

WHO'S GONNA PAY?
CANADA (ATTORNEY GENERAL) V. MAVI

“WHO’S GONNA PAY?”

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For anyone interested in sponsoring a family member to immigrate to Canada, be aware that a major part of the sponsorship application is the required Sponsorship Agreement and Undertaking (the “Undertaking”). This is a binding contract, whereby the sponsor agrees to provide for the needs of the sponsored immigrant for three or more years from the time the immigrant lands in Canada. The sponsor agrees that he/she will repay the Government if the sponsored person receives any social assistance during the life of the Undertaking.

The eight sponsors involved in the recent Supreme Court case of *Canada (Attorney General) v. Mavi* had all signed the Undertaking, thus agreeing to repay the Government should their sponsored family member receive social assistance. Problems arose when the sponsors either divorced or otherwise lost contact with their sponsored family members, who then received social assistance. The sponsors claimed that they should not be responsible to repay the Government, or alternatively, that the payments ought to be deferred.

In its unanimous decision, the Supreme Court of Canada held that the responsibility to pay for any government assistance given to the sponsored immigrant lies squarely on the shoulders of the sponsor.

The government owes a minimal “duty of procedural fairness,” which includes: notifying the sponsor of the claim, allowing the sponsor to explain their current situation, considering all relevant circumstances, and notifying the sponsor of the Government’s decision.

Notwithstanding this duty of procedural fairness, the Court held that the Government retains a certain degree of discretion when dealing with debt collection. This discretion allows the Government to delay enforcement with “regard to the sponsor’s circumstances and to enter into agreements respecting

terms of payment, but not simply to forgive the statutory debt.”¹

Unfortunately for sponsors, there is no way to shed the financial responsibility that comes with sponsoring an immigrant family member, regardless of the circumstances. However, some comfort may be taken from the fact that the Government can choose to defer repayments.

Before sponsoring anyone to immigrate to Canada, make sure that you understand exactly what sponsorship will mean for you. If you don’t, you may be left asking—“Who’s gonna pay?”

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1. <http://scc.lexum.org/en/2011/2011scc30/2011scc30.html>