

# CHAPTER EIGHTEEN: IMMIGRATION LAW

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# CHAPTER EIGHTEEN: IMMIGRATION LAW

## I. INTRODUCTION

This chapter is designed to assist with the following questions pertaining to immigration law in Canada:

What is my status?

How do I obtain a Work / Study Permit?

How do I obtain Permanent Residence?

How do I appeal an immigration matter?

It is advised that you reference outside sources in addition to this manual if your question is beyond the scope of the questions listed above. It is also important to refer to the main sources of immigration law (listed below) when researching a legal issue as the law may have changed since the printing of this manual. Notes advising users of potential changes to immigration law have been placed throughout the chapter as a warning that further research may be needed.

It is recommended that you contact an immigration lawyer if you require further assistance. Legal advocacy is recommended for appellate proceedings due to the complex nature of this area of law. Furthermore, several programs in British Columbia offer assistance with Temporary and Permanent Residence applications. If you cannot obtain the services of an immigration lawyer, the Law Students' Legal Advice Program and the services listed in Section XII of this chapter may be able to provide assistance if you meet their qualifications.

**NOTE:** The COVID-19 pandemic is affecting immigration, refugees, citizenship and passport services. Further, there is currently travel restrictions to Canada for non-essential travels from the US until at least July 21, 2020 and from outside of the US until at least July 31, 2020. Accordingly, it is recommended that you refer to the Immigration, Refugees, and Citizenship Canada (IRCC) website for updated information on how your client's legal matter may be affected by the service restrictions imposed by IRCC prior to provide legal advice to your clients. For more information, please see the below website:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-covid19.html>

**NOTE:** This chapter does not cover Quebec immigration matters.

## II. GOVERNING LEGISLATION AND RESOURCES

### A. *Main Sources of Immigration Law*

Immigration law is a very dynamic area, and it has undergone significant change in the recent past. For this reason, it is imperative to refer to the following sources, for the most up to date information about immigration law:

- ***Immigration and Refugee Protection Act, RSC 2001, c 27 [IRPA]***  
<http://canlii.ca/t/7vwwq>
- ***Immigration and Refugee Protection Regulations, SOR/2002-227 [IRP Regulations]***  
<http://canlii.ca/t/7xsp>
- ***Operational Bulletins and Manuals***  
<http://www.cic.gc.ca/english/resources/manuals/index.asp>

There are six general sources of immigration law and policy: the IRPA, the *IRP Regulations*, the Manuals, the Operational Bulletins, the Ministerial Instructions and case law. The *Canadian Charter of Rights and Freedoms* (Part I of the *Constitution Act*, 1982, is also applicable to immigration matters; the IRPA and *IRP Regulations* must be consistent with *Charter* provisions.

## 1. The Immigration and Refugee Protection Act and Regulations

The *Immigration and Refugee Protection Act* is the primary source and should be referenced first. However, the IRPA is “framework” legislation, i.e. the provisions are general and principled. The *IRP Regulations* are more detailed than the IRPA and give specific guidance to applicants. Case law in immigration law operates in the same manner as it does in other areas of law. Case law interprets the IRPA and the *IRP Regulations*. The IRPA is a federal statute, and cases generally go to the Federal Court, the Federal Court of Appeal and the Supreme Court of Canada. The Immigration and Refugee Board has jurisdiction to hear certain immigration matters (consisting of four separate divisions).

The *Immigration and Refugee Protection Act*, RSC 2001, c 27 (“IRPA”) came into force on June 28, 2002, replacing the former *Immigration Act of Canada*, 1976. It is important to note which legislation governs a matter. Refer to Part 5 of the IRPA and Part 20 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRP Regulations*”) for the transitional provisions if you may be subject to the old Act.

**NOTE:** The key legislation in this area of law changes frequently. Make sure to check the most recent version of the IRPA and Regulations, and to check the IRCC website for policy changes.

## 2. Operational Manuals and Bulletins

However, much of the operation of law in the Canadian immigration context takes place through the decision making apparatus of IRCC, which is a large spatially distributed administrative bureaucracy. IRCC “officers” make decisions on written applications, without significant applicant input, and often without any opportunity to clarify evidence, so it is **vital** that applications contain all the evidence required for the status being sought. Much of the law itself is interpreted through the policy of IRCC, which is publicly available through IRCC’s Operational Manuals (<http://www.cic.gc.ca/english/resources/manuals/index.asp>) and between manuals, Operation Bulletins (a link to these bulletins can be found on the Operational Manuals page).

Operational Manuals are drafted by IRCC and provide details on the interpretation of the IRPA and *IRP Regulations*. Immigration Officers and Visa Officers usually consider themselves bound to the Manuals when determining a case. Operational Bulletins are recent developments by IRCC that have not yet been incorporated into the Manuals.

**NOTE:** The Manuals and Operational Bulletins do not have the force of law and must be consistent with the IRPA and the *IRP Regulations*. Cases that do not fit the factors listed in the Manuals and Operational Bulletins may therefore still be arguable at law. However, you may never have an opportunity to argue the legal case due to the limited and narrow appeals and review options, and so it is essential that applicants try to conform to the policy requirements as much as possible in the circumstances.

## 3. Ministerial Instructions

The Ministerial Instructions are provided for in s 87.3 of IRPA and are created through Order in Council. The Ministerial Instructions drive current immigration policy. The Minister uses Ministerial Instructions to make fast, sweeping changes to the immigration system, so it is very important to ensure that you are working with the most current information on requirements.

## **B. Resources**

### **Immigration, Refugees and Citizenship Canada IRCC (“IRCC”)**

Website: [www.cic.gc.ca](http://www.cic.gc.ca)

- Canadian immigration law is changing constantly and sometimes unpredictably. To ensure that you are using the most up to date forms, and the most current policies and procedures, it is important to always check the web site of IRCC: Here you can find information, downloadable forms, and links to the IRPA, Regulations, and Policy Manuals. Operational Manuals and Bulletins published by IRCC are available online under the Publications heading (<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html>). They explain the policies and procedures used by immigration officials to interpret the IRPA.

### **Immigration and Refugee Board (“IRB”)**

Website: <http://www.irb-cisr.gc.ca>

H.M. Goslett & B.J. Caruso eds., *The 2018 Annotated Immigration and Refugee Protection Act of Canada*, (Toronto: Carswell, Legal Publications). Available on reserve in the UBC Law Library.

L. Waldman, *Canadian Immigration Law and Practice 2018* (LexisNexis).

## **III. IMMIGRATION “PLAYERS”**

### **A. Immigration, Refugees and Citizenship Canada (“IRCC”) and Canada Border Services Agency (“CBSA”)**

Immigration, Refugees and Citizenship Canada (“IRCC”), under the Minister of Immigration, Refugee and Citizenship, is generally responsible for processing permanent resident and temporary visa applications. The Canada Border Services Agency (“CBSA”) under the Minister of Public Safety and Emergency Preparedness is generally responsible for enforcement, removals, and hearings. The difference between the CBSA and IRCC is more complicated than what is outlined here, and roles change.

### **B. Immigration and Refugee Board (“IRB”)**

The Immigration and Refugee Board is an independent tribunal with four distinct divisions. These are outlined below in **Section VIII: The Immigration and Refugee Board**.

### **C. Immigration Representatives, Consultants, and “Shadow” or “Ghost” Consultants**

Under section 91 of the IRPA, the only persons permitted to offer immigration advice or to appear before the Immigration and Refugee Board for consideration (i.e. pay) in relation to an application, are lawyers (and articulated students) and members of the Immigration Consultants of Canada Regulatory Council (“ICCRC”). The ICCRC will be replaced by a new regulatory body, the College of Immigration and Citizenship Consultants, by the end of 2020 or early 2021. A person who is not paid may legally provide assistance and advice to an applicant.

Any party appearing as a representative to an applicant must complete an IMM5476E “Use of a Representative” form. This includes both unpaid and paid parties.

For any proceeding in Federal Court, i.e. judicial review of an IRB decision, only lawyers and the applicants themselves may appear.

“Shadow” or “ghost” consulting refers to the practice of offering immigration-consulting services without proper accreditation. While these consultants are not authorized players in the immigration process, their presence is nevertheless significant, and often harmful. Whether acting within Canada or outside Canada, ghost consultants will never appear in the official record of an application. Since many immigrants are unaware of the regulatory requirement for authorized representation, those immigrants are exposing themselves to censure and even findings of "misrepresentation" if they employ ghost consultants, and IRCC and CBSA will aggressively pursue such findings if given the opportunity. Advocates should be entirely sure of their suspicions of the use of a ghost consultant before revealing this fact to IRCC and prejudicing their client. There are methods for pursuing and censuring ghost consultants provided in the IRPA and *IRP Regulations*, and clients may also have civil remedies against them in certain situations. Refer to the “small claims” chapter for more information on filing complaints or small claims actions against consultants.

## IV. CATEGORIES OF PERSONS UNDER THE IRPA

There are three legal categories of persons under IRPA: citizens, permanent residents and foreign nationals. “Status” is the term commonly used to describe the category under which someone falls. Every person physically present in Canada falls into one (and only one) of these categories. “Indians” under the *Indian Act* may enter and remain in Canada in ways that are similar to, but not the same as, a permanent resident, and Indians may also apply for citizenship under certain circumstances. However, Indians may also still be foreign nationals even though they are also Indians, and as such are under the legal requirements of foreign nationals.

### A. *Citizen*

A citizen is a person who was born in Canada, born outside Canada to a Canadian citizen parent, or who has been granted citizenship after filing an application for citizenship under the *Citizenship Act*, RSC 1985, c C-29. Various types of people can apply for citizenship. See **Chapter 17: Citizenship**.

Dual Canadian citizens (persons with multiple citizenships, including Canadian citizenship) travelling to or through Canada are required to enter Canada on a Canadian passport. Canadian citizens should always try to have a passport that will remain valid well beyond any time they plan to spend outside Canada.

### B. *Permanent Resident*

A permanent resident (historically called a “landed immigrant”) is a person who has been granted permanent admission as an immigrant, but who has not become a Canadian citizen. Under IRPA section 2, “permanent resident” means a person who has acquired permanent resident status and has not subsequently lost that status under section 46.

Permanent residents have the same rights as Canadian citizens, with a few exceptions. One important exception is that permanent resident cannot vote. Another important exception is that a permanent resident can lose their permanent resident status and be removed from Canada under certain circumstances, most notably, for having committed a serious criminal offence or for not fulfilling their “residency requirements” (see below).

### C. *Foreign National*

Under IRPA s 2, a foreign national is any person who is not a Canadian citizen or a permanent resident and includes a stateless person. Foreign nationals with Temporary Resident status have conditions attached that the foreign national must abide by, such as visitor, person with a Study Permit or a Work Permit, Convention refugee claimant and many others. Foreign nationals may also have no status – however, they are still Foreign Nationals even if their status has expired.

Upon losing their Temporary Resident status for allegedly failing to comply with conditions imposed (a list can be found in *IRP Regulations* 185(a)), a foreign national can apply within 90 days to have this reviewed. If the officer finds that the foreign national has not failed to comply with any conditions and meets the initial requirements for their stay, the officer shall restore their Temporary Resident status.

Some types of foreign nationals and their associated conditions are described below:

## 1. Visitors

Visitors are foreign nationals who enter Canada lawfully as a visitor. Foreign nationals from certain countries require a Temporary Resident Visa (“TRV”) under the Visitor Class (sometimes known as a “visitor’s visa”) before entering Canada; others do not (see *IRP Regulations*, s.190). Examples of “visa-exempt” countries are the United States, the United Kingdom, Australia, Japan, and most European countries. Foreign nationals with visitor’s status can apply to extend their visitor’s status from within Canada. A visitor has the condition that they **cannot work or study** in Canada, with very few exceptions. Visitors must prove that they will leave Canada at the end of their visit.

Visitors who are exempt from requiring a TRV will still be required to attain an Electronic Travel Authorization (“ETA”). The sole exception to this requirement is for individuals from the United States and individuals with a valid Canadian visa. Applications to obtain an ETA are made through the IRCC website and applicants will be required to pay a \$7.00 surcharge. Electronic Travel Authorizations are not guaranteed and may be denied to travellers with criminal records or existing inadmissibility to Canada. For more information on the ETA process and to apply online visit [www.cic.gc.ca/english/visit/eta.asp](http://www.cic.gc.ca/english/visit/eta.asp)

Visitors can only stay in Canada for the duration of time granted when they first enter Canada unless they obtain an extension. The default amount of time granted upon entry is six months, although an immigration officer may specify a different period of time (*IRP Regulations* s 183). **This includes foreign nationals from visa-exempt countries.** It is possible to apply for an extension with IRCC from within Canada. However, a person may apply for an extension without having to leave the country if they apply **before the temporary resident status expires**. If such a person stays in Canada beyond the period of time granted, the person has “overstayed” his or her visit and is subject to the issuance of a removal order for non-compliance (which would result in a mandatory 1-year exclusion from Canada). A successful applicant must prove that they will leave at the end of the visitation period and that they will have sufficient funds during their visit. Most foreign nationals can apply for Restoration (*IRP Regulations* s 182) within 90 days of expiry, but person’s status is not actually restored until a decision is made, and so they remain at risk of potential enforcement.

A Super Visa allows parents or grandparents of permanent residents or Canadian citizens to visit Canada for up to two years at a time. IRCC grants multiple-entry visas of up to ten years for qualifying individuals. To be eligible for a super visa:

- You must apply for a super visa from outside Canada
- You must be the parent or grandparent of a Canadian citizen or a permanent resident of Canada
- You must have a signed letter from your child or grandchild who invites you to Canada that includes:
  - a promise of financial support for the length of your visit
  - the list and number of people in the household of this person
  - a copy of this person’s Canadian citizenship or permanent resident document
- You must take an immigration medical exam.
- You must have medical insurance from a **Canadian** insurance company that is:

- valid for at least 1 year from the date of entry
- at least \$100,000 coverage
- have proof that the medical insurance has been paid (quotes are not accepted)

For more information on the Super Visa process and to apply online visit:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/parent-grandparent-super-visa.html>.

## 2. Students

A foreign national who wishes to study in Canada must apply for their initial study permit **from outside** Canada at a visa office under the authorization of the Student Class. There are several exceptions to this general rule: in some circumstances a foreign national can study in Canada without a permit (see *IRP Regulations* ss. 188 to 189); and in circumstances, such as extending an existing study permit, a foreign national can apply for a study permit from within Canada (see *IRP Regulations* s. 215).

International students enrolled in courses in Canada for six months or less do not need a study permit, as long as those studies began and will end within six months of their entry to Canada. However, they must still have valid temporary resident status in Canada to perform these studies.

To acquire a study permit, a foreign national must have an acceptance letter from a valid academic institution, sufficient funds, and the intention to leave Canada once their permit expires (see *IRP Regulations* ss. 210 to 222 ).

Registered Indians (as defined under the Canada *Indian Act*) who are also foreign nationals are allowed to study in Canada without a study permit. However, those persons must still have valid temporary resident status in Canada.

An international student who graduates from an eligible designated learning institution may be eligible to obtain a Post-Graduation Work Permit (“PGWP”). Applicants can only receive one PGWP in their lifetime. An applicant must submit clear evidence that:

- They have completed a completed an academic, vocational or professional training program that is at least 8 months in duration from a designated learning institution.
- They have maintained full-time status in Canada during each academic session of the program except the final academic session.
- They have received a final transcript or an official letter from a designated learning institution confirming that they have met the requirements to complete the program.
- They have 180 days after they have received their final marks to apply for a PGWP.

For more information on the PGWP process and to apply online visit:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/work/after-graduation/about.html>.

## 3. Workers

A foreign national who wishes to work in Canada must apply for authorization under the Worker Class, and a work permit **from outside** Canada at a visa office. There are several exceptions to this general rule: in some circumstances, a foreign national can work in Canada without a permit (see *IRP Regulations* ss. 186 to 187); and in some circumstances, a foreign

national can apply for a work permit at a port of entry (“POE”), such as airport, land border or sea border (see *IRP Regulations* s. 198), or from within Canada (see *IRP Regulations* s. 199).

The most common variety of work permit is based on an employer in Canada applying to obtain a Labour Market Impact Assessment (“LMIA”), or “validation,” from Service Canada (Employment and Skills Development Canada). Obtaining an LMIA under the Temporary Foreign Worker Program is often difficult. There are several criteria the employer must meet, including evidence of efforts to hire Canadians or permanent residents; that a government-determined minimum wage (not the same as the provincial minimum wage) will be paid (commonly known as the prevailing wage); and that the employer is able to demonstrate it can pay the wages offered. There are additional rules associated with whether the position pays less than or more than the provincial prevailing wage for the occupation.

Information on the LMIA process (currently called the “Temporary Foreign Worker Program”) can be found at the Employment and Social Development Canada website ([http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/index.shtml)).

There are other, less common kinds of work permits under the International Mobility Program, such as a professional pursuant to CUSMA; inter-company transfers; Mobilité Francophone, and significant benefit permits, where the foreign national can demonstrate that they will contribute significantly to Canadian culture or the economy. Work permits authorizing self-employment are technically possible but rarely granted. Please see sections 204 and 205 of the *IRP Regulations* and the Operational Manuals relating to the International Mobility Program for further details:

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/exemption-codes.html>

Workers who have employer-specific work permits may be eligible for an open work permit that is exempt from an LMIA if they are experiencing abuse, or if they are at risk of abuse. The main objective of this program is to provide migrant workers means to leave their employer if they are facing abuse. It helps migrant workers by reducing the risk and fear of work permit revocation and removal from Canada. Consult the relevant Operational Manual for further details:

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html>.

Further, registered Indians are exempt from having to apply for a work permit to work in Canada. Please see section 186(x) of the *IRP Regulations* for more information.

NOTE: Under the International Mobility Program, all employers, apart from those exempted from the employer compliance regime, who make an offer of employment to a foreign national referred to in *IRP Regulations* s. 200(1)(c)(ii.1) must comply with the conditions imposed under *IRP Regulations* ss. 209.2 and 209.4. An employer may be inspected (an inspection may be initiated from the first day of employment for which a work permit is issued up to a maximum of 6 years thereafter) and must ensure they have met these conditions. For more information, see the IRCC website:

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/work-without-permit/employer-compliance-inspections.html>

NOTE: Under the Temporary Foreign Worker Program, ESDC/Service Canada has the authority to review the activities of any employer using the Temporary Foreign Worker

Program, in relation to the treatment of workers, their LMIA or LMIA application by conducting an inspection with or without prior notice to the employer. For more information, see the ESDC website:

<https://www.canada.ca/en/employment-social-development/services/foreign-workers/employer-compliance.html>

#### **4. Temporary Resident Permit**

When a person is determined by IRCC or CBSA to be inadmissible to Canada (see below), a Temporary Resident Permit (“TRP”) (formerly called a Minister’s Permit, and not to be confused with a Temporary Resident Visa ) can be issued to a foreign national who is otherwise inadmissible but who has a compelling reason for either entering or remaining in Canada. The TRP can be applied for from either outside or inside Canada (IRPA, s. 24). A foreign national is granted a TRP only under **exceptional circumstances**.

#### **5. Convention Refugee Claimants**

A Convention refugee claimant is a foreign national who enters Canada and who requests protection but who has not yet had their refugee hearing. Canada is obligated to grant protection to refugees and other persons in need of protection under the IRPA; the obligation originates from various United Nation Conventions and Treaties.

Details of the Convention refugee process are outlined in **Section VII.F: Convention Refugees**, below.

## **V. APPLYING FOR PERMANENT RESIDENCE**

Immigrant applicants can be broken down into three general categories (these categories are extremely broad): (i.) Economic Class applicants, (ii.) Family Class applicants, and (iii.) Humanitarian or Refugee applicants. There are several subclasses or subcategories within each of these general headings. All applicants and their dependent family members are subject to medical, criminal, and security checks. These are referred to as “statutory requirements” in the legislation.

Amendments to the Act that came into force June 18<sup>th</sup>, 2008 give the Minister authority to establish an order of priority for incoming applications (s. 87.3) and relieve IRCC from the obligation to process all applications to a full decision (s. 11). For example, priority processing amongst Family Class applications is given to spouses and dependent children; these are commenced immediately upon receipt. See the Operational Manuals for details.

**NOTE:** It is important to inform IRCC about any changes in the application, such as a birth or adoption of a child, marriage or divorce, death of an applicant or dependent.

#### **A. *Economic Class Applicants***

Foreign nationals who apply under one of the economic classes must prove that they will become financially established in Canada. This general requirement is reflected through a series of criteria. There are three general sub-classes within the economic class: the skilled worker class, investor class and the self-employed class. Please note that there are Provincial Nominee Programs in operation throughout Canada, including British Columbia. Under these programs, the province nominates an immigrant for Federal screening (see s. 87 of the *IRP Regulations*). Nomination by a province provides strong evidence of an applicant’s ability to become economically established in Canada as required by IRPA s. 12(2). A detailed discussion of these programs is beyond the scope of this Manual.

**NOTE:** IRCC has implemented an online screening and selection process for persons who wish to be considered for permanent resident status in Canada under the Economic Classes of Federal Skilled Worker, Canadian Experience Class, and Federal Skilled Trades Class. This process is called Express Entry (“EE”): <http://www.cic.gc.ca/english/immigrate/express/express-entry.asp>

EE is a system whereby applicants create an online profile (there is no paper process for creating an EE profile) that assigns points according to “Human Capital Factors” and “Skill Transferability Factors” under a “Comprehensive Ranking System”. An applicant can obtain a maximum score of 600 points based on these factors in combination, and a possible extra 600 points by obtaining a special EE-related Provincial Nomination (see Provincial Nominee Programs). These factors and selection criteria were established through Ministerial Instructions and can be reviewed in detail on the IRCC website (<http://www.cic.gc.ca/english/department/mi/express-entry.asp>).

Once the person has created an active EE profile, they may be selected for an Invitation to Apply (“ITA”) for permanent resident status under one of the three aforementioned Classes of permanent residence. They will be issued an ITA if their profile score equals or exceeds the score chosen by IRCC at a particular selection pass. Consequently, potential immigrants do not know if they are able to apply for permanent resident status until they receive an ITA. In other words, there is no guarantee the potential immigrant will receive an ITA.

Upon receiving an ITA, the applicant has 60 days to submit the application for permanent resident status. The application is made entirely online, without written forms, and requires scans of all relevant documents. The applicant will not know exactly what documents are required until they actually receive the ITA, and the documents required may change according to other evidence provided as part of the application. The online submission is often referred to as the “e-APR”.

Once the e-APR is submitted, they will be contacted by IRCC with instructions on where to send original documents that may be required (such as original police clearances).

**NOTE:** During the COVID19 pandemic, a potential immigrant who received an ITA has up to 90 days to submit an application for permanent resident status. The increase from 60 days to 90 days is temporary. Please see the IRCC website for more details (<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/coronavirus/permanent-residence.html>).

## **1. Federal Skilled Worker Class (Express Entry Required)**

The Federal Skilled Worker Program (“FSW”) selects immigrants based on their ability to succeed economically in Canada. After meeting the threshold criteria set out in s. 75 of the *IRP Regulations*, foreign nationals who apply under the skilled worker class are assessed on a point system designed to evaluate their ability to become successfully established in Canada. Applicants are given points on the following criteria: education, language, experience, age, adaptability, and arranged employment. The point structure is set out in the *IRP Regulations* in ss. 78 to 83.

For information on how points are allocated, refer to [www.cic.gc.ca/english/immigrate/skilled/apply-factors.asp](http://www.cic.gc.ca/english/immigrate/skilled/apply-factors.asp).

For complete information of the Federal Skilled Worker Program, please refer to <http://www.cic.gc.ca/english/immigrate/skilled/index.asp>.

## 2. Canadian Experience Class (Express Entry Required)

This class is designed to recognize the value of having experience in Canada, and the positive impact this experience is likely to have on a newcomer's prospects of success in Canada. Applicants under this class must be able to demonstrate the following things:

- 1) At least one year of full-time skilled work experience in Canada, in the last 3 years, in an occupation under NOC type O, A or B (managerial, professional or technical occupations). The work experience must be gained by working in Canada legally and it does not include work experience gained while on a study permit. Full-time work experience is defined as at least 30 hours per week. Further, the skilled work experience can be made up of work in more than one skilled job, but any hours beyond 30 during that week are surplus and are not counted; and
- 2) The applicant must show a minimum proficiency in English or French, through providing a test result report from the TEF, IELTS or CELPIP testing systems.

See the IRCC Program Delivery Instructions for the Canadian Experience Class (<http://www.cic.gc.ca/english/resources/tools/perm/econ/cec/index-post.asp>) and the IRCC website (<http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>).

## 3. Federal Skilled Trades Class (Express Entry Required)

This class is meant to facilitate the permanent residence of skilled tradespersons in Canada. In order to be eligible for the Federal Skilled Trades Program ("FSTP"), an applicant must

- a) Plan to live outside the province of Quebec;
- b) Meet the required levels in English or French for each language ability (CLB 5 for speaking, and listening, and CLB 4 for reading, writing);
- c) Have at least two years of full-time (30 hours per week) work experience (or an equal amount of part-time work experience) in a skilled trade within the five years before applying;
- d) Meet the job requirements for their predominant skilled trade as set out in the National Occupational Classification ("NOC"), (except for needing a certificate of qualification),  
**and**
  - a. Have an offer of full-time employment for a total period of at least one year (up to 2 employers can commit to offering employment, but all offers of employment must be associated with an LMIA).  
or
  - b. A certificate of qualification in their predominant skilled trade issued by a Canadian provincial or territorial authority (such as a Red Seal).
- e) Have sufficient funds for the applicant and the applicant's family to settle in Canada. This requirement is waived if the applicant is working in Canada legally and has a valid job offer from an employer in Canada.

See the IRCC website for more information:  
<http://www.cic.gc.ca/english/immigrate/trades/apply-who.asp>

## 4. Provincial Nominee Programs

All provinces, including British Columbia, have their own selection systems and criteria for new immigrants. Applicants who apply under these classes must still comply with the statutory requirements under the federal legislation (see s. 87 of the *IRP Regulations*). Section 87(3) permits the federal immigration officer to substitute his/her own evaluation of the applicant's ability to become economically established in Canada for that of the nominating

province. B.C.'s Provincial Nominee Program ("BC PNP") has its own categories, which can be different from the federal requirements.

After you are nominated for permanent residence by the BC PNP, both you and your employer must tell the BC PNP about any employment changes by emailing [PNPPostNom@gov.bc.ca](mailto:PNPPostNom@gov.bc.ca). This includes a promotion, a lay-off, a termination or a potential new job with a new employer. Please note that failure to inform BC PNP of a change in your employment status could lead to the withdrawal of your nomination. It could also lead to questions from IRCC when they process your application. All post-nomination requests, including requests for work permit support letters, change of employers, and re-nominations, must now be emailed to [PNPPostNom@gov.bc.ca](mailto:PNPPostNom@gov.bc.ca).

On 1 February 2017, the BC Provincial Immigration Programs Act and Regulations came into effect. This legislation provides a framework for the operation of the BC PNP, including direction concerning what factors can serve as the basis for a nomination, how fees are set, provides investigatory powers to the Director of the PNP, and allows for an appeal process for refused nominations. Clinicians assisting with PNP applications should familiarize themselves with the "interpretive guidelines" provided on the BC PNP site: <https://www.welcomebc.ca/Immigrate-to-B-C/B-C-Provincial-Nominee-Program/Documents>.

Where a BC PNP applicant is refused their application for a nomination certificate, the ability to appeal the decision is provided within their BC PNP online profile, and so it is important for the applicant to log into their profile as soon as possible upon receiving a refusal. They must pay a fee of \$200, and provide submissions and evidence as part of the appeal process.

**NOTE:** A BC PNP nomination can be cancelled after being issued, and this cancellation does not receive consideration under the appeal process. Instead, the nominee is given basic procedural fairness protections in the form of an opportunity to be heard before the nomination is cancelled. There is no appeal to the cancellation decision and so it is important to make the best case possible at that time.

The BC PNP program is currently using an online registration and selection process similar to that of Express Entry (see the NOTE in Section V. A. "Economic Class Applicants"). Enrolment in the program is free. Once an applicant has enrolled in the program, they wait to be issued an invitation to apply for a provincial nomination. No time estimate for waiting periods can be provided as they vary and depend on the strength of the application. Consolidated guides with all the details necessary to assist with a BCPNP application can be found under <http://www.welcomebc.ca/Immigrate-to-B-C/B-C-Provincial-Nominee-Program/Documents>. For more information about BC's programs generally, see <http://www.welcomebc.ca/pnp>.

## **5. Atlantic Immigration Pilot Program**

The Atlantic Immigration Pilot is an economic immigration program aiming at fulfilling the need for labour in Atlantic Canada. Skilled foreign workers and international students who want to work and live in New Brunswick, Nova Scotia, Prince Edward Island, or Newfoundland and Labrador may apply for permanent residence through this program.

To participate in this program, an applicant must satisfy the requirements for an international graduate, a high-skilled worker or an intermediate-skilled worker. Also, they must receive a job offer from a designated employer in Atlantic Canada. However, if an applicant receives a job offer from an employer who is not designated yet, they may ask the employer to consider being designated.

For more detailed information about this program, please visit the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/atlantic-immigration-pilot.html>.

## **6. Yukon Community Immigration Pilot Program**

The Yukon Community Pilot (“YCP”) is a new stream of the Yukon Nominee Program that will allow more flexibility for nominees working in specific Yukon communities. YCP was launched in early 2020 and it will run for three years.

The YCP will provide nominees with a work permit for a specific community, rather than a specific employer, and allow them to work for several employers in the same community, while the permanent resident application is being processed.

To participate in this program, an applicant must meet the general requirements for a work permit and receive two to three eligible job offers from the same participating Yukon community of this program and have a signed letter of support from the Government of Yukon.

For more detailed information about this program, please visit the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/provincial-nominees/yukon-community-pilot.html>.

## **7. Rural and Northern Immigration Pilot Program**

The Rural and Northern Immigration Pilot is a community-driven Program. It provides an opportunity for skilled foreign workers to gain permanent residence by working and living in a participating community. Applicants must meet both IRCC eligibility requirements and the community-specific requirements. Further, applicants need to have a community recommendation to apply for permanent residence. Participating communities in British Columbia include Vernon and West Kootenay (Trail, Castlegar, Rossland, Nelson).

For more detailed information about this program, please visit the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/rural-northern-immigration-pilot.html>.

**NOTE:** Due to the scope of this chapter, we are not able to provide an overview of all of the economic programs. For other economic programs not listed above, please see the IRCC website (<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/economic-classes.html>).

## **8. Self-Employed Persons Class**

This category is designed for individuals who have the intention and ability to be self-employed in Canada in cultural activities or athletics. While it is not explicitly stated on the IRCC website, applicants with exceptional skills, such as Olympic athletes, world-renowned artists and/or musicians, etc. are more likely to be successful under this class. It is not necessary that the applicant actually be self-employed before coming to Canada, so long as they have participated at a “world-class” level in their field of endeavour for at least 2 years. However, persons not actually participating at a “world-class” level may still be successful if they can demonstrate they were self-employed in Category 5 of the Canadian National Occupational Classification (“NOC”) (occupations in art, culture, recreation, and sport) for at least 2 years before coming to Canada, and that they are likely to become economically established in Canada.

Please refer to *IRP Regulations* Part 6 Division 2 (ss. 100 and 101) and to the IRCC website (<http://www.cic.gc.ca/english/immigrate/business/self-employed/apply-who.asp>).

## 9. Investor Class

The Investor Program and the Federal Entrepreneur Program has been closed since July 1<sup>st</sup>, 2012.

IRCC has a Start-Up Visa Program under the Business Immigration Program, which is geared at attracting experienced businesspersons to Canada who will support the development of a strong and prosperous Canadian economy. Individuals are advised to check the IRCC website for the latest information.

**NOTE:** To learn about the Start-Up Visa Program, please visit the IRCC website:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/start-visa.html>.

## B. Caregiver Program

There are two options for a caregiver to come to Canada to become a permanent resident or work temporarily: 1) Home Child Care Provider Pilot, and 2) Home Support Worker Pilot. As of June 18, 2019, an individual may be able to apply for permanent residence through one of the above programs if they meet the eligibility requirements and have a job offer to work in one of these occupations.

Under the Home Child Care Provider Pilot and Home Support Worker Pilot, caregivers will receive a work permit if they have a job offer in Canada and meet the standard criteria for economic immigration programs. Please note an LMIA is not required. A caregiver can apply for permanent residency after two years of Canadian work experience.

These new pilot programs will also benefit from:

- Occupation specific work permits rather than employer-specific permits. This will allow a caregiver to change employers if needed; and
- The caregivers' immediate family members will be eligible for open work permits and/or study permits.

Please see **Chapter 6: Employment Law** for further information on caregivers or the IRCC website:

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/economic-classes/pathways-for-caregivers/child-care-provider-support-pilots/assessing-application-selection-criteria.html>

.You may also contact the Migrant Workers Centre for more information:

### **Migrant Worker's Centre (formerly WCDWA)**

302-119 W Pender Street  
Vancouver, B.C. V6B 1S5  
Website: [www.wcdwa.ca](http://www.wcdwa.ca)

Telephone: (604) 669-4482  
Fax: (604) 669-6456  
E-mail: [info@wcdwa.ca](mailto:info@wcdwa.ca)

## C. Humanitarian and Compassionate Applications

Section 25(1) of the *Immigration and Refugee Protection Act* (IRPA) allows foreign nationals who are inadmissible or who are ineligible to apply in an immigration class, to apply for permanent residence,

or for an exemption from a requirement of the IRPA, based on humanitarian and compassionate (“H&C”) considerations.

Humanitarian and compassionate (“H&C”) applications are generally applied for from within Canada under section 25(1) of the IRPA, but they can also be applied for from abroad.

This is a highly discretionary category **and, generally, only exceptional circumstances will result in an H&C exception.** The Supreme Court of Canada in [\*Kantbasamy v Canada \(Citizenship and Immigration\)\* 2015 SCC 61](#) established a broad and comprehensive assessment of all the applicants’ circumstances in an H&C application. The former test, which considers whether the foreign national would face “undue, undeserved, or disproportionate hardship” if they were forced to return to their country of habitual residence or citizenship, does not create three new thresholds for relief separate and apart from the humanitarian purpose of s. 25(1). Accordingly, officers should not look at s. 25(1) through the lens of the three adjectives as discrete and high thresholds, and use the language of “unusual and undeserved or disproportionate hardship” in a way that limits their ability to consider and give weight to *all* relevant humanitarian and compassionate considerations in a particular case. The three adjectives should be seen as instructive but not determinative, allowing s. 25(1) to respond more flexibly to the **equitable** goals of the provision.

Factors to be looked at include level of establishment of the person in Canada, family ties in Canada, the best interests of any children involved, and what could happen if the request is not granted. There are other rules applicable to the application, please review the IRCC website for more information (<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html>) for more information.

**NOTE:** In 2010, s 25 of the IRPA was amended, such that “... the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national”. In other words, officers do not determine whether well-founded fear of persecution, risk to life, danger of torture and risk of cruel and unusual treatment or punishment has been established, but they may take the underlying facts into account in determining whether the applicant will face hardship if returned to their country of origin.

Subsection 25(1.3) applies only to H&C applications made in Canada. Personal risks faced by the claimant that are relevant to a Convention refugee determination can no longer be considered in deciding an H&C application. However, “hardship” must still be considered—see IRPA s. 25(1.3). Thus, discrimination in the foreign national’s country of origin that does not constitute persecution may still properly be considered by the Minister in determining whether the foreign national would experience undue, undeserved or disproportionate hardship.

**NOTE:** Refugee claimants are prohibited from having concurrent H&C applications. Those who have had their claim denied **will be subject to a 1-year bar on submission of an H&C application.** There are some exceptions to the bar. The bar does not apply if:

- you have children under 18 who would be adversely affected if you were removed from Canada, or
- you have proof that you or one of your dependents suffers from a life-threatening medical condition that cannot be treated in your home country.

Unlike applications made under a Pre-Removal Risk Assessment, a person who applies under H&C considerations **may be removed from Canada before the decision on the application is made.**

## **D. Family Class Applicants**

Foreign nationals can be “sponsored” under the Family Class by a Canadian citizen or permanent resident. Please see the *IRP Regulations*, Part 7.

### **NOTE:**

Foreign nationals must declare any of their non-accompanying family members (i.e. dependent children, spouses, and parents) in their initial application if they wish, at some point to sponsor these individuals themselves. An individual generally cannot sponsor a family member if they failed to declare that family member in their application for permanent residence. However, a pilot project has been launched from September 9, 2019 to September 9, 2021 which will allow certain newcomers who failed to declare their family members to sponsor undeclared immediate family members. Consult the IRCC website for the latest details on this pilot project, which presently applies only to individuals who became permanent residents under the Convention refugee and Family Classes and who are applying to sponsor undeclared family members.

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/excluded.html>

### **1. Sponsors**

The sponsor must meet certain eligibility requirements. For example, the sponsor must be at least 18 years old, must reside primarily in Canada, must not be bankrupt or receiving provincial welfare benefits, must not be in default of a previous immigration undertaking, etc. (see ss. 130 - 137 of the *IRP Regulations* for the requirements).

The requirement to reside in Canada only applies to permanent resident applications. Canadian citizen sponsors may reside outside of Canada when they submit the sponsorship but must demonstrate their intention to return to Canada when the sponsored person becomes a permanent resident (see *IRP Regulations* 130(2)).

In some circumstances, the sponsor must prove they earn a specific amount of money, depending on his or her family size and the city they are living in. The definition of “minimum necessary income” can be found in s.2 of the *IRP Regulations*. This is also known as the “low-income cut-off” figure (“LICO”). Generally speaking, the LICO **does not apply** to sponsors who are just sponsoring their spouse or children (*IRP Regulations* s. 133(4)).

### **2. Members of the Family Class**

The family class is the group of family members that can be sponsored to immigrate to Canada. Family members who are not included in *IRP Regulations* s. 117(1) cannot be sponsored. Below is a list of members of the family class:

- a) Spouse, common-law partner or conjugal partner,
- b) Dependent child,
- c) Parents or grandparents,
- d) Brother, sister, niece, nephew, or grandchild who is an orphaned child under 22 and is not a spouse or common-law partner, or
- e) Relative of any age if the sponsor does not have an aunt, uncle, or family member from the list above who they could sponsor or who is already a Canadian citizen, registered Indian, or permanent resident. This is known as the “lonely Canadian” provision.

A dependent child is defined as a child, both biological and adopted, of the sponsor or sponsor’s spouse who is below the age of 22. Exceptions can be made for children who are above the age of 22 but are substantially dependent on their parent due to a mental or physical condition (*IRPA* s. 1).

When the sponsor is also applying for permanent residency as a Principal Applicant, the sponsor’s spouse, common-law partner, or conjugal partner, and the sponsor’s dependent children are included on the sponsor’s permanent residency application as accompanying or non-accompanying family members. However, a Principal Applicant may be rendered inadmissible if the family members included on his or her application are inadmissible.

**NOTE:** There is a new requirement that sponsors meet an increased income level for sponsoring parents or grandparents.

**NOTE:** A major issue that arises in many spousal sponsorship applications is whether the marriage is genuine. Under *IRP Regulations*, s. 4, a foreign national will not be considered a spouse if the marriage is not genuine or was entered into primarily for the purposes of acquiring any status or privilege under the Act. Applicants must prove that their marriage is valid, both in Canada and in the country in which it took place (*IRP Regulations*, s. 2). While an arranged marriage is not inherently less credible, prior acquaintance to the marriage can pose some evidentiary challenges.

### 3. Procedure

To sponsor a family class member, a potential sponsor must fill out an application to sponsor, and the relative being sponsored must fill out an application for permanent residence. The sponsor must also provide a signed undertaking with the federal government that they will support the prospective immigrant and accompanying dependents, if necessary, for three years if the applicant is a spouse or conjugal/common-law partner, or ten years for most other categories of applicants (see *IRP Regulations*, Part 7, Division 3). If an application for sponsorship under the Family Class is refused, the **sponsor** may (in most cases) appeal the refusal to the Immigration Appeal Division.

#### ***E. “In-Canada” Spouses, Common-law Partners, and their dependents (Spouse or Common-Law Partner in Canada Class)***

The statutory “in-Canada” family class sponsorship provisions are outlined under ss. 123 - 125 of the *IRP Regulations*. The requirements from the sponsor are generally the same, but the Class of persons able to be sponsored through this route is limited to spouses, common-law partners, and the children or grandchildren of those persons. The entire application is processed inside Canada, and the applicants are generally landed at an IRCC office in Canada. It is important to note that, aside from the question of the genuineness of the relationship, in-Canada applications are only successful if the sponsored person resides in Canada with the sponsor.

## ***Out of status spouses in Canada – Public Policy***

A Canadian citizen or permanent resident can sponsor a spouse regardless of the spouse's status in Canada under a special public policy directive relating to out-of-status applicants. After the sponsored spouse (applicant) receives first-stage approval of their application (that is, approval in principle), they are entitled to an Open Work Permit under *IRP Regulations* s. 207. This means the applicant is entitled to work in Canada in any capacity; in other words, unlike most temporary foreign workers, this work permit is not tied to a particular form of employment with a particular employer.

**NOTE:** An applicant will generally be granted a sixty (60) day period in which IRCC should determine whether the relationship is genuine if the applicant is out of status and there is a removal order. If it is determined that the relationship is genuine then the removal order will be stayed.

It is important to understand that foreign nationals without status can apply under this class **only** if the foreign national:

- a) Has overstayed a visa, visitor record, work permit or study permit,
- b) Has worked or studied in Canada without authorization under the *IRPA*,
- c) Has entered Canada without the required visa or other document required under the *IRP Regulations* and/or,
- d) Has entered Canada without a valid passport or travel document (provided valid documents are acquired by the time IRCC seeks to grant permanent resident status).

Consequently, foreign nationals who are inadmissible to Canada, who entered Canada without permission after having been deported, or who have misrepresented themselves are not permitted to apply under this class. Always look to the most recent version of this policy.

**NOTE:** Under “in-Canada” classes, there is **no appeal** to the Immigration Appeal Division of a failed sponsorship. The only redress is to file a new application, file an overseas family class application, or if possible, to file for judicial review of the refusal.

**NOTE:** IRCC will issue spousal open work permits to certain spouse or common-law partner in Canada class applicants at the initial stage of processing. Please note the spousal open work permit is a pilot program that has been extended to July 31, 2020. We are still waiting for confirmation from IRCC on whether or not the spousal open work permit pilot will be further extended.

## ***F. Convention Refugees (the Process)***

The Refugee Protection Division (“RPD”) assesses foreign nationals who apply for Convention refugee protection or “protected persons” status.

The definition of a Convention refugee is found at s 96 of the IRPA. Generally, the person must:

- a) Have a well-founded fear of persecution,
- b) The fear must be objective and subjective,
- c) The fear must be linked to a Convention ground (i.e. race, nationality, religion, political opinion or membership in a particular social group),
- d) There must be no Internal Flight Alternative, i.e. a place in the country of feared persecution where the person can reasonably live safely,
- e) There must be no state involvement or state complicity, and
- f) The state must be unable or unwilling to protect.

If a person has more than one place of citizenship, they must have exhausted options in both of their countries of citizenship (see [Canada v Ward \[1993\] 2 SCR 689](#)). This is not an exhaustive list; refer directly to the IRPA, ss. 95 to 111.

The IRB Chairperson has issued special interpretation guidelines for determining Convention refugee claims of women refugees. Individuals should review these “Gender Guidelines” when assisting women refugee claimants. The Gender Guidelines can be found on the IRB’s website, [www.irb-cisr.gc.ca](http://www.irb-cisr.gc.ca), under the heading “Legal and Policy References.”

**NOTE:** A “person in need of protection” has a different definition, outlined under s 97 of the IRPA. **Review the Convention Refugee and Protected Persons classes in the IRPA carefully if dealing with such a case.** The Refugee Protection Division has the jurisdiction to consider both ss. 96 and 97 of the IRPA.

**Significant changes to the refugee determination process have been implemented over the last several years by the *Balanced Refugee Reform Act, SC 2010, c 8 (BRRA)*, and, the *Protecting Canada’s Immigration System Act, SC 2012, c 17*.**

Key Changes:

- People who make a refugee claim at an office in Canada must submit their completed Basis of Claim form (“BOC”) during their eligibility interview. Those who make a refugee claim at a port-of-entry must submit their BOC to the IRB no later than 15 days after referral of their claim to the IRB.
- Hearings at the independent Immigration and Refugee Board of Canada (“IRB”) will be conducted by public servant decision makers rather than people appointed by the Governor in Council (“GIC”).

In general, refugee claimants have an initial intake interview with an officer, followed by a hearing with a public servant. Due to the increased volume of claims, the RPD has moved to a “first-in, first-out” model where claims are heard in the order they are referred. **If the claimant fails, they will have 15 days to make an appeal to the Refugee Appeal Division (“RAD”). Claimants whose claims are decided by the IRB to be “manifestly unfounded” or have “no credible basis,” designated foreign nationals, and those falling under an exception to the Safe Third Country agreement have no right of appeal to RAD but may be able to file for Judicial Review in the Federal Court.**

Please note that the timelines for BOC, Hearings, Document Disclosure and Postponement Requests are different for Inland claimants and Port-of-Entry claimants.

Any person midway through the application process should consult the IRCC website for the latest information:

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/canada.html>

## **1. Entry/Initiation**

A foreign national generally requests Convention refugee protection at the Port-of-Entry upon arrival, i.e. at the airport, land border or sea border. However, if a foreign national wishes to make a Convention refugee claim after being admitted into Canada, the person should go to the Immigration, Refugees and Citizenship Office at 1148 Hornby Street, Vancouver, British Columbia and enter a claim for protection. The first step is the eligibility interview.

## **2. Eligibility**

Once a foreign national makes a claim for protection, an immigration officer will interview him or her and determine if the person is eligible to make a claim. There are several classes

of ineligible people listed at s. 101 of the IRPA. For example, if a foreign national has previously made a Convention refugee claim in Canada, and the claim was accepted, refused, withdrawn or abandoned, that person is “ineligible” to make another claim. If a foreign national is determined “ineligible,” the process stops.

At the eligibility interview, the interviewing immigration officer will obtain the detailed reasons why the foreign national fears persecution. A foreign national should be prepared to **accurately outline the details** of his or her account of events leading to the claim for protection.

Important changes to the eligibility rules for refugee claimants were introduced in 2019. Anyone who has made a refugee claim previously in a country with which Canada has an information-sharing agreement (US, UK, Australia, and New Zealand) are now **ineligible** to make a refugee claim in Canada. Instead, these individuals will receive only a Pre-Removal Risk Assessment (“PRRA”). We recommend that claimants in this situation consult with a lawyer as soon as possible to understand their options.

### **3. Basis of Claim Form (“BOC”)**

Once a foreign national is determined to be eligible to submit a Convention refugee claim, the foreign national will be given a Conditional Departure Order. This is a removal order that only comes into effect if the person loses the claim for protection. The foreign national is now a Convention refugee claimant. The claimant will have **15 days to file the BOC**. This is the most important obligation on a Convention refugee claimant, apart from attending their hearing.

Claimants will require help in preparing their BOC. In the BOC, a claimant must outline the precise reason(s) for their well-founded fear of persecution. This includes a narrative outlining the dates, incidents of persecution, why they are afraid, etc. The **BOC should include facts that support the claimant’s fear, and that address the requirements set out in the IRPA**. For example, the BOC should address why the claimant has no internal flight alternative, how the state is involved or complicit in the persecution, etc. This account of events will form the basis of the request for protection at the hearing.

### **4. Refugee Hearing**

The Convention refugee claimant will be scheduled for an oral hearing to assess their claim. This hearing is not open to the public. The Presiding Member will question the claimant regarding the BOC. The Minister may also intervene in the hearing and a Hearings Officer may question the claimant if they allege the claimant should be excluded from refugee protection under IRPA s. 98 or if they have concerns about the claimant’s credibility.

Note that if the claimant wishes to rely on documents, they must file or serve those documents not less than 10 days before the hearing. If the Minister intervenes, they must also be served within the same time frame. If there are documents in other languages, they must be translated (Rule 28).

Claimants may represent themselves at the hearing or be represented by counsel. Representation by counsel is always preferable. Interpreters are provided if required. Claimants may request that a family member or friend be present at the hearing for emotional support.

**NOTE:** Claimants (and their counsel) must **be very familiar with the content of their BOC before the hearing**. Claimants must be prepared to elaborate on the details outlined in the BOC. A decision maker may interpret inconsistencies with the facts as stated in the BOC as weakening the claimant’s credibility.

## 5. Refugee Appeal Division

The Refugee Appeal Division (“RAD”) considers appeals against decisions of the *Refugee Protection Division* (“RPD”) to allow or reject claims for refugee protection. In most cases there will be no hearing, as the RAD will base its decision on the documents provided by the parties involved and the RPD record.

### *a) Appealing the RPD’s decision to the RAD*

For appeals of a **decision of the RPD** to the RAD, the following information may be helpful:

- There are **only 15 days** to file a Notice of Appeal after receiving the written reasons for the decision from the RPD,
- After a claimant receives the written reasons from the RPD decision, the claimant has 30 days to file an Appellant's Record,

**For a detailed compilation of necessary steps and information for a claimant’s appeal, please refer to the Appellant’s Guide and Kit:**

<http://www.irb-cisr.gc.ca/Eng/RefApp/Pages/RefAppKitTro.aspx>

### *b) Responding to the Minister’s Appeal of the RPD’s Decision*

The Minister can appeal the RPD’s decision to accept a claimant’s refugee claim subject to the following exceptions:

- a) The claimant is a designated foreign national,
- b) The claimant made their claim at a land border with the United States and the claim was referred to the RPD as an exception to the Safe Third Country Agreement, and/or
- c) The claimant’s claim was referred to the RPD before the relevant provisions of the new system came into force.

When responding to the Minister’s appeal of their RPD decision to the RAD, the following should be considered:

1. A claimant will know the Minister is appealing the RPD decision when the Minister gives the claimant and the RAD a document called a ‘notice of appeal’. The Minister has 15 days after they have received the RPD’s written decision to take this action.
2. The Minister will then give the claimant any supporting documents that they will be submitting as evidence. The Minister has 30 days after receiving the RPD’s written reasons to take this action.
3. After this is done, the claimant will have to submit a “**Notice of Intent to Respond**” and provide the Minister and the RAD with a copy, **no later than 15 days** after the claimant receives the supporting document from the Minister.

For a detailed compilation of all necessary components when responding to an appeal, please refer to the Respondent’s Guide:

<http://www.irb-cisr.gc.ca/Eng/RefApp/Pages/ResIntKitTro.aspx>.

## **G. Pre-Removal Risk Assessment (“PRRA”)**

A PRRA is a risk assessment application before removal of a foreign national from Canada. With some exceptions and some restrictions (see ss. 112(2) and 112(3) of the IRPA), every person who is being removed from Canada can submit a paper application describing why they would suffer

persecution or danger in the country of destination if returned to that country. The risk(s) are assessed under ss. 96 and 97 of the IRPA. However, very few applications succeed under the PRRA process.

**NOTE:** Under the *IRPA* those claimants who have a failed or abandoned refugee claim will generally be ineligible to make a PRRA claim for **12 months** after the judicial review decision.

## **1. Process**

Once a claimant has received a removal order and has been given **notification**, they have 15 days to apply for a PRRA and another 15 days to make submissions and include documentary evidence. If the person is a failed Convention refugee claimant, the evidence supporting the PRRA must be new or must have not reasonably been available on the date of the hearing; in other words, only “new evidence” is considered.

Once a person has applied for a PRRA, the person cannot be removed from Canada until a decision is made regarding their case. This is called a “stay of removal”.

A person who has been given notice of removal can apply for the PRRA later than the 15-day deadline. However, that person could be removed from Canada before the decision is made (i.e. no stay of removal is issued).

A person who loses the PRRA will be removed. The only redress to a PRRA refusal is to apply for leave and appeal to the Federal Court. The deadline to apply for leave to the Federal Court is 15 days. In such cases, the claimant should contact a lawyer immediately.

## **2. Status Conferred**

If the PRRA is granted, the person will receive the same protection as a Convention refugee. The person will be considered a “protected person” and can apply for permanent resident status from within Canada.

# **VI. IDENTIFICATIONS FOR PERMANENT RESIDENTS**

Unlike other countries, Canada does not issue national identification cards to its residents. Instead, all new permanent residents are issued a Permanent Resident Card since June 28, 2002. The Permanent Resident Card is proof of the individual’s status in Canada as a permanent resident and it is required when travelling to Canada by commercial carrier or commercial airline. In general, a permanent resident of Canada cannot return to Canada by commercial carrier or commercial airline without their Permanent Resident Card. Accordingly, in order for a permanent resident without a valid Permanent Resident Card to return to Canada, they would need to apply for a Permanent Resident Travel Document.

## **A. Permanent Resident Cards**

According to IRP Regulations s. 53(1), the Permanent Resident Card (“PR Card”) is a document that indicates the holder’s permanent residence status in Canada. In general, the PR Card is valid for five years from the date of issue. In order to maintain the permanent resident status, an individual would need to comply with the residency obligation under IRPA s. 28. For more information, see the Residency Obligation section below.

When a permanent resident becomes a citizen of Canada, they must return the PR Card to IRCC at the citizenship ceremony.

A permanent resident should only apply for a PR Card in one of the following situations:

- their PR Card has expired or will expire in less than 9 months;
- their PR Card is lost, stolen, or destroyed;
- they did not receive their PR Card within 180 days of immigrating to Canada; or
- they need to update the PR Card to legally change their name, change their citizenship, change their gender designation, or correct their date of birth.

If a permanent resident finds a mistake on their PR Card, they can request IRCC to issue a new PR Card. Please note shortening a long name to fit the PR card is not considered as a mistake.

For more information about the application process, please see the IRCC website:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-card/how-to-apply.html>.

**NOTE:** A permanent resident without a valid PR Card is still a permanent resident, so their legal status in Canada will not necessarily change as the card expires.

**NOTE:** New permanent residents are not required to apply for a PR Card upon arriving in Canada. This is because IRCC will automatically send a PR Card to the new permanent resident if they provide IRCC with their mailing address in Canada.

## **B. *Permanent Resident Travel Document (“PRTD”)***

A PRTD is a document that permanent residents can use to re-enter Canada when they do not possess a PR Card, as their PR Cards may be expired when they are outside of Canada. A PRTD is normally only valid for one single entry. Accordingly, permanent residents should apply for a new PR Card as soon as they return to Canada. Please note in order to apply for a new PR Card, the permanent resident must demonstrate they meet the residency obligation under IRPA s. 28. For more information, see the Residency Obligation section below.

Please note a permanent resident can only apply for a PRTD when they do not have a valid PR Card, are outside of Canada, and will return to Canada by airplane, boat, train or bus.

The PRTD application is submitted outside of Canada at a Visa Application Centre (“VAC”). During the COVID-19 pandemic, the permanent resident could submit the PRTD application by email. See instructions below:

1. Submit a scanned PRT application (see below) and a copy of the permanent resident’s passport bio-data page to [IRCC.COVIDPRTD-TVRPCOVID.IRCC@cic.gc.ca](mailto:IRCC.COVIDPRTD-TVRPCOVID.IRCC@cic.gc.ca). The subject line should read as “PRTD application: (legal name);
2. Scan a copy of the required documents listed in the Document Checklist (IMM5627);
3. Complete and scan the Application for a Permanent Resident Travel Document (IMM5524);
4. Pay the processing fee (\$50) and provide a copy of the receipt; and
5. Provide a copy of the confirmed flight ticket/itinerary for travel to Canada that clearly shows the flight number, date of travel, and arrival airport in Canada, if this information is available.

When a permanent resident applies for PRTD through a VAC, a VAC agent will review the application package to ensure the application package is complete and has all the documents specified in the above document checklist. Further, an immigration officer will then assess the PRTD

application to determine whether or not the permanent resident met the residency obligation. In some cases, a permanent resident may be required to attend an in-person interview.

For more information about the application process, please see the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-travel-document/how-to-apply.html>.

**NOTE:** In limited circumstances, a permanent resident can request for urgent processing of their PR Card. See the IRCC website for more information: <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-card/apply-renew-replace/urgent.html>.

**NOTE:** The current application fee is \$50 for a PR card or a PRTD.

### **C. *Other Identifications***

As mentioned from above, a permanent resident requires a PR card or PRTD to re-enter Canada by commercial vehicle, such as airplane, bus, train, or boat. However, a permanent resident may enter Canada with other identifications when they travel by private vehicle. Those identifications include Enhanced Driver's License issued by a Canadian province or territory, Enhanced Identification/Photo Card issued by a Canadian province or territory, and Confirmation of Permanent Residence Document.

For more information, please refer to the website of the Canada Border Services Agency:

<https://www.cbsa-asfc.gc.ca/travel-voyage/td-dv-eng.html>.

## **VII. THE IMMIGRATION AND REFUGEE BOARD**

The Immigration and Refugee Board (the "IRB") is made up of four tribunals with distinct jurisdictions. In Vancouver, the active divisions of the IRB are located at 300 West Georgia Street, Vancouver, British Columbia on the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> floors.

### **A. *Immigration Division***

The Immigration Division deals with (i) detention reviews and (ii) admissibility hearings.

#### **1. Detention Reviews**

If a foreign national or permanent resident is "detained" under the IRPA, that person is entitled to a detention review before the Immigration Division. The adjudicator is called the "Presiding Member", and a CSBA officer called "Minister's Counsel" (representing the Minister for Public Safety) presents the case to detain the person concerned unless an alternative to detention exists.

A person arrested under the IRPA provisions is entitled to a detention review within 48 hours after arrest, or as soon as practicable. If the person is ordered detained, they receive another detention review in 7 days, then again in 30 days, then again, every 30 days thereafter until they are either removed or released.

To keep a person in detention, the onus is on the Minister to prove that there are reasonable grounds to believe that the detainee's identity cannot be ascertained and that the detainee is

either a danger or unlikely to appear for his or her detention review hearing (see IRPA, s. 55 and *IRP Regulations* ss. 244 to 250).

## **2. Admissibility Hearings**

If an immigration officer alleges a foreign national or permanent resident of Canada is “inadmissible” under a provision of the IRPA, the Immigration Division conducts admissibility hearings to determine whether or not the allegation is founded.

**NOTE:** There are exceptions where an immigration officer can determine inadmissibility without redress to the Immigration Division. For inadmissibility provisions, please refer to Division 4 of the IRPA.

The hearings are conducted as adversarial tribunals. Persons subject to such a hearing may represent themselves, or they may choose to retain counsel. It is always preferable for such persons to retain counsel.

If a person is found inadmissible, a removal order will be issued. A determination of inadmissibility can be appealed to the Immigration Appeal Division in certain cases. The Minister can also appeal in some circumstances. Only permanent residents or Convention refugees can appeal, with very few exceptions. Foreign nationals who are not Convention refugees, generally, cannot appeal the removal order to the IAD but can apply for judicial review or a stay from Federal Court.

### ***B. Immigration Appeal Division***

The Immigration Appeal Division (“IAD”) hears appeals from the Immigration Division and some decisions from visa officers and immigration officers. The three most common types of appeals are as follows:

- a) Permanent residents who have been determined inadmissible by the Immigration Division for serious criminality,
- b) Canadian citizens or permanent residents appealing a negative decision on a sponsorship application under the family class, and
- c) Permanent residents determined inadmissible for not having met the “residency requirements”.

The IAD is a court of competent jurisdiction. Charter issues can be raised. Also, the IAD, in most circumstances, can deal with issues of equity. For example, if a permanent resident is “lawfully” determined inadmissible by the Immigration Division for having committed criminal acts in Canada and lawfully given a deportation order, the IAD can allow an appeal because there are sufficient “humanitarian and compassionate” grounds warranting relief. See **Section XI: Appeals**.

### ***C. Refugee Protection Division***

The Refugee Protection Division (“RPD”) deals exclusively with determining claims for Convention refugee protection. The RPD also deals with, to a lesser extent, “vacation hearings,” i.e. hearings where an allegation is made that Convention refugee protection should be taken away from someone.

### ***D. Refugee Appeal Division***

The Refugee Appeal Division (“RAD”) is an appeal division for some failed Convention refugee claimants, established by the IRPA. Under s.110, the IRPA provision that actually permits an appeal to be made to the RAD, only some refugee claimants will have access to RAD. Designated foreign nationals, those whose claims are deemed to be “manifestly unfounded” or to have “no credible basis” and those whose claims are considered under an exception to the Safe Third Country

agreement will have no right of appeal to the RAD. All other claimants have 15 days to submit an appeal to RAD. The appeal will largely be paper-based; hearings will be held only in exceptional cases.

## VIII. LOSS OF PERMANENT RESIDENT STATUS

It is possible for a permanent resident to lose their permanent resident status and can even be removed from Canada in certain circumstances. Further, a permanent resident may also voluntarily relinquish their status as a permanent resident.

### A. *Residency Requirement*

A permanent resident must meet the residency requirements as outlined in the IRPA. **Generally, a permanent resident must be physically present in Canada for 730 days out of every five years.** If a person has been a permanent resident for less than five years, they must demonstrate at examination, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident. The residency requirements can be met in a few different ways. See s. 28 of the IRPA for full details.

**NOTE:** The onus is on the permanent resident to demonstrate with supporting documentation as considered necessary by an officer that they were physically present in Canada for the required number of days or have otherwise met (or will be able to meet) the residency obligation as prescribed in IRPA. The permanent resident also bears the onus of presenting documentation that is credible, in the opinion of an officer, to support any assertion(s) made by the permanent resident, or that may have been made on behalf of that permanent resident.

### B. *Inadmissibility*

A foreign national or permanent resident can be determined “inadmissible” to Canada for several reasons, including, but not limited to, committing a serious crime or being found to have misrepresented information in their immigration application. Inadmissibility means that a foreign national or permanent resident has contravened the IRPA in some way and will be issued a removal order.

There are three types of removal orders, which are discussed below.

If a permanent resident is determined inadmissible, they may lose their permanent resident status. The inadmissibility provisions relating to foreign nationals and permanent residents overlap for the most part, but there are some differences. For example, permanent residents will be inadmissible for serious criminality if they commit an indictable offence, while foreign nationals will be inadmissible for committing a less serious summary offence. Refer to the IRPA directly for specific grounds of inadmissibility (ss. 34 – 43).

**NOTE:** Convention refugees are not inadmissible on the same health and criminality grounds as most other kinds of applicants, but they may be excluded in cases of serious criminality or crimes against humanity.

**NOTE:** **A permanent resident sentenced to 6 months or more of incarceration (including time in custody awaiting trial) is inadmissible to Canada and does not have an appeal to the IAD of their removal.** This means that permanent

residents who are arrested and charged with crimes, even relatively minor ones, must ensure their criminal counsel are aware of this consequence from the beginning of the criminal process. A conditional sentence does not equal imprisonment for the purposes of this provision and sentencing must be considered at the time of conviction (see [Tran v Canada \(Public Safety and Emergency Preparedness\), 2017 SCC 50](#)). Users of this manual should check for developments in this area of the law as it is undergoing continued legal development. See also *XII Immigration Issues at Sentencing*.

## IX. IN-CANADA TEMPORARY RESIDENCE MATTERS

For temporary residents in Canada, such as visitors, workers or students, who apply for permanent residency while holding temporary resident statuses in Canada, they may counter various immigration matters, which will be covered in this section.

### A. *Temporary Residence Extension*

In general, a temporary resident who enters Canada as a visitor can usually stay in Canada for up to six months, unless the CBSA officer authorized a different length of stay in Canada. A temporary resident in Canada may apply to extend their stay beyond their initial period of stay granted by the CBSA officer at the POE. The temporary resident extension application must be submitted before the expiry date of the temporary resident's authorized stay in Canada.

For the temporary resident extension application, the applicant submits the application to the Case Processing Centre in Edmonton ("CPC-E") usually online with all of the required documentation and the fee. An agent at CPC-E will review the application. If the application is approved, then CPC-E will request for a passport if the applicant is from a temporary resident visa-required country. Conversely, if the applicant is from a temporary resident visa-exempt country, then a Visitor Record will be mailed to the applicant. However, if the application is not approved, then CPC-E will mail a letter to the applicant to inform the applicant of the reasons for refusal and advice of the next course of action.

Please refer to the IRCC website for information on the process to extend the temporary resident status in Canada: <https://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/extend-stay.html>.

When the temporary resident submits an extension application before their authorized period of stay expires, then the temporary resident could legally remain in Canada on implied status until a decision on the temporary resident extension application is made or by the end of the new period authorized for their stay when their application is approved, pursuant to IRP Regulations 183(5). Similarly, a foreign national on a valid temporary work permit or study permit who has applied to extend their status in Canada before their Work Permit or Study Permit is expired could also continue to work in Canada or study in Canada on implied status under the same terms and conditions as their temporary status document in Canada until a decision on their application is made.

Please note if a temporary resident with implied status leaves Canada before a decision on their extension application is made, then when they re-enter Canada they cannot study or work until a decision is made on their Study Permit or Work Permit extension application.

Those who are on implied status and wish to leave Canada while their extension application is processing should contact a lawyer for assistance regarding eligibility to re-enter Canada.

## **B. *Loss and Restoration of Temporary Resident Status***

Section 47 of the IRPA outlines when a foreign national's temporary resident status in Canada is expired; namely:

- (i) At the end of the period for which they are authorized to remain in Canada;
- (ii) On a determination by an officer or the Immigration Division that they have failed to comply with any other requirements of IRPA; or
- (iii) On cancellation of their temporary resident permit.

Further, if a temporary resident has lost their status based on IRPA s. 47 or let their authorization to work or study expire, they may apply to restore that status in accordance with IRP Regulations s. 182. The eligibility requirements for restoration of status are as follow; namely, the applicant must:

- applies within 90 days of having lost their status;
- meets the initial requirements for their stay;
- remains in Canada until a decision is made;
- has not failed to comply with any condition imposed automatically by regulation or an officer other than those listed under R 185(a), R 185(b)(i) to (iii), and R 185(c); and
- continues to meet the requirements of the authorization they want to restore.

The application process is similar to the one of temporary residence extension. If the applicant is not eligible for the restoration, the officer will refuse the application, and the applicant is notified in writing that they must leave Canada immediately. Also, the officer will determine whether a s. 44 report may be warranted due to a possible violation of the IRPA or IRPR. The officer may refer the application to a Domestic Network ("DN") officer near the applicant's place of residence for further assessment and interview. If the application is referred to a DN office, the DN officer may call the applicant in for an interview to gather additional information. The officer will either approve or refuse the application. If the application is refused, a letter will go to the applicant notifying them of the refusal, the reasons for it. Refused applicants should leave Canada immediately.

For detailed information about the eligibility and restoration fees, please check the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/visitors/restoration-status.html>.

## **C. *In-Canada Study Permit Applications***

In general, the initial Study Permit application is submitted while the foreign national is outside of Canada (see IRP Regulations s. 213). However, foreign national may apply for a study permit when entering Canada at the POE if they are a citizen or permanent resident of the United States, a resident of Greenland or a resident of St. Pierre and Miquelon (see IRP Regulations s. 214). Further, a foreign national may apply for a study permit after entering Canada if they meet the requirements specified in IRP Regulations s. 215. For more information, please see the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/study-permits/making-application.html#InCanada>.

**NOTE:** If a foreign national has already had a study permit approved abroad but has not obtained it at a POE on their initial arrival due to different reasons, they may contact the IRCC Call Centre and the Operational Support Centre will assess the foreign national's eligibility against the case management system to verify their status. Once the eligibility is

confirmed, CPC-E may mail a study permit to the foreign national's address in Canada.

**NOTE:** An application for a study permit renewal does not constitute an application for a TRV. Therefore, visa-required foreign nationals must apply separately for a TRV extension and pay the processing fee.

**NOTE:** In-Canada visitors are not eligible to apply for a study permit from within Canada unless they are exempt under R215.

## ***D. Working in Canada as an International Student***

### **1. Working On Campus During Studies**

In general, students can work on campus after they have started their study program in Canada. This means if the students arrived in Canada prior to the program commences they must wait until they have commenced their studies in Canada before they can work on campus. In order to work on the student's campus without a work permit, the following conditions must be met:

- a) The student is a full-time post-secondary student at a public post-secondary school, private college-level school in Quebec that operates under the same rules as public schools, and is at least 50% funded by government grants, or Canadian private school that can legally award degrees under provincial law;
- b) The student has a valid study permit; and
- c) The student has a Social Insurance Number ("SIN") - this can be obtained at a Service Canada office.

Please note the student must stop working on campus under one of the below circumstances. If the student continues to work, then this could lead to a removal order for not complying with the terms of the Study Permit.

- a) On the day the student stop studying full-time;
- b) When the student's study permit expires;
- c) When the student is on an authorized leave from studies; or
- d) When the student is switching schools and is not currently studying.

IRCC also defines where the student can work on campus and who they can work for. For more information see the IRCC website:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/work/work-on-campus.html>

### **2. Working Off Campus During Studies**

In general, students can work off campus after they have started their study program in Canada. This means if the students arrived in Canada prior to the program commences they must wait until they have commenced their studies in Canada before they can work off campus. In order for the students to work off campus, the following conditions must be met:

- a) The student is a full-time student at a designated learning institution;
- b) The student is enrolled in a post-secondary academic, vocational or professional training program, or a secondary-level vocational training program (Quebec only);
- c) The student's study program is at least 6 months long and leads to a degree, diploma or certificate;
- d) The student's Student Permit has a notation that says the student can work off campus;
- e) The student has started studying in Canada; and

- f) The student has a Social Insurance Number (“SIN”) - this can be obtained at a Service Canada office.

If the students are eligible to work in Canada off campus, then they are bound by the below conditions:

1. The student may work up to 20 hours per week off campus or full-time during regular breaks if they meet the criteria outlined in IRP Regulations s. 186(v); and
2. The student may accept employment on or off campus if they meet the eligibility criteria in IRP Regulations s. 186(f), (v) or (w) and they must cease working if they no longer meet the above criteria.

After the student completed their study they generally need to stop working. In this scenario, we recommend you to speak to a lawyer. For more information, please refer to the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/work/work-off-campus.html#who-can>

**NOTE:** During the COVID-19 pandemic, international students providing essential service is temporarily allowed to work more than 20 hours if they are a study permit holder in an academic session; eligible to work off campus; and providing an essential service as defined by Public Safety Canada (see website: <https://www.publicsafety.gc.ca/cnt/ntnl-sert/crtcl-nfrstrctr/esf-sfe-en.aspx>). This temporary policy is in effect until August 31, 2020. For more information, please visit the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/services/coronavirus-covid19/visitors-foreign-workers-students.html>

**NOTE:** **Students who are taking ESL/FSL language courses for self-improvement, or a course or program as a prerequisite to their enrolment at a DLI are not eligible for the off campus work permit program for their enrolment in those courses or programs, but it does not affect their eligibility gained by other programs.**

### **3. Working during PGWP Application**

A post-graduation work permit (“PGWP”) allows students who have graduated from a participating Canadian post-secondary institution to gain valuable Canadian work experience. Students often use this to gain the necessary Canadian work experience in order to immigrate to Canada as a permanent resident under the Canadian Experience Class.

In general, international students who have completed their program of study are allowed to work pursuant to IRP Regulations 186(w), while they are waiting for a decision on their PGWP application, provided they meet **all** of the below criteria:

- they are or were holders of a valid study permit at the time of the PGWP application;
- they were full-time students enrolled at a DLI in a post-secondary academic, vocational or professional training program;
- they were authorized to work off campus without a work permit; and
- they did not exceed the allowable hours of work.

In general, a student is only permitted to apply for one PGWP in their lifetime. There are specific deadlines that students must meet in order to be eligible to apply for a PGWP. Applicants must apply for a PGWP within 180 days of obtaining written confirmation from their DLI indicating that they have met the requirements for completing their program of study, starting from the earlier time of the day their final marks are issued and the day they receive formal written notification of program

completion. The onus is on the student to provide proof of the date of completion of the program to IRCC

A PGWP is issued based on the length of the study program (including regularly scheduled breaks) and can last between 8 months and 3 years. When determining the length of a post-graduation work permit, officers may confirm the duration of the program of study in Canada with supporting documents, including letter confirming completion of the program and transcript. For details about length calculation and other frequent issues about its validity, please refer to the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/study-permits/post-graduation-work-permit-program/permit.html>.

The PGWP can be applied while the student is inside Canada or outside Canada.

The requirements that must be met for a student to apply for a PGWP while in Canada are as follow:

- their study permit is still valid,
- they have a valid visitor record because they changed their status to visitor before their study permit expired while waiting for their notice of graduation from their institution or simply to remain in Canada, subject to R 186(w),
- they are on implied status (submitted an application to extend or change their status to visitor or student before the expiry date of their study permit and no decision has been made).

When the student's Study Permit becomes invalid or expires the student must leave Canada and submit the PGWP application overseas, or apply to restore the student's status as a student, then submits the PGWP concurrently.

Application packages can be found at the below websites:

- <https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/work/after-graduation/apply.html> (in Canada), and
- <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/apply-work-permit-outside-canada.html> (overseas).

**NOTE:** There are some common types of ineligible applicants, including those who have been previously issued a PGWP: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/study-permits/post-graduation-work-permit-program/eligibility.html>.

**NOTE:** PGWP holders may leave Canada and return if they satisfy certain requirements: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/study-permits/post-graduation-work-permit-program/travel.html>.

## ***E. Working in Canada as Foreign Spouses or Partners of Temporary Residents***

### **1. Spouses or Partners of Skilled Workers**

Spouses or common-law partners of skilled foreign workers may be authorized to work in Canada without an Offer of Employment (see IRP Regulations s. 205(c)(ii)). A spouse or common-law partner is eligible to apply for an open work permit if their spouse (the principal foreign worker) meets the below requirements:

- holds a work permit valid for at least 6 months, or, if working under IRP Regulations s. 186 without a work permit, presents evidence that they will be working for a minimum of 6 months;
- is employed in an occupation that falls within skill type 0 or skill levels A or B: (See the IRCC website to determine the NOC <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/find-national-occupation-code.html>), and
- physically resides or plans to physically reside in Canada while working.

For detailed information on the eligibility requirements and application procedures, please visit the IRCC website:

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/exemption-codes/public-policy-competitiveness-economy.html>

## 2. Spouses or Partners of Full-Time Students

In general, spouses or common-law partners of certain foreign students may be allowed to apply for an Open Work Permit (see IRP Regulations s. 205(c)(ii) and LMIA exemption code C42). The applicant must provide evidence that they are the spouse or common-law partner of a study permit holder who is a full-time student at a public secondary institution; a private post-secondary institution that operates under the same rules and regulations as a public post-secondary institution in Quebec; a private or public secondary or post-secondary institution (in Quebec) offering qualifying programs of 900 hours or longer leading to a diploma of vocational studies or an attestation of vocational specialization; or a Canadian private institution authorized by provincial statute to confer degree but only if the student is enrolled in one of the programs of study leading to a degree, as authorized by the province and not in just any program of study offered by the private institution.

For more information, please see the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/exemption-codes/public-policy-competitiveness-economy.html>

**NOTE:** The validity of the Work Permit will coincide with the spouse's Study Permit.

### ***F. Revocation of Work Permit due to Public Policy Considerations***

In specific circumstances, an officer may revoke a Work Permit if, in the officer's opinion, public policy considerations specified in instructions by the Minister of Immigration, Refugees and Citizenship justify the revocation, including (not an exclusive list):

- the associated LMIA has been revoked;
- the employment is having a significantly greater negative effect than benefit with respect to the development of a strong Canadian economy (applies to LMIA-exempt work permit);
- the employer has provided false, misleading or inaccurate information;
- the employer's name has been added to the ineligible employer list under IRP Regulations s. 209.91(3); or
- the Work Permit is issued on the basis of any foreign national on the basis of their relationship with another foreign national and the principal foreign worker's Work Permit is now revoked (applies to LMIA-exempt Work Permit).

For details, please refer to the IRCC website: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/work-without-permit/revocation-work-permit-public-policy-considerations.html>.

**NOTE:** Revocation of a foreign national's Work Permit does not make the foreign national inadmissible to Canada.

**NOTE:** All in-Canada visitor record, study permit and work permit applications must be submitted electronically, subject to a limited number of exemptions: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/visitors/place-application-visa-electronic-travel-authorization-study-permit-work-permit/exempt-electronic-applications.html>.

## **X. REMOVAL ORDERS**

There are three types of removal orders: (i.) departure orders, (ii.) exclusion orders, and (iii.) deportation orders (*IRP Regulations*, Part 13). The IRPA sets out certain types of removal orders that are associated with certain offences created under IRPA. For example, if a foreign national is determined inadmissible for having committed a serious criminal offence, the foreign national will automatically receive a deportation order. Similarly, if a foreign national has worked without a Work Permit and without authorization, the foreign national will be issued an exclusion order. Removal orders vary in seriousness and repercussion. However, officers retain a measure of discretion in deciding whether to issue an exclusion order, restrict entry or allow entry for examination. See Operational Manual ENF 6 and ENF 10 for more details.

Removal orders can be stayed either by asking CBSA to defer the removal or by applying for a stay to the Federal Court pending determination of a judicial review or H&C application. Those who are seeking a stay should contact a lawyer for assistance.

### **A. *Departure Order***

A departure order requires the individual to leave Canada “voluntarily” within 30 days. The person may be required to sign a “certificate of departure” at the POE (i.e. airport, land border or sea border ) when leaving. If a person under a departure order legitimately leaves Canada, they may return to Canada at any time without any specific permission from the Minister, so long as they meet requirements of the IRPA.

**NOTE:** If a person under a departure order does not leave Canada within 30 days of the order coming into effect, the departure order becomes a deportation order. An exact date should be requested from CBSA before administering any time calculation.

### **B. *Exclusion Order***

Under an exclusion order, the individual must leave Canada, and cannot re-enter Canada for one year without consent from the Minister in the form of an Authorization to Return to Canada (an “ARC” under s. 52 of the *IRP Regulations*). If the ground of inadmissibility is misrepresentation under s. 40(2)(a) of the IRPA, the exclusion order will be in effect for **five years** from the date of departure or removal. After the period of inadmissibility has passed, the person can apply to re-enter Canada so long as they meet the requirements of the IRPA. During any period, an order is in effect, the person concerned can apply for an Authorization to Return to Canada – for more information, see “Deportation Order” below.

### **C. *Deportation Order***

A deportation order is the most serious type of removal order. A person under a deportation order is generally removed, but in some circumstances, may leave voluntarily. A person removed on a deportation order can never return to Canada unless they obtain authorization from the Minister (See *IRP Regulations*, s 226(1)); this is also known as an “Authorization to Return to Canada”, or “ARC”).

If a person who has been removed from Canada by IRCC wishes to return to Canada and is permitted to do so, they must pay a fee.

**NOTE:** If a person, who has been removed from Canada under a deportation order or an exclusion order that is still in effect, returns to Canada without permission from the Minister, that person can be charged with offences under s 124 of the IRPA.

## XI. APPEALS

The Immigration Appeal Division (“IAD”) may allow an appeal and set aside an original decision:

- a. Based on the grounds of an error in law or fact,
- b. If there are sufficient humanitarian grounds (in some cases), or
- c. If a breach of a principle of natural justice has occurred. Principles of equity are generally of greater concern in appeals concerning removal orders.

In certain cases, the IAD may also give special relief on the basis of humanitarian and compassionate grounds (i.e. equitable grounds), considering all the circumstances of the case and especially in taking into account the best interests of a child. The IAD can:

- a. Allow an appeal,
- b. Dismiss an appeal, or
- c. Stay the removal and impose terms and conditions (IRPA s. 68).

### A. *Sponsorship Appeals*

If a Canadian citizen or permanent resident (PR) tries to sponsor a member of the family class and the application is refused, the citizen or PR can appeal the refusal to the immigration appeal division. Appeals must be made within **30 days** of the day the sponsor is informed of the refusal. A member will hear the appeal following the tribunal process. Section 63 of IRPA specifies that the IAD can consider H&C applications only if the applicant is a confirmed family member.

Some sponsorship appeals follow an Early Resolution (“ER”) process. The appellant can always request ER. The ER process at the IAD usually involves a one-hour, in-person meeting with a CBSA hearings officer who will review the facts and question the Appellant sponsor. The IAD assigns a member to act as an Early Resolution Officer (“ERO”) for each appeal that is selected for the ER process. Counsel should also attend, but does not make submissions, and is primarily there to assist the Appellant. Despite this process, many of the cases that go through ER will have a final result without the parties having to attend a full oral hearing, so applicants may wish to request ER if they believe the Appeal case is strong, is not especially complex, can be resolved without the direct testimony of the principal applicant (sponsored person), and that it can be dealt with about an hour.

IAD’s jurisdiction is limited to errors in law, fact, or mixed law and fact. IAD cannot override a negative sponsorship application on grounds of equity. **Sponsorship applications made from within Canada, i.e. Spouse and Common-law Partner in Canada Class applications, cannot be appealed to the IAD.**

### B. *Removal Order Appeals*

Permanent residents, Convention refugees, and protected persons who have been ordered removed from Canada may file an appeal with the IAD. These appeals may be based on either legal or equitable grounds.

**NOTE:** If a person has been convicted and sentenced in Canada to six months imprisonment or more, they will not be able to appeal an order to the IAD. A conditional sentence order (“CSO”) is included in ‘imprisonment’.

Removal orders may **not** be appealed if the **permanent resident** has been found inadmissible because of:

- a) Serious criminality with a sentence of 6 months or more,
- b) A foreign conviction (or committing an act outside Canada) carrying a maximum sentence of 10 years or more in Canada,
- c) Organized criminality,
- d) Security grounds, or
- e) Violations of human or international rights.

Appeals must be filed within **30 days** of the removal order being issued.

**For a comparison of the former inadmissibility regime to the new inadmissibility regime, please refer to:** <http://www.cic.gc.ca/english/departement/media/backgrounders/2013/2013-06-20a.asp>.

**NOTE:** Because of the exclusion from appeal for people sentenced to six months or more, advocates in criminal trials where this may become an issue should ensure that the judge is aware of the immigration status of the accused, as it may affect sentencing (e.g. the judge may reduce the sentence to six months less a day, in which case an appeal of the removal order would be possible). For further details see **Section XIII: Immigration Issues at Sentencing, below.**

### ***C. Residency Obligation Appeals***

Permanent residents **outside** of Canada who are determined by an IRCC officer not to have fulfilled their residency obligation have a right of appeal before the IAD.

Appeals must be made within **60 days** of receiving the written decision. Upon application, the IAD can issue an order that the person must physically appear at the hearing. Once the order is given, a travel document will be issued by IRCC allowing the person to enter Canada for the hearing. If the appeal is allowed, the person will not lose permanent resident status. If it is dismissed, the person will lose permanent resident status, and the IAD will issue a removal order.

### ***D. Federal Court (Leave and Judicial Review)***

Always contact an immigration lawyer in cases where Federal Court is or might be involved. Decisions by the IAD (or the Refugee Protection Division and the Immigration Division, where no administrative appeal exists) may be challenged by judicial review in the Federal Court of Canada. **There is a 15-day filing deadline to apply for leave for judicial review of matters decided within Canada, and a 60-day deadline for matters decided overseas (IRPA, s. 72), so an applicant must act quickly if they seek leave for judicial review.** In the process of judicial review, the court does not try the case *de novo*; the role of the court is not to substitute its own discretion for that of the tribunal, but rather to ensure that the tribunal did not exceed its statutory authority. The court simply reviews the case to verify that it was procedurally fair; that the decision maker did not make any errors of law or unreasonable findings of fact; and that the decision itself was reasonable. See **Chapter 20: Public Complaints** for a more thorough treatment of judicial review.

On a leave application, all arguments and evidence are submitted to the judge in written form without a personal appearance. The judge reviews the material and, if satisfied that the applicant has made an arguable case, grants leave. If the judge decides there is no arguable case, leave will be denied and there can be no further argument in the Federal Court. A decision made by the Federal Court may be

appealed to the Federal Court of Appeal only if the Trial Division judge “certifies” a question as being of serious and general importance (s. 74(d)).

## XII. OFFENCES UNDER THE ACT

Part 3 of the IRPA outlines various offences and penalties for breaches of the Act. Offences of human smuggling and trafficking in persons have penalties of up to life in prison and fines of up to one million dollars. Other offences created by the Act include:

- a) Disembarking a person or group of people at sea for the purposes of entering Canada illegally,
- b) Possession, use, import/export, or dealing in passports, visas and other documents to contravene the Act,
- c) Entering Canada at any place other than a Port-of-Entry without reporting to an immigration officer,
- d) Gaining admission to Canada through the use of a false or improperly obtained passport, visa or other documents,
- e) Violating the terms or conditions under which admission was granted,
- f) Knowingly making false or misleading statements at an immigration examination or admissibility hearing,
- g) Remaining in Canada after ceasing to be a visitor, and
- h) Working illegally or employing a person who is not authorized to work.

For lesser offences, s 144 of the IRPA provides that offenders may be ticketed. This provides officers with an alternative to using the other procedures set out in the IRPA or the *Criminal Code*, RSC 1985, c C-46. Fines of up to \$10,000 may be assessed under such offences.

## XIII. IMMIGRATION ISSUES AT SENTENCING

In June 2013, changes to the IRPA came into force that severely altered the **permanent residence** consequences of a term of imprisonment of 6 months or more, including credit for time served. Such permanent residents will be issued a deportation order with **no appeal** of the deportation order to the IAD. Previously, the period of imprisonment required before there was no appeal to the IAD of a removal was 2 years. This change is retroactive, and any permanent resident who had not already been referred to the IAD for an appeal of the removal order will not have that option even if the sentence was imposed before the law changed.

If a permanent resident has been convicted of an offence in Canada for which a maximum term of imprisonment of more than 10 years could be imposed, they become inadmissible to Canada and will be issued a deportation order. A permanent resident has the right to appeal a deportation order to the IAD under s. 63(3) of the IRPA. As noted above, this right of appeal is lost if the permanent resident actually receives a sentence of 6 months or more, and the calculation of 6 months includes pre-trial custody, so an individual who receives a 2-month sentence in addition to double credit for 2 months pre-trial custody, has received a 6-month sentence. A conditional sentence of imprisonment imposed pursuant to the regime set out in ss. 742 to 742.7 of the *Criminal Code* "is not a term of imprisonment" under s. 36(1)(a) of the *IRPA*. "punishable by a maximum term of imprisonment of at least 10 years" in s. 36(1)(a) of the *IRPA* refers to the maximum term of imprisonment under the law in force at the time admissibility is determined.

**NOTE:** The accused should actively raise these immigration considerations with criminal defence counsel at the earliest opportunity, and make sure that counsel is engaging these issues whenever the accused is in custody, or faces a possible custodial sentence.

## XIV. IMPORTANT ADDRESSES AND PHONE NUMBERS

### **Immigration, Refugees and Citizenship Canada (IRCC)**

1148 Hornby Street  
Vancouver, B.C. V6Z 2C3  
Website: [www.cic.gc.ca](http://www.cic.gc.ca)

### **Immigration and Refugee Board of Canada**

Library Square, 1600 - 300 West Georgia  
Street  
Vancouver, B.C. V6B 6C9  
Website: [www.irb-cisr.gc.ca](http://www.irb-cisr.gc.ca)

Telephone: (604) 666-5946

### **Canada Border Services Agency (Enforcement)**

Library Square, 700 - 300 West Georgia  
Street  
Vancouver, B.C. V6B 6C9

### **Vancouver Association for Survivors of Torture (VAST)\***

2610 Victoria Drive  
Vancouver, B.C. V5N 4L2  
Website: <https://vast-vancouver.ca/>

Telephone: (604) 255-1881  
E-mail: [referrals@vast-vancouver.ca](mailto:referrals@vast-vancouver.ca)

- Provides medical and/or psychological assistance to refugee claimants who were victims of torture, as well as services to family members of survivors.

### **MOSAIC Settlement Services**

5575 Boundary Rd, Vancouver, BC V5R 2P9  
Website: [www.mosaicbc.com](http://www.mosaicbc.com)

Telephone: (604) 254-9626  
Fax: (604) 254-3932  
E-mail: [info@mosaicbc.com](mailto:info@mosaicbc.com)

### **Immigrant Services Society of B.C.**

2610 Victoria Drive  
Vancouver, BC V5N 4L2 Canada  
Website: [www.issbc.org](http://www.issbc.org)

Telephone: (604) 684-2561  
Fax: (604) 684-2266  
E-mail: [info@issbc.org](mailto:info@issbc.org)

- ISS is a non-profit organization committed to identifying the needs of immigrants and refugees and to developing and providing programs which meet those needs.

**Inland Refugee Society of B.C.**

Suite # 615 – 525 Seymour Street  
Vancouver, B.C. V6B 3H7  
Website: [www.inlandrefugeesociety.ca](http://www.inlandrefugeesociety.ca)

Telephone: (778) 328-8888  
Fax: (604) 873-6620  
E-mail: [contact@inlandrefugeesociety.ca](mailto:contact@inlandrefugeesociety.ca)

- The Society facilitates the landing in Canada of people whose refugee claims are in process or who need to file a claim. Their services include assisting in the claim process, providing counselling during the claim period, and providing basics like shelter, food, and clothing.

**S.U.C.C.E.S.S.**

Head office: 28 West Pender Street  
Vancouver, B.C. V6B 1R6  
Website: [www.success.bc.ca](http://www.success.bc.ca)

Telephone: (604) 684-1628  
E-mail: [info@success.bc.ca](mailto:info@success.bc.ca)

- S.U.C.C.E.S.S. is a non-profit social service agency that provides assistance to newly-arrived immigrants and refugees. The agency provides instructions in Cantonese and Mandarin on how to fill out citizenship forms and study for the citizenship test.

**Legal Aid (Legal Services Society) Vancouver Regional Centre**

Suite 425 (Intake); Suite 400  
(Administration)  
510 Burrard Street  
Vancouver, B.C. V6C 3A8  
Website: [www.lss.bc.ca/legal\\_aid](http://www.lss.bc.ca/legal_aid)

Telephone: (604) 601-6206 (Intake)  
Fax: (604) 601-6000

**BC Provincial Nominee Program**

Suite 450 - 605 Robson Street  
Vancouver, B.C. V6B 5J3

Telephone: (604) 775-2227  
Fax: (604) 660-4092  
E-mail: [pnpinfo@gov.bc.ca](mailto:pnpinfo@gov.bc.ca)

**Lawyer Referral Service**

Head office: 300 - 845 Cambie Street  
Vancouver, B.C. V6B 4Z9  
Website: [www.accessprobono.ca/node/385](http://www.accessprobono.ca/node/385)

Telephone: (604) 687-3221  
E-mail: [lawyerreferral@accessprobono.ca](mailto:lawyerreferral@accessprobono.ca)

- The Lawyer Referral Service provides referrals to lawyers who will provide up to 30 minutes of free legal consultation. When requesting a referral, please request for a lawyer who specializes in immigration law because immigration law is an area of law that changes frequently.

\*These organizations may have closed / their mandates may be significantly altered due to changes in funding.

\*\*This Society can no longer assist people who have not already been granted Permanent Resident Status.