

**SUPREME COURT OF CANADA**

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| **Citation:** Canada (Attorney General) *v.* Mavi, 2011 SCC 30, [2011] 2 S.C.R. 504 | **Date:** 20110610  **Docket:** 33520 |

**Between:**

**Attorney General of Canada**

Appellant

and

**Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano,**

**Nedzad Dzihic, Rania El‑Murr, Oleg Grankin, Raymond Hince,**

**Homa Vossoughi and Hamid Zebaradami**

Respondents

**And Between:**

**Attorney General of Ontario**

Appellant

and

**Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano,**

**Nedzad Dzihic, Rania El‑Murr, Oleg Grankin, Raymond Hince,**

**Homa Vossoughi and Hamid Zebaradami**

Respondents

- and -

**South Asian Legal Clinic of Ontario, Canadian Council for Refugees,**

**Metropolitan Action Committee on Violence against Women and Children**

**and Canadian Civil Liberties Association**

Interveners

**Coram:** McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 80) | Binnie J. (McLachlin C.J. and LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ. concurring) |

Canada (Attorney General) *v.* Mavi, 2011 SCC 30, [2011] 2 S.C.R. 504

Attorney General of Canada *Appellant*

v.

Pritpal Singh Mavi,

Maria Cristina Jatuff de Altamirano,

Nedzad Dzihic, Rania El‑Murr,

Oleg Grankin, Raymond Hince,

Homa Vossoughi and

Hamid Zebaradami *Respondents*

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v.

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Nedzad Dzihic, Rania El‑Murr,

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**Indexed as:** Canada (Attorney General) ***v.*** Mavi

2011 SCC 30

File No.: 33520.

2010: December 9; 2011: June 10.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the court of appeal for ontario

*Immigration — Sponsorship — Family class — Sponsors signing undertakings promising to provide for sponsored relative’s essential needs and ensuring that relative would not require social assistance during sponsorship period — Legislation providing that social assistance paid to relative during sponsorship period constitutes debt that “may be recovered” either by federal or provincial government — Ontario seeking repayment of debts — Sponsors seeking declaration discharging them from debt — Whether Immigration and Refugee Protection Act provides discretion to enforce sponsorship debt — Whether Ontario debt recovery policy improperly fettering exercise of statutory discretion — Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 145 — Immigration and Refugee Protection Regulations, SOR/2002‑227, s. 132.*

*Administrative law — Natural justice — Procedural fairness — Doctrine of legitimate expectations — Debt enforcement — Sponsors signing undertakings promising to provide for sponsored relative’s essential needs and ensuring that relative would not require social assistance during sponsorship period — Legislation providing that social assistance paid to relative during sponsorship period constitutes debt that “may be recovered” either by federal or provincial government — Ontario seeking repayment of debts under policy incorporating significant procedural protections in terms of sponsorship undertakings — Sponsors seeking declaration discharging them from debt — Whether duty of procedural fairness applied to enforcement of debt — Whether legitimate expectations created by terms of undertaking were enforceable and satisfied.*

Since 1978, Canada has allowed Canadian citizens or permanent residents to sponsor their relatives to immigrate to Canada. If such persons after arriving in Canada obtain social assistance (contrary to their sponsor’s undertaking of support), the sponsor is deemed to have defaulted on the undertaking and either the provincial or federal government may recover from the sponsor the cost of providing social assistance. The present proceedings were initiated by eight sponsors whose relatives received social assistance and are therefore deemed to have defaulted on their undertakings. The sponsors deny liability under the undertakings and seek various declarations the result of which, if granted, would be to avoid payment, either temporarily or permanently. The sponsors contend that s. 145(2) of the *Immigration and Refugee Protection Act* (“*IRPA*”) which states that an amount that a sponsor is required to pay under the terms of an undertaking “may be recovered” indicates the existence of a Crown discretion to collect or not to collect the debt. The applications judge concluded that the government was not vested with a discretion to consider on a case‑by‑case basis whether or not to enforce the debt. The government’s duty is to collect and the legislation does not impose any duty of fairness towards sponsors in default. The Court of Appeal allowed the appeal and held that the word “may” in the legislation indicates some degree of discretion on the part of the government. Furthermore, the province had improperly fettered or abused the exercise of its discretion because its policy prohibited a settlement for less than the full amount of the debt which is an option expressly contemplated by the *Immigration and Refugee Protection Regulations*. It was also held that the governments do owe a duty of procedural fairness to the sponsors.

*Held*: The appeal should be allowed in part.

Parliament’s legislation manifests an unambiguous intent to require the full sponsorship debt to be paid if and when the sponsor is in a position to do so, even incrementally over many years pursuant to an agreement under the Regulations. In dealing with defaulting sponsors, the government must however act fairly having regard to their financial means to pay and the existence of circumstances that would militate against enforcement of immediate payment. In the exercise of this discretion, which Parliament has made clear is narrow in scope, the Crown is bound by a duty of procedural fairness. Nevertheless the content of the duty of fairness in these circumstances is less ample than was contemplated in the decision of the Court of Appeal and, contrary to its opinion, the requirements of procedural fairness were met in the cases of the eight respondent sponsors.

The undertakings are valid contracts but they are also structured, controlled and supplemented by federal legislation. The debts created thereby are not only contractual but statutory, and as such their enforcement is not exclusively governed by the private law of contract.

The doctrine of procedural fairness has been a fundamental component of Canadian administrative law for over 30 years. As a general common law principle, it applies to every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges, or interests of an individual (subject of course to clear statutory language or necessary implication to the contrary). *Dunsmuir* does not detract from the general duty of fairness owed by administrative decision makers. Rather it acknowledged that in the specific context of the contract of employment at issue in the circumstances of that case dismissal was governed by contract law rather than public law. Here, in contrast, the terms of sponsorship are dictated and controlled by public law. The undertaking is required by statute. While there are some contractual aspects, it is the statutory framework that closely governs the rights and obligations of the parties and opens the door to the requirements of procedural fairness.

Section 132 of the Regulationsobligates a sponsor to reimburse the Crown in right of Canada or a province for the cost of every benefit provided as social assistance to the sponsored family member during the term of the undertaking. The undertakings set out the obligations of the sponsor, the duration of the undertaking and the consequences of the default. They are binding notwithstanding any change in the sponsor’s personal circumstances.

On a proper interpretation of the governing legislation, the Crown does have a limited discretion to delay enforcement action having regard to the sponsor’s circumstances and to enter into agreements respecting terms of payment, but this discretion does not extend to the forgiveness of the statutory debt. Debt collection without any discretion would not advance the purposes of the *IRPA.* It would hardly promote “successful integration” to require individuals to remain in abusive relationships. Nor would the attempted enforcement of a debt against individuals without any means to pay further the interest of “Canadian society”. Excessively harsh treatment of defaulting sponsors may risk discouraging others from bringing their relatives to Canada, which would undermine the policy of promoting family reunification.

Once the duty of procedural fairness has been found to exist, the particular legislative and administrative context is crucial to determining its content. It is clear from the legislative history of the *IRPA* that over the years Parliament has become increasingly concerned about the shift to the public treasury of a significant portion of the cost of supporting sponsored relatives. Family reunification is based on the essential condition that in exchange for admission to this country the needs of the immigrant will be looked after by the sponsor, not by the public purse. Sponsors undertake these obligations in writing. They understand or ought to understand from the outset that default may have serious financial consequences for them. Here, the nature of the decision is final and specific in nature. It may result in the filing of a ministerial certificate in the Federal Court which is enforceable as if it were a judgment of that court. The *IRPA* does not provide a mechanism for sponsors to appeal the enforcement decision. This absence of other remedies militates in favour of a duty of fairness at the time of the enforcement decision. The effect of the decision on the sponsors is significant as sponsorship debts can be very large and accumulate quickly.

The content of the duty of procedural fairness in these cases is fairly minimal. It does not require an elaborate adjudicative process but it does oblige the Crown, prior to filing a certificate of debt with the Federal Court, (i) to notify a sponsor at his or her last known address of its claim; (ii) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (iii) to consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; and (iv) to notify the sponsor of the government’s decision. It is a purely administrative process and is a matter of debt collection. There is no obligation on the government decision maker to give reasons. The existence of the debt is reason enough to proceed.

Ontario did not improperly fetter its exercise of statutory discretion in adopting its current policy. Its terms are consistent with the requirements of the statutory regime and met the legitimate procedural expectations of the sponsors created by the text of their respective undertakings. Ontario’s policy seeks to balance the interests of promoting immigration and family reunification on the one hand, and preventing abuse of the sponsorship scheme on the other. There is no evidence that the limited procedural protections afforded by Ontario have in any way undermined or frustrated the debt collection objective or resulted in unfairness to family sponsors.

**Cases Cited**

**Distinguished:**  *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; **discussed:**  *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; **referred to:***Nicholson v. Haldimand‑Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643; *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781; *Rhine v. The Queen*, [1980] 2 S.C.R. 442; *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190, [2007] 2 F.C.R. 475; *Canada v. Crosson* (1999), 169 F.T.R. 218; *Optical Recording Corp. v. Canada*, [1991] 1 F.C. 309; *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152; *Greater Toronto Airports Authority v. International Lease Finance Corp.* (2004), 69 O.R. (3d) 1; *Ward‑Price v. Mariners Haven Inc.* (2001), 57 O.R. (3d) 410; *Houde v. Quebec Catholic School Commission*, [1978] 1 S.C.R. 937; *Moreau‑Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249; *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539.

**Statutes and Regulations Cited**

*Financial Administration Act*, R.S.C. 1985, c. F‑11, s. 23.

*Immigration Act*, R.S.C. 1985, c. I‑2, ss. 108(2), 114(1)(*c*), 115, 118(1), (2).

*Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ss. 2(2), 3, 12, 14(2), 145(2), (3), 146.

*Immigration and Refugee Protection Regulations*, SOR/2002‑227, ss. 132, 135.

*Immigration Regulations, 1978*, SOR/78-172, s. 5(2)(*g*) [ad. SOR/97-145, s. 3].

*Interpretation Act*, R.S.C. 1985, c. I‑21, s. 11.

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APPEAL from a judgment of the Ontario Court of Appeal (Laskin, Simmons and Lang JJ.A.), 2009 ONCA 794, 98 O.R. (3d) 1, 313 D.L.R. (4th) 137, 259 O.A.C. 33, 5 Admin. L.R. (5th) 184, 85 Imm. L.R. (3d) 1, [2009] O.J. No. 4792 (QL), 2009 CarswellOnt 6992, setting aside a decision of Wilson J., Superior Court of Justice, September 11, 2008, unreported. Appeal allowed in part.

Urszula Kaczmarczyk and Christine Mohr, for the appellant the Attorney General of Canada.

Robert H. Ratcliffe, Sara Blake and *Baaba Forson*, for the appellant the Attorney General of Ontario.

Lucas E. Lung and Lisa Loader, for the respondents Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano, Oleg Grankin, Raymond Hince and Homa Vossoughi.

Lorne Waldman and Jacqueline Swaisland, for the respondent Nedzad Dzihic.

Hugh M. Evans, for the respondents Rania El‑Murr and Hamid Zebaradami.

Ranjan K. Agarwal and Daniel T. Holden, for the intervener the South Asian Legal Clinic of Ontario.

Chantal Tie, Carole Simone Dahan and Aviva Basman, for the intervener the Canadian Council for Refugees.

Geraldine Sadoway, for the intervener the Metropolitan Action Committee on Violence against Women and Children.

Guy Régimbald, for the intervener the Canadian Civil Liberties Association.

The judgment of the Court was delivered by

1. Binnie J. — Since 1978, Canada has allowed Canadian citizens or permanent residents to sponsor their relatives to immigrate to Canada. Family reunification was an important objective of the former *Immigration Act*, R.S.C. 1985, c. I-2, and remains so under the successor legislation enacted in 2001 as the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (“*IRPA*”). Of the over 2 million permanent residents admitted to this country between 1997 and 2007, 615,000 (or 27%) are members of the family class. If such persons after arriving in Canada obtain social assistance (contrary to their sponsor’s undertaking of support), the sponsor is deemed to have defaulted and either the provincial or federal government may recover from the sponsor the cost of providing social assistance.
2. The present proceedings were initiated by eight sponsors who denied liability under their undertakings. As will be explained, the undertakings are valid contracts but they are also structured, controlled and supplemented by federal legislation. The debts created thereby are not only contractual but statutory, and as such their enforcement is not exclusively governed by the private law of contract. The issue raised by this appeal is the extent to which, if at all, the government is constrained by considerations of procedural fairness in making enforcement decisions in relation to these statutory debts.
3. The Attorney General of Canada argues (and the applications judge agreed) that the Crown is not required even to notify an allegedly defaulting sponsor of its claim prior to filing with the Federal Court a ministerial certificate of the alleged debt which becomes, automatically, enforceable as if it were a judgment of that court. He argues that the legislation imposes on the Crown a *duty* (not a discretion) to collect sponsorship debts in full. He denies that in carrying out this duty there is any obligation of procedural fairness.
4. On a proper interpretation of the governing legislation, however, I believe the Crown *does* have a limited discretion in these collections. The discretion enables the governments to delay enforcement action having regard to the sponsor’s circumstances and to enter into agreements respecting terms of payment, but not simply to forgive the statutory debt. On the evidence, Ontario has had in place a discretionary policy respecting the collection of family sponsorship debts for many years, both before and after the enactment of the *IRPA* in 2001.
5. In the exercise of this discretion, which Parliament has made clear is narrow in scope, the Crown is bound by a duty of procedural fairness. The content of this duty is fairly minimal. The Crown is obliged prior to filing a certificate of debt with the Federal Court (i) to notify a sponsor at his or her last known addressof its claim; (ii) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (iii) to consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; and (iv) to notify the sponsor of the government’s decision. This is a purely administrative process. It is a matter of debt collection. There is no obligation on the government decision maker to give reasons. The existence of the debt is, in the context of this particular program, reason enough to proceed.
6. Although the respondents took the position in the courts below that they should be altogether “discharged from their sponsorship obligations” (2009 ONCA 794, 98 O.R. (3d) 1, at para. 6), they took the less extravagant position in this Court that they

do not dispute that undertakings are enforceable. Nor do they dispute that undertakings should be enforced in the overwhelming majority of cases. They are merely asking that the [governments] properly exercise the discretion that was granted to them and consider their circumstances before making the decision to enforce. [R.F., at para. 5]

1. The Ontario Court of Appeal held that the Ontario government’s deferral policy improperly fettered its statutory discretion in a manner “inconsistent with the overall legislative scheme” (para. 132). While I agree (as stated) with the court below that the sponsors are entitled to a basic level of procedural fairness, my view is that the Ontario guidelines are quite adequate in that regard and are consistent with the statutory scheme. Moreover, the contention of the respondent sponsors that they are entitled to a more elaborate “process” of decision making must be rejected. We are, after all, dealing with statutory debt collection. I would allow the appeal in part but as these appeals can properly be characterized as test cases, I would do so without costs.

I. Facts

1. Foreign nationals may apply to become permanent residents and eventually citizens, under three broad categories: the family class, the economic class and the refugee class (*IRPA*, s. 12). A permanent resident or citizen wishing to sponsor a family member initiates the process by making a sponsorship application. Sponsors must be over 18 years of age, and meet detailed financial and other requirements. Family class members are not assessed independently on their ability to support themselves. Since they obtain their permanent residence status on the sole basis of being in a familial relationship with a sponsor, they are not required to meet the financial or other selection requirements which are imposed on other classes of immigrants.

A. *The Sponsors*

1. The respondents to this appeal are eight sponsors whose relatives received social assistance and who are therefore deemed to have defaulted on their undertaking.
2. The respondent Dzihic sponsored his fiancée in 2002. His allegation is that when she arrived in Canada she refused to live with him or marry him. Mr. Dzihic notified the immigration department and an order was made for her deportation. However, his fiancée appealed the order successfully without any notice to or input from Mr. Dzihic. He says he was unaware of her success or the fact that she subsequently received social assistance totalling $10,510.65 as of July 2007, for which he is now responsible.
3. The respondent El-Murr sponsored her father, mother and two brothers in 1995 while she was unemployed. Her husband was employed at the time and he co-signed the undertaking. After the family members arrived in Canada, Ms. El-Murr left her husband because of alleged abuse and she went on social assistance as did her parents and one brother. The debt amount as of February 2006 is $94,242.16 and she says she cannot afford to repay this amount.
4. The respondent Grankin sponsored his mother in 1999. He claims that he subsequently lost his job and had to apply for social assistance. He was thus unable to support his mother after her arrival in Canada. His mother applied for social assistance and received it. Mr. Grankin states that had he known he was responsible for repaying the benefits, he would not have permitted his mother to apply for assistance. As of June 2007 his total debt was $54,426.39.
5. The respondent Hince married Ms. Patel who was on a visitor’s visa in 2002. She returned to India and Mr. Hince sponsored her and her daughter to return to Canada. They did so in 2006 and lived briefly with Mr. Hince, then left. He says he was unaware that she subsequently received social assistance. His job is low paying and does not permit him, he says, to repay the social assistance amount due as of June 2007 of $10,547.65. He believes he was exploited by Ms. Patel to enable her to gain immigration status.
6. The respondent de Altamirano and her husband sponsored her mother in 2000. After arriving in Canada, her mother suffered a stroke. Ms. de Altamirano applied for benefits to pay for her mother’s institutional care. She alleges that she was encouraged to do so by a case worker and did not realize that she would have a responsibility to repay the benefits — as of May 2007 said to be $54,559.99.
7. The respondent Mavi sponsored his father in 1996. He alleges he did not read the application or understand it. His father arrived in Canada in 1997 and lived with Mr. Mavi. There was a falling out and the father left. Mr. Mavi learned in 2005 that his father had collected benefits and he contacted the government to advise that his own health was not good, which limited his ability to work. The amount of benefits said to be owed as of June 2005 is $17,818.08.
8. The respondent Vossoughi applied to sponsor her mother at a time when she was married. In 2002, she left her husband because, she says, of abuse. In 2003, her mother arrived in Canada. Ms. Vossoughi says she could not support her mother and her mother went on social assistance. She alleges she did not realize she was responsible for repaying the benefits. The amount said to be owed pursuant to the undertaking as of July 2007 is $28,754.71.
9. The respondent Zebaradami sponsored his fiancée in 2000. She arrived in Canada in 2001 but only stayed with him for a few weeks, then left him for another man. She received social assistance benefits of $22,158.02 as of July 2007. Mr. Zebaradami says he was duped and that his former fiancée only used him to gain status in Canada.
10. The Government of Ontario, which in each case paid the social assistance to the needy relative, took steps to enforce the debt against each of the sponsors. In applications filed in the Ontario Superior Court of Justice, the eight sponsors sought various declarations the result of which, if granted, would be to avoid payment, either temporarily or permanently.

B. *The Undertakings*

1. The undertakings signed by Mr. Grankin, Mr. Zebaradami and Ms. de Altamirano contained the following statement with respect to the possibility that enforcement might be deferred (with similar statements made in the undertakings signed by Ms. Vossoughi, Mr. Dzihic and Mr. Hince):

The Minister may choose not to take action to recover money from a Sponsor or a Sponsor’s spouse (if Co-signer) who has defaulted in a situation of abuse or in other appropriate circumstances. The decision of the Minister not to act at a particular time does not cancel the debt, which may be recovered by the Minister when circumstances have changed. [Emphasis added.]

C. *Federal and Provincial Policies*

1. The Canada-Ontario Memorandum of Understanding on Information Sharing — 2004 (“MOU”), provides for the sharing of information in order to facilitate, *inter alia*, the enforcement of sponsorship debts. Section 6 of the MOU states that sponsorship debts are “payable on demand”, but that default may be cured in cases where a province accepts partial payment of the debt. Ontario will apply its own guidelines to determine whether collection action should be undertaken immediately or deferred, e.g. in cases of family violence.
2. The Ontario policy itself states that certain cases of default would not be referred for collection, namely where the person is incapacitated and unable to pay, where there is evidence of domestic violence, where the sponsor himself or herself is in receipt of social assistance, or where other “documented extraordinary circumstances” exist. The Attorney General of Ontario contends (unlike his federal counterpart) that the federal legislation does permit a measure of discretion, and that Ontario’s policies are fully compliant. He claims however that relations between Ontario and the sponsors are governed only by rules applicable to private contracts.
3. The respondent sponsors contend (and the Court of Appeal agreed) that the wording of the undertakings should be taken into account in the interpretation of the governing legislation.

II. Statutory Framework

1. Pursuant to s. 132 of the *Immigration and Refugee Protection Regulations*,SOR/2002-227, a sponsor is obliged to reimburse the Crown in right of Canada or a province, for the cost of every benefit provided as social assistance to the sponsored family member during the term of undertaking — formerly 10 years but now 3 years for a spouse or a dependent child 22 years of age or older and 10 years for a dependent child less than 22 years of age and all other family members (s. 132(1)). The undertakings set out the obligations of the sponsor, the duration of the undertaking and the consequences of default, and stated that the undertaking would be binding notwithstanding any change in the sponsor’s personal circumstances.
2. Section 108(2) of the former *Immigration Act* authorized the federal government to enter into agreements with the provinces for the purposes of implementing immigration programs. Section 114(1)(*c*) authorized the executive to create regulations with respect to sponsorships and s. 115 allowed the Minister to create forms necessary to implement the program (such Ministerial authority was the basis for the undertakings at issue here, which were drafted by the Department of Citizenship and Immigration and signed by each sponsor). Pursuant to s. 118(1) of the former Act, the federal government could assign an undertaking to a province in order to allow that province to recover social assistance payments from the sponsor directly. The new *IRPA* eliminated the need for such an assignment of the debt.
3. The collection procedure under the old *Immigration Act* was also more cumbersome than under the new *IRPA*. The former s. 118(2) required governments to obtain a judgment from a court of competent jurisdiction in order to enforce the sponsorship debt. Public monies spent as a result of a breach of an undertaking were deemed to be a “debt due to Her Majesty in right of Canada or in right of the province to which the undertaking is assigned” and “may be recovered from the person or organization that gave the undertaking”. Section 5(2)(*g*) of the old Regulations stated that default on an existing undertaking was a bar to additional sponsorships (*Immigration Regulations, 1978*, SOR/78-172, as amended by SOR/97-145, s. 3).
4. In 2002, the *IRPA* made important changes to the rules governing the family immigration class. Section 14(2)(*e*) confers broad powers to make regulations with respect to sponsorship undertakings. Section 145(2) is central to the issue of the Minister’s discretion on this appeal. It states in relevant part:

. . . an amount that a sponsor is required to pay under the terms of an undertaking is payable on demand to Her Majesty in right of Canada and Her Majesty in right of the province concerned and may be recovered by Her Majesty in either or both of those rights.

The respondent sponsors contend that “may” is permissive and indicates, they say, the existence of a Crown discretion to collect or not to collect the debt.

1. The *IRPA* streamlined the enforcement of sponsorship debt. It is no longer necessary for the federal undertakings to be assigned to the provinces before they can be enforced by the province. Furthermore, s. 145(3) negates the effect of limitations statutes by prescribing that the debt may be recovered “at any time”.
2. Governments no longer even have to obtain a judgment to engage Federal Court processes to enforce the debt. Section 146 allows the Minister to certify the debt immediately or within 30 days of default, depending on the circumstances, and register that certificate with the Federal Court, giving it the same force as a judgment.
3. The new Regulations provide in s. 135 that default begins when the government makes a payment and ends when the sponsor either reimburses the government “in full or in accordance with an agreement with that government”, or when the sponsor ceases to be in breach of the undertaking. The Attorney General of Canada takes comfort from the *IRPA*’s elimination of any judicial process prior to the Minister’s authority to invoke Federal Court enforcement. The respondent sponsors, on the other hand, argue that elimination of prior judicial authorization makes it all the more important that the Minister act fairly and get the facts straight before initiating what they regard as an overly harsh statutory collection procedure.

III. Judicial History

A. *Ontario Superior Court of Justice (Wilson J.), No. 07-CV-331628PD3, September 11, 2008, unreported*

1. The applications judge found that the *IRPA* and its Regulations, when viewed as a whole, showed a Parliamentary intent to create a collection procedure that was “purely administrative in nature” (para. 52). The government is not vested with a discretion to consider on a case-by-case basis whether or not to enforce the debt. The government’s duty is to collect. The legislation does not impose any duty of fairness towards sponsors in default. Neither the statute nor the regulations permit sponsors to make submissions before their debts are collected (para. 54).
2. According to the applications judge, the sponsorship agreements are governed by contract law (para. 55). The sponsors entered into the agreements voluntarily (para. 57). The contractual undertakings should be construed in light of the purpose of the statute which is debt collection (para. 58). The doctrine of frustration does not apply (para. 59). The Applicants were aware that they would be liable if a sponsored relative became financially dependent on the state (para. 59). The applications for various declarations sought by the sponsors were therefore dismissed.

B. *Ontario Court of Appeal (Laskin, Simmons and Lang JJ.A.), 2009 ONCA 794, 98 O.R. (3d) 1*

1. On appeal, the issues were restricted to administrative law grounds, specifically: (1) whether the Acts confer upon the governments a case-by-case discretion concerning the recovery of sponsorship debt; (2) whether Canada and Ontario abused this discretion; (3) whether Canada and Ontario owe sponsors a duty of procedural fairness; and (4) whether the undertakings given under the old Act are enforceable under the new Act. The Court of Appeal allowed the appeal.
2. On the first issue, the Court of Appeal found that both Acts confer a case-by-case discretion in the collection of sponsorship debt (para. 89). In construing s. 118(2) of the old Act and s. 145(2) of the new Act, the word “may” indicates some degree of discretion on the part of the Minister.
3. According to the Court of Appeal, the applications judge erred “in part, because she failed to take proper account of the Regulations and forms” which are “essential components of an integrated [immigration] scheme” (paras. 91 and 95). The Court of Appeal noted that since 1999 the undertakings have included a provision that allowed a sponsor to negotiate a settlement with the government concerned (para. 98). In addition, the undertakings under both Acts stated that the governments “may” choose not to collect the debt (para. 103). Since Parliament did not eliminate this discretion in the 2002 amendments, it is reasonable to infer that it intended there to be some flexibility in terms of debt collection.
4. On the second issue, the Court of Appeal went further. In light of the wording of the undertaking, Ontario had improperly “fettered or abused the exercise of its discretion” in part because its policy required that a “‘defaulting sponsor . . . repay the full amount of the debt’” (paras. 125-26). This prohibited a settlement for less than the full amount, an option which is expressly contemplated by s. 135(*b*)(i) of the new Regulations. Since the policy required full repayment in every case, regardless of the circumstances, this amounted to an improper fettering of the Minister’s discretion under the statute (para. 127).
5. Furthermore, Ontario’s policy of only granting deferrals based on “documented extraordinary circumstances” was a more onerous standard than the existence merely of “appropriate circumstances” contemplated by the undertakings (paras. 132-33), and was to that extent invalid.
6. On the third issue, the Court of Appeal held that the governments owed a duty of procedural fairness to the sponsors (para. 135). It was held that the government was obliged to provide “a process” for individual sponsors to explain their relevant personal and financial circumstances, to consider those circumstances, and to inform the sponsor that their submissions had been considered and to tell them of the decision (para. 147). The provision in the undertakings that the government will consider “other appropriate circumstances” in exercising its discretion created a legitimate expectation that the government will consider their individual circumstances (para. 148). Finally, the court held that undertakings given under the old *Immigration Act* are enforceable under the *IRPA*.

IV. Analysis

1. The doctrine of procedural fairness has been a fundamental component of Canadian administrative law since *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311, where Chief Justice Laskin for the majority adopted the proposition that “in the administrative or executive field there is a general duty of fairness” (p. 324). Six years later this principle was affirmed by a unanimous Court, *per* Le Dain J.: “. . . there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual”: *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at p. 653. The question in every case is “what the duty of procedural fairness may reasonably require of an authority in the way of specific procedural rights in a particular legislative and administrative context” (*Cardinal*, at p. 654). See also *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 669; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 20; and *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, 2001 SCC 41, [2001] 2 S.C.R. 281, at para. 18. More recently, in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, Bastarache and LeBel JJ. adopted the proposition that “[t]he observance of fair procedures is central to the notion of the ‘just’ exercise of power” (para. 90) (citing D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at p. 7-3).
2. Accordingly, while the content of procedural fairness varies with circumstances and the legislative and administrative context, it is certainly not to be presumed that Parliament intended that administrative officials be free to deal unfairly with people subject to their decisions. On the contrary, the general rule is that a duty of fairness applies. See G. Régimbald, *Canadian Administrative Law* (2008), at pp. 226-27, but the general rule will yield to clear statutory language or necessary implication to the contrary: *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781, at para. 22. There is no such exclusionary language in the *IRPA* and its predecessor legislation.
3. In determining the content of procedural fairness a balance must be struck. Administering a “fair” process inevitably slows matters down and costs the taxpayer money. On the other hand, the public also suffers a cost if government is perceived to act unfairly, or administrative action is based on “erroneous, incomplete or ill-considered findings of fact, conclusions of law, or exercises of discretion” (Brown and Evans, at p. 7-3; see also D. J. Mullan, *Administrative Law* (2001), at p. 178).
4. Once the duty of procedural fairness has been found to exist, the particular legislative and administrative context is crucial to determining its content. We are dealing here with ordinary debt, not a government benefits or licensing program. It is clear from the legislative history of the *IRPA* that over the years Parliament has become increasingly concerned about the shift to the public treasury of a significant portion of the cost of supporting sponsored relatives. Family reunification is based on the essential condition that in exchange for admission to this country the needs of the immigrant will be looked after by the sponsor, not by the public purse. Sponsors undertake these obligations in writing. They understand or ought to understand from the outset that default may have serious financial consequences for them.
5. A number of factors help to determine the content of procedural fairness in a particular legislative and administrative context. Some of these were discussed in *Cardinal*, a case involving an inmate’s challenge to prison discipline which stressed the need to respect the requirements of effective and sound public administration while giving effect to the overarching requirement of fairness. The duty of fairness is not a “one-size-fits-all” doctrine. Some of the elements to be considered were set out in a non-exhaustive list in *Baker* to include (i) “the nature of the decision being made and the process followed in making it” (para. 23); (ii) “the nature of the statutory scheme and the ‘terms of the statute pursuant to which the body operates’” (para. 24); (iii) “the importance of the decision to the individual or individuals affected” (para. 25); (iv) “the legitimate expectations of the person challenging the decision” (para. 26); and (v) “the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances” (para. 27). Other cases helpfully provide additional elements for courts to consider but the obvious point is that the requirements of the duty in particular cases are driven by their particular circumstances. The simple overarching requirement is fairness, and this “central” notion of the “just exercise of power” should not be diluted or obscured by jurisprudential lists developed to be helpful but *not* exhaustive.
6. Here the nature of the administrative decision is a straightforward debt collection. Parliament has made clear in the statutory scheme its intention to avoid a complicated administrative review process. Nevertheless, as the Court of Appeal correctly observed, the nature of the decision in this case is final and specific in nature. It may result in the filing of a ministerial certificate in the Federal Court which is enforceable as if it were a judgment of that court. The *IRPA* does not provide a mechanism for sponsors to appeal the enforcement decision. Here, as in *Knight*, the absence of other remedies militates in favour of a duty of fairness at the time of the enforcement decision (see also *Baker*,at para. 24). The effect of the decision on the sponsors is significant. Sponsorship debts can be very large and accumulate quickly, as is evident from the amounts the respondents are said to owe the government in this case.
7. The legislation leaves the governments with a measure of discretion in carrying out their enforcement duties, and in this case Ontario’s procedure is perfectly compatible with both efficient debt collection and fairness to the defaulting sponsors. I will deal separately below with the issue of legitimate expectations.
8. In these circumstances I believe the *content* of the duty of procedural fairness does not require an elaborate adjudicative process but it *does* (as stated earlier) oblige a government, prior to filing a certificate of debt with the Federal Court, (i) to notify a sponsor at his or her last known address of its claim; (ii) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (iii) to consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; and (iv) to notify the sponsor of the government’s decision. Given the legislative and regulatory framework, the non-judicial nature of the process and the absence of any statutory right of appeal, the government’s duty of fairness in this situation does not extend to providing reasons in each case (*Baker*,at para. 43). This is a situation, after all, merely of holding sponsors accountable for their undertakings so that the public purse would not suffer by reason of permitting the entry of family members who would otherwise not qualify for admission.
9. Ontario has adopted a collection policy along these lines. There is no evidence before us that the minimal procedural protections afforded by Ontario have in any way undermined or frustrated the debt collection objective or resulted in unfairness to family sponsors.

A. *The Contract Argument*

1. The Attorneys General resist the application of a duty of procedural fairness in part on a theory that the claims against the sponsors are essentially contractual in nature. *Dunsmuir*, they say, stands for the proposition that procedural fairness does not apply to situations governed by contract. However, in this case, unlike *Dunsmuir*, the governments’ cause of action is essentially statutory.
2. *Dunsmuir* dealt with an employment relationship that was found by the Court to be governed by contract. The fact the contracting employee was a senior public servant did not turn a private claim for breach of contract into a public law adjudication. Here, on the other hand, the terms of sponsorship are dictated and controlled by statute. The undertaking is required by statute and reflects terms fixed by the Minister under his or her statutory power. The Attorneys General characterize sponsors as mere contract debtors but even contract debtors are ordinarily entitled to receive notice of a claim and the opportunity to defend against it.
3. The existence of the undertaking does not extricate the present disputes from their public law context. There is ample precedent for contracts closely controlled by statute to be enforced as a matter of *public* law. In *Rhine v. The Queen*, [1980] 2 S.C.R. 442, for example, the Court dealt with two appeals for breach of contract: the first was a claim to recover an advance payment under the *Prairie Grain Advance Payments Act*, and the second was a government claim to recover principle and interest owing on a student loan made pursuant to the *Canada Student Loans Act*. The defendants took the position that enforcement of a private law contract is a matter of provincial law and thus outside the jurisdiction of the Federal Court. In both appeals, the jurisdictional challenge was rejected. The contracts were creatures of statute. Laskin C.J. noted:

What we have here is a detailed statutory framework under which advances for prospective grain deliveries are authorized as part of an overall scheme for the marketing of grain produced in Canada. An examination of the *Prairie Grain Advance Payments Act* itself lends emphasis to its place in the overall scheme. True, there is an undertaking or a contractual consequence of the application of the Act but that does not mean that the Act is left behind once the undertaking or contract is made. At every turn, the Act has its impact on the undertaking so as to make it proper to say that there is here existing and valid federal law [i.e. the statute] to govern the transaction which became the subject of litigation in the Federal Court. [p. 447]

See also *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190, [2007] 2 F.C.R. 475, at para. 72; *Canada v. Crosson* (1999), 169 F.T.R. 218, at para. 36.

1. Similarly, while the sponsors’ undertakings here have some contractual aspects, it is the statutory framework that closely governs the rights and obligations of the parties and opens the door to the requirements of procedural fairness. As stated earlier, s. 145(2) of the *IRPA* makes any debt owing pursuant to an undertaking payable to and recoverable by either federal or provincial Crown. Furthermore, s. 132(1) of the Regulations makes sponsors liable for any social assistance paid to the sponsored relative. Section 135 of the Regulations defines “default”. Finally, the enforcement of the undertaking in Federal Court is governed by s. 146 of the *IRPA*. Just as in *Rhine*, the undertaking at every turn is a creature of statute.
2. The situation here does not come close to the rather narrow *Dunsmuir* employment contract exception from the obligation of procedural fairness. As the *Dunsmuir* majority itself emphasized:

This conclusion does not detract from the general duty of fairness owed by administrative decision makers. Rather it acknowledges that in the specific context of dismissal from public employment, disputes should be viewed through the lens of contract law rather than public law. [Emphasis added; para. 82.]

*Dunsmuir* was not intended to and did not otherwise diminish the requirements of procedural fairness in the exercise of administrative authority.

B. *The Statutory Exclusion Argument*

1. There is no doubt that the duty of fairness, being a doctrine of the common law, can be overridden by statute. The Attorneys General argue that the legislation does so in the present case. I do not agree. Such a conclusion is not consistent with the legislative text, context or purpose.

(1) The Statutory Text

1. Central to the collection procedure is s. 145(2) of the new Act and, to a lesser extent, its predecessor s. 118(2) of the old Act, which provide (with emphasis added) as follows:

**145.** . . .

(2) [Debts due — sponsors] Subject to any federal-provincial agreement, an amount that a sponsor is required to pay under the terms of an undertaking is payable on demand to Her Majesty in right of Canada and Her Majesty in right of the province concerned and may be recovered by Her Majesty in either or both of those rights.

**118.** . . .

(2) [Recovery for breach of undertaking] Any payments of a prescribed nature made directly or indirectly to an immigrant that result from a breach of an undertaking referred to in subsection (1) may be recovered from the person or organization that gave the undertaking in any court of competent jurisdiction as a debt due to Her Majesty in right of Canada or in right of the province to which the undertaking is assigned.

The statements that the “sponsor is required to pay” and that the amount owing is “payable on demand” leave no doubt about the existence of a statutory debt. The words “may be recovered” occur in both Acts.

1. The applications judge thought the word “may” simply enables *either* level of government to enforce the undertaking. The point, however, is that nothing in the relevant sections explicitly *requires* Her Majesty to pursue collection of debts irrespective of the circumstances. Legislative use of the word “may” usually connotes a measure of discretion (*Interpretation Act*, R.S.C. 1985, c. I-21, s. 11).This is as one would expect. It seems too clear for argument that Parliament intended the federal and provincial Crowns to deal with debt collection in a rational, reasonable and cost-effective way. The Attorney General of Canada concedes that Ministers have a “management discretion” in the conduct of departmental affairs*.*  See, e.g., *Optical Recording Corp. v. Canada*, [1991] 1 F.C. 309 (C.A.), at p. 323. Effective management requires some measure of flexibility. Flexibility necessarily entails discretion.
2. However circumscribed, the existence of a discretion attracts a level of procedural fairness appropriate to its exercise.

(2) The Statutory Context

1. As the Attorneys General point out, several provisions of the *IRPA* affirm the obligatory nature of the undertaking and strengthen enforcement measures as compared to the old *Immigration Act*. Nevertheless, the evidence that Parliament intended in the new Act to facilitate the collection of sponsorship debts does not mean it intended this to be done unfairly.
2. The Regulations are also an important part of the statutory context. In *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, 2004 SCC 54, [2004] 3 S.C.R. 152, Deschamps J. noted that regulations “can assist in ascertaining the legislature’s intention”, particularly where the statute and the regulations form an integrated scheme (para. 35). See also *Greater Toronto Airports Authority v. International Lease Finance Corp.* (2004), 69 O.R. (3d) 1 (C.A.), at paras. 102-4; *Ward-Price v. Mariners Haven Inc.* (2001), 57 O.R. (3d) 410 (C.A.), at para. 29. Professor Sullivan notes at p. 370 of her treatise that “[w]hen regulations are made to complete the statutory scheme, they are clearly intended to operate together [with the enabling statute] and to be mutually informing” (*Sullivan on the Construction of Statutes* (5th ed. 2008) (emphasis added)). Section 2(2) of the *IRPA* states that references to “this Act” include the Regulations.
3. Regulations under the *IRPA* are made under a broad authority with respect to a number of matters including family class immigration and sponsorship undertakings. Section 135 of the Regulations, which informed the Court of Appeal’s finding of a Ministerial discretion states:

**135.** [Default] For the purpose of subparagraph 133(1)(*g*)(i), the default of a sponsorship undertaking

. . .

(*b*) ends, as the case may be, when

(i) the sponsor reimburses the government concerned, in full or in accordance with an agreement with that government, for amounts paid by it, or

(ii) the sponsor ceases to be in breach of the obligation set out in the undertaking.

The Attorney General of Canada argues that this provision does not mean that the government can make “an agreement” to forgive the debt, which he says can only be done under the terms of the *Financial Administration Act*, R.S.C. 1985, c. F-11, s. 23 (“*FAA*”). Rather, he says, this provision merely defines default for the purpose of a person’s eligibility to sponsor additional family members.

1. The fact is however that the Regulations *do* distinguish between payment “in full” and payments “in accordance with an agreement with that government”. This can only mean that the government is authorized to limit enforcement to whatever amount is agreed upon with the sponsor, and no floor or ceiling (short of forgiveness) is fixed by the Regulations. The amount and terms of repayment are therefore within the discretion of the government decision maker. An agreement requiring a sponsor to pay $20 a month on a $20,000 debt may never result in the full amount being paid, but it would nevertheless be an “agreement” within s. 135(*b*)(i) which governments are authorized to make.
2. The Attorney General of Canada contends that agreements for less than the full amount would be tantamount to a write-off in violation of the procedures set out in the *FAA*. However, in my view, what is contemplated in s. 135(*b*)(i) of the Regulations is not a write-off but “agreed” levels of deferred enforcement. The *FAA* is a statute of very general application. It does not preclude Parliament from enacting more specialized legislative schemes for the management and enforcement of debts owed to the Crown under particular statutory programs. The *IRPA* is an example of such a specialized collection regime.
3. Unlike the Court of Appeal, I interpret the *IRPA* and its regulations without reference to the terms of the sponsorship undertakings themselves, which are drafted by the Minister and his officials and can be (and are) modified from time to time. At best the undertakings reflect an administrative interpretation of the legislative framework. It would be different in the case of forms that are actually appended to statutes, and which therefore carry the authority of Parliament, which is not the case here. See *Houde v. Quebec Catholic School Commission*, [1978] 1 S.C.R. 937, at p. 947; Sullivan, at pp. 408-9.

(3) The Statutory Purpose

1. Section 3 of the *IRPA* states that the Act is intended to encourage family reunification but also recognizes that successful integration of immigrants involves “mutual obligations for new immigrants and Canadian society”, as follows:

**3.** (1) [Objectives — immigration] The objectives of this Act with respect to immigration are

. . .

(*d*) to see that families are reunited in Canada;

(*e*) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;

. . .

(*j*) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

. . .

(3) [Application] This Act is to be construed and applied in a manner that

. . .

(*f*) complies with international human rights instruments to which Canada is signatory.

Debt collection without any discretion in relation either to sponsors or their relatives would not advance the purposes of the *IRPA.*  It would hardly promote “successful integration” to require individuals to remain in abusive relationships. Nor would the attempted enforcement of a debt against individuals without means to pay further the interest of “Canadian society”. Forcing a sponsor into bankruptcy may or may not deliver a short-term return, but hardly enhances the bankrupt’s chances of becoming a positive contributor to Canadian society. Excessively harsh treatment of defaulting sponsors may risk discouraging others from bringing their relatives to Canada, which would undermine the policy of promoting family reunification. Clearly Parliament’s intent is to require the full debt to be paid if and when the sponsor is in a position to do so, even incrementally over many years pursuant to an “agreement” under s. 135(*b*)(i) of the Regulations. There is no reason why a sponsor who eventually wins a lottery should be relieved of the full measure of the debt at the expense of the taxpayer regardless of when the win occurs.

1. Nevertheless, in dealing with defaulting sponsors, the government must act fairly having regard to their financial means to pay and the existence of circumstances that would militate against enforcement of immediate payment (such as abuse). Ontario’s policy seeks to balance the interests of promoting immigration and family reunification on the one hand, and preventing abuse of the sponsorship scheme on the other. Discretion in the enforcement of sponsorship debt allows the government to further this objective.
2. For these reasons, I would reject the Attorneys General’s argument that the existence of an administrative discretion that attracts procedural fairness is excluded by the text, context and purpose of the legislation.

C. *Did Ontario Improperly Fetter the Exercise of Its Statutory Discretion?*

1. The Court of Appeal noted that “[d]iscretion is fettered or abused when a policy is adopted that does not allow the decision-maker to consider the relevant facts of the case, but instead compels an inflexible and arbitrary application of policy” (para. 124). The court concluded that the Ontario collection policy conflicts with the intended scope of the discretion. With respect, I do not agree that there is a conflict. As discussed earlier, the legislation allows the Minister to defer but not forgive sponsorship debt. This is also Ontario’s policy. The policy provides that “[t]he defaulting sponsor is required to repay the full amount of debt. There is no forgiveness of the debt by the Ministry”.
2. The federal Minister of Citizenship and Immigration can change the content of the undertakings, as indeed he has over the years, just as the provincial Minister of Community and Social Services changes the enforcement policy from time to time. Policies are necessary to guide the action of the multitude of civil servants who operate government programs. The Minister is entitled to set policy within legal limits. It cannot be said that the Ontario policy here so “fetters” the discretion as to be invalid.
3. The Court of Appeal also concluded that Ontario’s policies were less favourable to the sponsors than the terms of some of the sponsorship undertakings. However, as discussed above, the terms of the undertakings are merely expressions of administrative interpretation. They are not, in my view, tools to construe the statutory framework itself. The importance of the signed undertakings in the administrative law context is that they lay the foundation for the application of the doctrine of legitimate expectations, as discussed below. However, with great respect for the Court of Appeal, I do not agree that the federal legislative framework mandates a broader discretion in favour of defaulting sponsors than Ontario permits. It was quite open to Ontario to adopt the collection policy that it did, in my opinion.

D. *The Doctrine of Legitimate Expectations*

1. Where a government official makes representations within the scope of his or her authority to an individual about an administrative process that the government will follow, and the representations said to give rise to the legitimate expectations are clear, unambiguous and unqualified, the government may be held to its word, provided the representations are procedural in nature and do not conflict with the decision maker’s statutory duty. Proof of reliance is not a requisite. See *Mount Sinai Hospital Center*, at paras. 29-30; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11, [2002] 1 S.C.R. 249, at para. 78; and *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539, at para. 131. It will be a breach of the duty of fairness for the decision maker to fail in a substantial way to live up to its undertaking: Brown and Evans, at pp. 7-25 and 7-26.
2. Indeed it would be somewhat ironic if the government were able to insist on the sponsor living up to his or her undertaking to the letter while at the same time walking away from its own undertakings given in the same document. Generally speaking, government representations will be considered sufficiently precise for purposes of the doctrine of legitimate expectations if, had they been made in the context of a private law contract, they would be sufficiently certain to be capable of enforcement.
3. Here the undertakings reaffirm that the government can defer, but not forgive, sponsorship debt. The respondents Grankin, Zebaradami, and de Altamirano, signed undertakings under the old *Immigration Act* in which the federal government represented that it possessed and would exercise a measure of discretion in the matter of enforcement:

**CONSEQUENCES OF DEFAULT**

. . .

The Minister may choose not to take action to recover money from a Sponsor or a Sponsor’s spouse (if Co-signer) who has defaulted in a situation of abuse or in other appropriate circumstances. The decision of the Minister not to act at a particular time does not cancel the debt, which may be recovered by the Minister when circumstances have changed. [Emphasis added.]

While *default* can be cured by making arrangements for repayment, it is clear that no representation is made that the *debt* will be cancelled, even when the Minister exercises his or her discretion to defer enforcement with or without a s. 135(*b*)(i) agreement. The Vossoughi and Dzihic undertakings are substantially the same.

1. The essential elements of the undertakings remained unchanged under the new Act. The Hince undertaking of November 20, 2002, signed under the *IRPA*, reads in relevant part as follows:

I understand that all social assistance paid to the sponsored person or his or her family members becomes a debt owed by me to Her Majesty in right of Canada and Her Majesty in right of the province concerned. As a result, the Minister and the province concerned have a right to take enforcement action against me (as sponsor or co-signer) alone, or against both of us.

The Minister and the province concerned may choose not to take enforcement action to recover money from me if the default is the result of abuse or in other circumstances. The decision not to act at a particular time does not cancel the debt. The Minister and the province concerned may recover the debt when circumstances have changed. [Emphasis added.]

1. While the terms of the *IRPA* undertakings support the position of the Attorneys General that the debt is not forgiven, they also support the sponsors’ contention of a government representation to them that there exists a discretion not to take enforcement action “in a situation of abuse or in other appropriate circumstances” (pre-2002) or “if the default is the result of abuse or in other circumstances” (post-2002). Such representations do not conflict with any statutory duty and are sufficiently clear to preclude the government from denying to the sponsor signatories the existence of a discretion to defer enforcement. Given the legitimate expectations created by the wording of these undertakings I do not think it open to the bureaucracy to proceed without notice and without permitting sponsors to make a case for deferral or other modification of enforcement procedures.

E. *Ontario’s Policy Provides an Appropriate Measure of Procedural Fairness*

1. The Ontario procedure takes the form of a series of letters notifying sponsors that a sponsored relative has applied for social assistance and that he or she is now in default. The letters in most cases made clear Ontario’s openness to consideration of mitigating factors or financial circumstances or other reasons why the debt should not immediately be enforced. This is the correct practice because under the Ontario policy the local social assistance agents are supposed to consider these factors *before* deciding to refer the matter for collection. Ontario Works and the Ontario Disability Support Program set out a process for dealing with family abuse between a sponsor and sponsored person. The Family Violence and Sponsorship Debt Recovery information sheet describes how the officers should deal with alleged abuse and/or family violence cases. Ontario requires that if such information comes to the officer’s attention collection efforts are to stop immediately.
2. If the sponsor does not agree to repay the debt and resume supporting his or her sponsored relative, the matter is ordinarily referred to the Overpayment Recovery Unit (“ORU”) for collection. The ORU will then send additional notice letters and if the sponsor responds, the ORU will solicit the sponsor’s financial information to determine his or her ability to support his or her relative and repay the debt. If the sponsor does not cooperate, the matter is referred to Canada Revenue Agency’s Refund Set-Off Program, which withholds any tax refunds or credits for the benefit of the province.
3. In this process there is a limited but real opportunity for the sponsor to make representations to the government regarding the particular circumstances surrounding a default. There is no hearing and no appeal procedure but there is a legitimate expectation that the government will consider relevant circumstances in making its enforcement decision and a duty of procedural fairness to do so. However, the wording of the government’s representations in the undertaking are sufficiently vague to leave the government’s choice of procedure very broad. Clearly no promises are made of a positive outcome from the sponsors’ point of view. The Ontario guidelines fully comply with the statutory requirements, in my opinion, but this is not to say that each province and territory must proceed in an identical fashion. The essential requirements are that procedural fairness be observed and that the terms of the undertakings be respected by governments as well as by the sponsors who are alleged to be in default.
4. The sponsors contend that the government is under a duty to inform them as soon as a sponsored relative obtains public assistance. It is unfair, they say, for the government to allow debt to accumulate unbeknownst to them. This is of particular concern when the relationship between sponsor and relative has broken down and the sponsor is unaware that the relative is seeking or receiving social assistance. Counsel point out that demand for payment from a number of the sponsors was not made before their indebtedness became relatively large and after the passage of a considerable period of time (for example, Mr. Grankin, four and a half years after his mother was first granted social assistance; Ms. de Altamirano, three years from the application for social assistance for her mother; Ms. Vossoughi, close to two years after the sponsor applied for social assistance for her sponsored mother). I agree that good debt management practice would suggest that demand be made as soon as the government payments to or on behalf of the sponsored relative commence. Nonetheless, it is inherent in the sponsor’s support obligation that the sponsor is to keep track of the sponsored relative he or she has undertaken to support. Family class immigrants are admitted solely on the basis of their relationship to the sponsor. In return, the *sponsor*,not the government, is “responsible for preventing the family member and any accompanying dependents from becoming dependent on public social assistance programs”. Accordingly, the risk of a rogue relative properly lies on the sponsor, not the taxpayer.
5. In the material before us it is clear that each of the eight sponsors was notified of the default and was in communication with the Ministry, in some cases through legal counsel. The facts considered relevant by the sponsors were put forward by some of the respondents. Others simply ignored the government’s reasonable requests. Mr. Hince, for example, declined to disclose his financial situation on the financial assessment forms and did not respond to the government’s letters. Ms. Vossoughi did not reply to the two notification letters sent to her after she had been advised that her mother had applied for social assistance.
6. The Ministry, after consideration of whatever information was provided, generally advised each of the respondent sponsors that the sponsorship undertakings remained in effect but that the government was open to the negotiation of a repayment plan. At least one of the respondent sponsors did negotiate a repayment plan and, it seems, has been making monthly payments. However, the respondents then initiated these proceedings. In my respectful view the policies adopted by Ontario would, if respected in its collection efforts, satisfy the legitimate procedural expectations of the sponsors, and meet the basic requirements of procedural fairness. The respondent sponsors’ claims to the contrary should be rejected.

V. Disposition

1. These actions arose out of claims for declaratory relief. In light of the foregoing reasons, the appeal is allowed in part and the following declarations will issue:

(i) Canada and Ontario have a discretion under the *IRPA* and its Regulations to defer but not forgive debt after taking into account a sponsor’s submissions concerning the sponsor’s circumstances and those of his or her sponsored relatives.

(ii) Ontario did not improperly fetter its exercise of statutory discretion in adopting its policy. Its terms are consistent with the requirements of the statutory regime and met the legitimate procedural expectations of the respondent sponsors created by the text of their respective undertakings.

(iii) Canada and Ontario owe sponsors a duty of procedural fairness when enforcing sponsorship debt.

(iv) The content of this duty of procedural fairness include the following obligations: (a) to notify a sponsor at his or her last known address of the claim; (b) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection; (c) to consider any relevant circumstances brought to its attention keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place; (d) to notify the sponsor of the government’s decision; (e) without the need to provide reasons.

(v) That the above requirements of procedural fairness were met in the cases of the eight respondent sponsors.

1. As these proceedings can properly be characterized as test cases to resolve certain legal issues of public importance all parties will bear their own costs on the appeal and on the application for leave to appeal.

*Appeal allowed in part.*

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Solicitor for the intervener the Metropolitan Action Committee on Violence against Women and Children:  Parkdale Community Legal Services, Toronto.

Solicitors for the intervener the Canadian Civil Liberties Association:  Gowling Lafleur Henderson, Ottawa.