



# Report on Summer 2005 Vol 1 Issue 2 MOBILITY

The Official Publication of the Canadian Employee Relocation Council

FEATURE



# ALL IN THE FAMILY

**Canada's Immigration Laws  
Let You Take Care of the Family**

**By Nan Berezowski**



**W**ho is counted as family for Canada's immigration programs? The answer to this question is important for those of us that work in corporate relocation – when a foreign national employee is considering relocation to Canada, they invariably include immediate family members. Experience tells us that satisfactory arrangements for the family are critical to the success of the relocation. Immigration legislation implemented in June of 2002 provided increased access to Canada for many less-traditional families. Perhaps the biggest related change was to the definition of "Members of the Family Class" to include common-law and conjugal partners. In turn, the inclusion of same-sex relationships in these newly introduced concepts heralded Citizenship & Immigration Canada's modern day approach to less traditional families. For the first time, Canada formally recognized common-law and conjugal relationships between both opposite and same-sex partners in its immigration programs.

## FACILITATING CORPORATE RELOCATIONS

There are three scenarios that arise in the context of corporate relocation, where this notion of family for immigration purposes can have an enormous impact:

### Spouses of Work Permit holders who wish to work while in Canada

In 1998 Citizenship & Immigration Canada opened the doors to the spouses of many Work Permit holders by allowing for Open Work Permits that permit spouses to work without employer restriction while in Canada. This change addresses the reality of dual career families and improves Canada's global attractiveness as a relocation destination.

### Foreign employees asked by the Canadian employer to stay in Canada beyond the initial period of the relocation

The employee, with the support of the employer, might decide to apply for Canadian Permanent Residence as a Skilled Worker. Where family members accompany the foreign national in Canada it can be critical to the continued unification of the family that family members be included as dependents in the Application for Permanent Residence.

### Foreign employees, who having relocated to Canada, enter into a committed relationship with a Canadian citizen or permanent resident

The couple may decide to apply under the Family Class program for the foreign national's permanent residence. This process requires that the Canadian, or Canadian permanent resident, sponsor the foreign national.

Since June 2002 common-law and conjugal partners, like marital spouses, have been considered spouses for purposes of the Work Permit program, dependent family members for purposes of Canada's Foreign Skilled Worker and Business (including Self-Employed, Entrepreneur and Investor) immigration programs as well as Family Members for family-based sponsored permanent residence applications. As well, same-sex partners now have access to these programs as all common-law and conjugal partners receive the same consideration as married spouses under the law.

### WHO IS FAMILY?

To relocate or immigrate to Canada on the basis of a family relationship the foreign national must be a Member of the Family Class. Common-law and conjugal partners as well as spouses (formally married partners) are included.

At least for immigration purposes, a common-law partner is an individual who has been cohabiting with the person in a conjugal relationship for at least one year. Common-law partners are eligible to work in or immigrate to Canada as dependents or "sponsorees".



*Bruce Ward Realty Ltd.*



Offering Furnished Rentals, Unfurnished Rentals, Relocation Services & Sales  
in Vancouver, British Columbia



Furnished Rentals

Lynn Whittingham  
lynn@bruceward.com  
877-684-6182 ext 0



Unfurnished Rentals &  
Relocation Services

Jacy Dobrich  
jacy@bruceward.com  
877-684-6182 ext 2



Sales

Klaus Rode  
klaus@bruceward.com  
877-684-6182 ext 3

[www.bruceward.com](http://www.bruceward.com)

The concept of a conjugal partner is a little trickier – here the foreign national resides outside of Canada but has been in a conjugal relationship with the sponsor for at least one year. Conjugal partners are similar to common-law partners; however, they have not yet merged their households, as they have not been able to cohabit continuously and permanently. Note, however, that the threshold for conjugal relationships is high – fiancé/fiancée and “boyfriend/girlfriend” relationships do not necessarily meet the test. The successful application must adequately explain why the couple has not cohabitated continuously for at least one year.

In making the definition of common-law and conjugal relationships gender neutral, Canada’s immigration laws, regulations and policies now provide for the equal treatment of common-law and conjugal couples of both the opposite and same-sex. The result is increased access for common-law, conjugal and same-sex couples to all of Canada’s immigration programs. This expansion is good news for those of us in the relocation industry as more employees and their families can be accommodated thus making Canada a relatively relocation-friendly destination.

#### MAKING THE CASE

The principal applicant must, of course, qualify for the status sought – whether it is an intra-corporate-based Work Permit or a Foreign Skilled Worker-based Permanent Residence Application. In the case of a sponsorship application, the sponsor must also meet certain regulatory requirements. In assessing any family-based immigration request, an Immigration Officer must also be satisfied that the relationship between the principal applicant or sponsor and the spouse, common-law or conjugal partner, is genuine. The law specifically precludes situations where the relationship was entered into primarily for immigration purposes.

One practical consequence of modernizing the definition of family has

been the increased scrutiny that Citizenship & Immigration Canada now places on the assessment of family-based applications in general. It has become increasingly important to provide extensive documentation evidencing the family relationship whether marital, common-law, or conjugal. However, because common-law and conjugal relationships are by nature less documented, it is particularly important to ensure that you have satisfactorily established the key elements of the relationship and submitted sufficient accompanying documentation. The principal applicant, sponsor and/or applicant(s) must fully appreciate the extensive information and documentation required to support the application and may need assistance in thoroughly preparing and monitoring the application.

The submission typically contains a summary of the major dates and events of the relationship and particulars of friends and family members with knowledge of the relationship. It also might contain details of the communications between the couple and an indication of the frequency of visits to each other when apart and/or an outline of time spent co-habiting either in Canada or abroad. Where applicable, the submission will also set out the financial co-dependence of the relationship and indicate whether either partner ever has been in a common-law or conjugal relationship before. A Statutory Declaration of Common Law Union may also be appropriate.

#### COVERING THE BASICS

Like others entering Canada, family members must generally be admissible under the sections of the law relating to health, criminality and security. In the context of a Permanent Residence Application, Immigration Officers determine admissibility on the basis of Police Certificates and background reports. Citizenship & Immigration Canada also diligently tests and screens all immigrants as well as many visitors (including Work Permit applicants and their family members) who wish to enter Canada for medical inadmissibility.

- Furnished suites for short term stays
- Unfurnished suites for extended stays
- Free utilities
- Laundry facilities, pools and parks
- Underground access to all buildings
- Easy access to Highways 40 and 20
- 15 minutes from Pierre Elliott Trudeau International Airport
- Close to restaurants, shopping centres, schools and hospital
- Public transportation at door

*Southwest One*

NOUS APPLIQUONS CONTINUUELLEMENT À EXCÉDER VOS ATTENTES.  
CONTINUOUSLY STRIVING TO SURPASS YOUR EXPECTATIONS.



Leasing Office: 514-697-2961 Email: [hharvey@tdccanada.ca](mailto:hharvey@tdccanada.ca)  
Fax: 514-695-1107 [www.southwestone.ca](http://www.southwestone.ca)

Foreign nationals are inadmissible to Canada on health grounds if they are determined to have a health condition that:

- Is likely to be a danger to public health;
- Is likely to be a danger to public safety;
- Might reasonably be expected to cause excessive demand on health or social services.

For purposes of a family-sponsored Permanent Residence application spouses, common-law or conjugal partners are exempted from meeting the health grounds due to excessive demand on Canada's health and social services. As same-sex couples are included in the common-law and conjugal definitions they too can avail themselves of this important exemption.

### CONCLUSION

We can take comfort in Citizenship & Immigration Canada's formal recognition of less traditional family relationships as it makes it possible to successfully relocate more foreign employees to Canada. The repatriation of the Constitution in 1982 and the implementation of the Charter of Rights and Freedoms in 1985 are generally acknowledged as the impetus behind Canada's gradual recognition of less traditional

family relationships. In 2002 a modern notion of family was formally incorporated into Canada's immigration programs. The result has been increased access for common-law, conjugal and same-sex couples to all of Canada's immigration programs. In the intervening years this recognition of common-law, conjugal relationships of both opposite and same-sexes has facilitated the unification of less traditional families in Canada. In today's competitive global market this is good news for those of us in the relocation industry.

*Nan Berezowski, BA, LL.B, is a Barrister & Solicitor, Attorney (New York) with Rekal Frankel LLP. She can be reached at 416.960.8876 E-mail: nan@mobilitylaw.com*

**L.H. LIND**  
REALTY INC.

ISO 9001: 2000 Registered

53 Wellington Street East  
Aurora, Ontario, Canada L4G 1H6  
FAX (905) 727-2230 1-888-727-8223  
Website: [www.lhlincrealty.com](http://www.lhlincrealty.com)  
E-Mail: [lenard@lhlincrealty.com](mailto:lenard@lhlincrealty.com)

**Lenard Lind**  
President - Broker/Owner  
MVA - Residential (Market Value Appraiser)  
Certified Luxury Home Marketing Specialist  
CERC Relocation Specialist  
CRS Certified Residential Specialist  
Registered New Home Builder - G.T.H.B.A. and TARION

**(905) 841-0000 or (416) 410-8223**



*Plan to Attend Canada's Premier Relocation Event!*

# Shaping The Future of Workforce Mobility

## CERC 2005 CONFERENCE

Sheraton on The Falls  
Niagara Falls, Ontario  
October 23-25, 2005

Register on-line at:  
[www.cerc.ca](http://www.cerc.ca)

 **CERC**  
*Leadership for Workforce Mobility*