landed immigrants.) Access to spousal benefits is worthless if your partner cannot live with you in Canada.

The new *Immigration and Refugee Protection Act* does make provision for both same-sex and opposite-sex unmarried partners of Canadians to be sponsored by their Canadian partners. Two new categories in the Family Class apply. The first is "common-law partners". This is 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. The second is "conjugal partners". It is an alternative option for 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.

Common-law partners can be sponsored from within Canada if they are living with their Canadian partner in Canada and have valid immigration status in Canada or they may be sponsored overseas by having the application processed through a visa office in a Canadian embassy or consulate-general. Conjugal partners can only be sponsored overseas.

When conjugal partners are issued a permanent resident visa there will be terms and conditions attached. They must provide proof to Citizenship and Immigration Canada that they have completed one year of cohabitation with their Canadian partner within 15 months of having been landed in Canada. If they do not do so CIC will seek to remove them from Canada.

The Canadian sponsors of overseas applications for common-law partners or conjugal partners where the application is refused have the right to appeal the refusal to the Appeal Division of the Immigration and Refugee Board. The Canadian sponsors of applications for common-law partners or conjugal partners filed in Canada where the application is refused do not have the right to appeal the refusal to the Appeal Division of the Immigration and Refugee Board.

Common-law partners, conjugal partners, and their dependents are exempt from the medical inadmissibility provisions for excessive demand on health or social services.

So, for example, an HIV-positive conjugal partner could not be barred. They are not, however, exempt from medical inadmissibility for public health risks such as tuberculosis.

Applications can be refused if CIC believes the primary purpose of the relationship is to facilitate immigration to Canada.

CIC does have discretion to give permanent residence to persons who cannot be sponsored as common-law partners or conjugal partners on humanitarian and compassionate considerations. Refusals of these decisions cannot be appealed to the Appeal Division of the IRB.