

But for the Plan (Immigration Performance Bond)

On a sunny day in August of 2003, Mr. and Mrs. Nowitsky (not their real name), an elderly eastern European couple, received a phone call from the Immigration Office. A relative, whom they had never met, was seeking refugee status.

The Nowitskys agreed to assist this nephew they had never met. They paid a \$5,000.00 Cash Bond and also signed a \$10,000.00 Performance Bond, which had numerous conditions. One of the conditions of the Performance Bond was that the nephew had to live with them. This lasted for about ten months. The nephew then went on his own way. From 2005 until the summer of 2008, they did not hear from their nephew. Nor did they hear from the Immigration Office.

On another sunny day in August of 2008, Mr. and Mrs. Nowitsky received a letter from the Canada Border Services Agency. It stated that their nephew failed to comply with the terms and conditions of the Performance Bond, and that they were now required to pay \$10,000.00, pursuant to the document they signed in August, 2003.

The Nowitskys then attended our Windsor office, very shaken. They had few assets and were afraid they would have to pay the \$10,000.00 immediately.

The lawyer did some research into the Minister of Immigration's discretion to reconsider the department's position regarding a Performance Bond. He discovered a recent 2008 case which set out guidelines for terminating a Performance Bond.

On behalf of the Nowitskys, the lawyer forwarded a letter to the Canada Border Services Agency setting out the factual situation, the recent court decision and reasons why his clients should be spared: they had no means to make sure that their nephew had complied with any of the conditions, as they were never informed by the Agency that they had a duty to have knowledge of the whereabouts of their nephew for the past three years.

Two weeks later, the Canada Border Services Agency replied, stating that the initial \$5,000.00 Cash Bond would be refunded and that the \$10,000.00 Performance Bond was cancelled. The Nowitskys would have no future obligations.

At almost no cost to our clients, this situation was resolved, better than they anticipated, as they never asked that the \$5,000.00 Cash Bond be refunded.

But for the Plan, it is likely that this elderly couple would have lost \$15,000.00. They would not have been able to afford a lawyer to do the research and effectively state their case to the Canada Border Services Agency.