

# Researchers: Abolish marriage consummation as requirement for citizenship

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Two political scientists at the University of Alberta argue consummation of marriage as a requirement for Canadian citizenship should be abolished.

It's "a vestige of an especially antiquated patriarchy" that should be abandoned, write Lois Harder and Margot R. Challborn in a study recently published in *Citizenship Studies*.

There was a time when consummating a marriage was considered so important newlyweds would invite witnesses to the bedroom on their wedding night. Practised as recently as the 18th century in Britain, the "bedding ceremony" was the only way to ensure a marriage was genuine.

The practice might seem ridiculously old-fashioned today, but consummation as the seal of marital authenticity still has a dominant role in Canadian law, especially [immigration law](#) as it applies to family sponsorship applications. And that needs to change, argue Harder and Challborn.

They have strong support for their case. Eighteen years ago, in a report entitled "Beyond Conjuality," the Law Commission of Canada laid out what should define a close personal [relationship](#) when it comes to the law, and concluded that "sex shouldn't be part of that."

"In the realm of immigration, the commission recommended that sponsorship on the basis of conjuality and close familial relationship be expanded to include the ability to sponsor persons with whom they have a close personal relationship," write Harder and Challborn, "even if that relationship does not involve ties of blood, marriage, common-law partnership or adoption."

Especially in family sponsorship cases, the Law Commission of Canada argued that what's more important than sexual relations is establishing that a sponsored person is "'known and emotionally important to the person sponsoring them,'" and that the sponsor is prepared to assume "a long term enforceable sponsorship commitment," which could be demonstrated by proving emotional or economic interdependence for at

least one year.

"If what matters, in the end, is whether there is a substantial emotional and financial commitment between the parties to the relationship—however they choose to conduct that relationship—the necessity of sex and details of its performance could be abandoned," write Harder and Challborn.

When it comes to domestic law, the Supreme Court of Canada has also weighed in. It ruled in 1999 that a [sexual relationship](#) does not determine a "conjugal relationship."

"Rather, the intimate relationships that undergird marriage are constituted by care and commitment, while [sexual relations](#) are a more ephemeral element of a marriage," said Harder. "What matters is the couple look after each other, make medical decisions together—all these kinds of things."

Alberta also clarified its position in 2001, enacting the Adult Interdependent Relationships Act. It states that one can form an interdependent relationship—in which partners are "emotionally committed to one another" and "function as an economic and domestic unit" without sexual involvement or marriage.

"The government was compelled to recognize same-sex relationships, but it didn't want to," said Harder. "So this is the way they got around it. Sex matters so much it couldn't matter at all. It really was about evading the sex in same-sex marriage."

After three years, interdependent couples have rights, benefits and responsibilities similar to—and in most cases, the same as—those of married couples.

However, this more flexible view of relationships does not apply to immigrants seeking Canadian citizenship.

In their study, Harder and Challborn examined 68 Immigration and Refugee Board appeals of spousal and conjugal partner sponsorship adjudications. Of the 68 cases, only two produced a result in which non-consummation nonetheless produced a finding of a "genuine marriage."

Without consummation, they write, "and with only a few telling exceptions," Canadian adjudicators have refused to accede that a genuine marriage has been established and thus spousal sponsorship applications are denied."

What the authors found most disturbing about the immigration board's focus on consummation, however, was the violation of applicants' privacy and "the explicit, high on pornographic, interest in the relationships of sponsored spouses," even though visa officers are not explicitly told to inquire into the sexual dimensions of applicants' lives.

Some come from cultural backgrounds with "very conservative religions about sex, and people are now on the public record," said Harder. Details of personal relationships are exposed "because the state wants an easy marker.

"It's not enough to have just consummation, but without it you won't be able to prove you have a marriage."

The study's authors also found that sponsored applications from certain parts of the world were more likely to have their privacy violated by immigration officials.

"If you're white and coming from the United States, probably it's fine ... but if you're coming from a poor country or there is a culture of

arranged marriage, questions arise about whether it's an authentic [marriage](#)."

Harder concedes that some arranged marriages may indeed be illegitimate scams intended to gain an unfair immigration advantage.

"But we argue, is consummation the way we should decide the dodginess of that application? Presumably there are better ways."

**More information:** Margot R. Challborn et al. Sex and the genuine marriage: consummation and conjugality in Canadian citizenship, *Citizenship Studies* (2019). [DOI: 10.1080/13621025.2019.1620686](https://doi.org/10.1080/13621025.2019.1620686)

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