Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEEN:

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

APPLICATION RECORD

Sujit Choudhry
Circle Barristers
325 Front St. W., Suite 200
Toronto, ON M5V 2Y1
Tel: (416) 436-3679
sujit.choudhry@circlebarristers.com

Maureen Silcoff
Silcoff, Shacter
Barristers and Solicitors
951 Mount Pleasant Rd.
Toronto, ON M4P 2L7
Tel: (416) 322-1480
msilcoff@silcoffshacter.com

Solicitors for the Applicant

Daniel Engel
Kevin Spykerman
Department of Justice
Ontario Regional Office
120 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 1T1
Tel.: 416-973-6241
Fax: 416-954-8982

AGC_PGC_TORONTO.IMM@justice.gc.ca
daniel.engel@justice.gc.ca
Kevin.Spykerman@justice.gc.ca

Solicitors for Respondents

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEEN:

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

- and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION, THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

INDEX

Registry No.: 4

FEDERAL COURT

BETWEEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

APPLICATION FOR LEAVE AND JUDICIAL REVIEW

TO THE RESPONDENTS:

AN APPLICATION FOR LEAVE TO COMMENCE AN APPLICATION FOR JUDICIAL REVIEW UNDER SECTION 72 (1) OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT* has been commenced by the Applicant.

UNLESS A JUDGE OTHERWISE DIRECTS, THIS APPLICATION FOR LEAVE will be disposed of without personal appearance by the parties, in accordance with section 72 (2) (d) of the *Immigration and Refugee Protection Act.*

IF YOU WISH TO OPPOSE THIS APPLICATION FOR LEAVE, you or a solicitor authorized to practice in Canada and acting for you must forthwith prepare a Notice of Appearance in Form IR-2 prescribed by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, serve it on the tribunal and the Applicant's solicitor or, where the Applicant does not have a solicitor, serve it on the Applicant, and file it, with proof after service, at the Registry, within 10 days of service of this application for leave.

IF YOU FAIL TO DO SO, the Court may nevertheless dispose of this application for leave and, if leave is granted, the subsequent application for judicial review without further notice to you.

NOTE:

Copies of the relevant Rules of Court, information on the local office of the Court and other necessary information may be obtained from any local office of the Federal Court Registry or Trial Division in Ottawa, telephone (613) 952-3653.

The Applicant seeks leave of the Court to commence an application for judicial review to seek a declaration of a right to counsel in immigration and refugee applications, interviews and examinations.

There is no file number or decision in this matter.

In the event that leave is granted, the Applicant seeks the following relief by way of judicial review:

1. That this Court issue the following declarations pursuant to section 18.1(3)(a) of the *Federal Courts Act*:

    a. there is a right to counsel in immigration and refugee applications, interviews and examinations in accordance with the common law and/or sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*;

    b. section 167(1) of the *Immigration and Refugee Protection Act* is underinclusive and therefore constitutionally invalid under section 52 of the *Constitution Act, 1982*;

    c. the right to counsel must be legally recognized by:

        i. enacting amendments to the *Immigration and Refugee Protection Act* and promulgating regulations as necessary; and/or

        ii. the Respondents revising their existing policies or adopting new policies.

2. An order as to costs; and

3. Such further and other relief as counsel may advise and this Honourable Court may allow.

In the event that leave is granted, the application for judicial review is to be based on the following grounds:

<u>Introduction</u>

1. This Application for Leave and Judicial Review (**"ALJR"**) seeks the recognition of the right to counsel, at an individual's own expense, in immigration and refugee related matters with the three

Respondents – the Ministers of Immigration, Refugees and Citizenship Canada (**"IRCC"**), Public Safety and Emergency Preparedness, and Employment and Social Development Canada (**"ESDC"**).

2. While there is no legal bar to individuals retaining and instructing counsel to represent them in these matters, there is no corresponding legal obligation for the Respondents to recognize counsel, interact with them, and accord them participatory rights in interviews and examinations. This Application seeks to confirm the existence of this obligation.

3. The right to counsel, and the corresponding obligation of the Respondents to recognize it, exists under under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* (**"*Charter*"**) and the common law. It extends beyond the contexts where the right to counsel is already conferred by section 167(1) of the *Immigration and Refugee Protection Act* (**"*IRPA*"**) and section 10(b) of *Charter*. Those provisions apply to proceedings before the Immigration and Refugee Board and detentions, but do not apply to immigration and refugee applications, examinations, and interviews. Moreover, the policies and practices of the three Respondents reflect this limitation and do not recognize this right in these contexts. At times, the Respondents' public policies and messaging actively discourage individuals from retaining counsel.

4. The Applicant seeks a declaration from the Court that the right to counsel exists in the contexts not covered by section 167(1) of the *IRPA* and section 10(b) of the *Charter*. It would then fall to the Respondents to comply with this declaration by giving effect to this right through effective means. Such means include amending existing policies or adopting new ones, promulgating regulations, and/or enacting amendments to the *IRPA* itself.

Jurisdiction

5. The Court has jurisdiction to hear this ALJR under section 72(1) of the *IRPA*, which applies to "any matter" under the *IRPA*. While most ALJRs under section 72(1) concern challenges to specific decisions, a "matter" extends more broadly to institutional policies and practices which underpin specific decisions. The scope of the term "matter" is explained in section 72(1) as "a decision, determination or order made, a measure taken or a question raised". In this ALJR, the policies and practices result from: the unlawfulness and/or unconstitutionality of an omission, which is a "question raised" under the *IRPA*; and specific policies denying a right to counsel, which is "a measure taken" by the Respondents.

6. Launching a comprehensive legal challenge to the Respondents' lack of recognition of the right to counsel under the *IPRA* is the most efficient way to bring the issue before the Court. The alternative, litigating this issue case-by-case on a piecemeal basis in the context of specific decisions to not recognize the right to counsel, would require dozens of proceedings to capture every possible scenario and circumstance. It would strain the resources of the Court, which is already burdened by backlog. It also avoids a multiplicity of proceedings and risks of inconsistent judicial findings.

Public Interest Standing of the Applicant

7. The Applicant, the Canadian Immigration Lawyers Association (**"CILA"**), asserts public interest standing. CILA is a non-partisan and non-profit association focused exclusively on immigration law. It provides professional resources and mentorship and promotes positive change in the Canadian immigration system for all immigrants, newcomers, and persons having dealings with Canadian immigration and citizenship laws. CILA engages in stakeholder consultations with IRCC and other ministries and organizations and makes regular appearances before various committees.

8. CILA meets the three-part test for public interest standing set out in *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45. First, CILA raises a serious justiciable issue in this litigation. Second, CILA has a real stake or a genuine interest in the outcome of the litigation. Third, the litigation is, in all the circumstances, a reasonable and effective way to bring the right to counsel issue before the Court.

Existing laws, policies and practices regarding right to counsel

9. Under section 167(1), there is a right to counsel in proceedings before the four divisions of the Immigration and Refugee Board: the Immigration Division, the Immigration Appeal Division, the Refugee Protection Division, and the Refugee Appeal Division.

10. Section 167(1) of the *IRPA* is limited in scope. It does not apply to large and significant components of the immigration and refugee system. For example, it does not apply to immigration applications, such as permanent and temporary resident applications, and citizenship applications. Nor does section 167(1) apply to examinations at a port of entry, or inland or overseas interviews.

11. Individuals have the right to counsel under section 10(b) of the *Charter* if they are detained or arrested. While *Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 SCR 1053 extended the application of section 10(b) to detentions in the immigration and refugee contexts, it adopted a narrow interpretation of what constituted a detention. Specifically, it determined that secondary examinations were not a form of detention.

12. There is no legal prohibition on individuals retaining and instructing counsel to represent them in immigration and refugee matters that fall outside the scope of section 167(1) of the *IRPA*, or section 10(b) of the *Charter* as currently interpreted. But there is no corresponding legal obligation under the *IRPA* and section 10(b) as currently understood for the Respondents to recognize that counsel and

interact with them, and to accord them participatory rights in interviews and examinations, which severely inhibits the exercise of that right and can render it ineffective.

13. For applications, the IRCC purports to recognize the right to counsel through the *Use of a Representative Form*, as does ESDC through its *Appointment of a Third Party Representative Form*. However, IRCC's and ESDC's practices are frequently inconsistent with these forms – that is, they refuse to deal with counsel whose clients have completed these forms, and/or interact directly with individuals who have completed these forms and have counsel of record. Moreover, some IRCC and ESDC portals expressly state that they are unavailable to counsel, which undermines the effectiveness of these forms. Finally, IRCC's *Use of a Representative Form* and its communications discourage the hiring of counsel.

14. For examinations and interviews, IRCC and the Canada Border Services Agency (**"CBSA"**) policies and practices limit the scope of the role of counsel. Counsel may at most attend and observe an interview and examination, but may not participate in it.

Need for counsel and harms of absence of counsel

15. Counsel can increase the chances of a successful outcome for applications, examinations and interviews. Conversely, the lack of counsel increases the risk of an unsuccessful outcome.

16. Counsel's legal advice in applications includes explaining concepts found in application forms and portal questions (e.g. arrest) whose meaning to laypersons may not match their legal meaning; providing advice on the gap between IRCC's written policies and their administrative interpretation; and determining the applicability of and explaining IRCC policies (e.g. Express Entry) of ever-increasing complexity.

17. Counsel's role in examinations and interviews involves: explaining the purpose of these processes; obtaining disclosure from CBSA or IRCC of the legal issues at stake and supporting evidence (including past applications); explaining the legal issues to clients and advising them of the evidence required to accurately answer those questions and avoid misrepresentations which may lead to negative decisions; preparing the client for the interview; at the interview, raising procedural fairness issues, ensuring the client understands the questions put to them and the officer understands their answers, and taking notes to ensure there is an accurate record; preparing written submissions; and ensuring that the record provides a foundation for a successful judicial review if one proves necessary.

18. The stakes are high when an unsuccessful application for temporary residence can cause significant economic loss, delay family reunification, and prevent an applicant from having a future path to Canadian permanent residence. For example, negative work permit decisions can harm Canadian business. Businesses are subject to Administrative Monetary Penalties and significant and lasting reputational harm for non-compliance with terms related to an offer of employment to a foreign national, and offences for unauthorized employment of foreign nationals.

19. The stakes are also high for an unsuccessful application for permanent residence. A negative decision for an application under an economic stream can have a harsh impact on an individual's employment and ability to make significant decisions in their life.

20. In both temporary and permanent resident applications, incomplete or inaccurate information can further delay processing in a system that is plagued by chronic backlogs, and can affect individuals' ability to come to Canada or arrive in a timely fashion, to pursue professional and personal opportunities. A misrepresentation by a foreign national or permanent resident can lead to denial of entry, removal, or a finding of inadmissibility that lasts five years.

21. Counsel can alleviate the discriminatory impact for individuals with linguistic, cultural, educational, mental health, and trauma-based barriers in applications, interviews and examinations.

Legal basis for right to counsel

22. The legal basis for the right to counsel is found in the common law and the *Charter*.

23. The common law requires a right to counsel in immigration and refugee applications and interviews and examinations, as a matter of procedural fairness under the factors set out by the Supreme Court in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

24. Section 7 of the *Charter* is engaged for *IRPA* matters that can lead to removal or refusal of entry, where individuals are deprived of their liberty and/or because they face a risk of life, liberty or deprivation of security of the person, as a consequence of interviews and examinations that lead to inadmissibility or ineligibility determinations under the *IRPA*, and may trigger removal (for persons in Canada) or refused entry to Canada (*Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17).

25. Family life is also protected by section 7. Unsuccessful applications for family reunification that were unintentionally improperly completed can also engage section 7 interests in family life that are protected by liberty and security of the person (*Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46).

26. The principles of fundamental justice encompass the right to procedural fairness, and in some circumstances, the right to counsel, as the right to procedural fairness encompasses “an opportunity to present his or her case effectively” (*G. (J.)*, para. 73).

27. Section 15 requires the right to counsel for non-citizens in immigration and refugee applications, interviews, and examinations, because counsel can mitigate the discriminatory effects of barriers based on language, culture, education, mental health and trauma. The right to counsel is required by the duty to accommodate under section 15.

Evidentiary basis for the right to counsel

28. The Applicant will adduce expert and experiential evidence that supports the need to recognize the right to counsel in applications, interviews and examinations, and that will highlight the barriers that individuals face in these contexts due to language, culture, education, and mental health and trauma, and the significance of the right to counsel to diminish the impact of these barriers.

29. Such further and other grounds as counsel may advise and this Honourable Court allows.

The Applicant has not received written reasons as none exist.

In the event that leave is granted, the Applicant proposes that the application for judicial review be heard at Toronto, Ontario, in the English language.

The application was prepared by Sujit Choudhry, Circle Barristers, 325 Front Street West, Suite 200, Toronto, Ontario M5V 2Y1, (416) 436-3679, sujit.choudhry@circlebarristers.com and Maureen Silcoff, Silcoff, Shacter, Barristers & Solicitors, 951 Mount Pleasant Road, Toronto, Ontario M4P 2L7, (416) 322-1480, msilcoff@silcoffshacter.com.

The address for service of documents on the Applicant is c/o Sujit Choudhry, Circle Barristers, 325 Front Street West, Suite 200, Toronto, Ontario M5V 2Y1, (416) 436-3679, sujit.choudhry@circlebarristers.com and Maureen Silcoff, Silcoff, Shacter, Barristers & Solicitors, 951 Mount Pleasant Road, Toronto, Ontario M4P 2L7, (416) 322-1480, msilcoff@silcoffshacter.com.

DATED AT TORONTO, this 22nd Day of May 2025.

Sujit Choudhry
Circle Barristers
325 Front St. W., Suite 200
Toronto, ON M5V 2Y1
Tel: (416) 436-3679
sujit.choudhry@circlebarristers.com

Maureen Silcoff
Silcoff, Shacter
Barristers and Solicitors
951 Mount Pleasant Rd.
Tel: (416) 322-1480
msilcoff@silcoffshacter.com

Solicitors for the Applicant

TO: The Registrar
FEDERAL COURT OF CANADA

FROM: THE DEPARTMENT OF JUSTICE
Exchange Tower Box 36
First Canadian Place, Suite 3400
Toronto, Ontario M5X 1K6
(416) 973-3433

Solicitor for the Respondents

Registry No.:

FEDERAL COURT

BETWEEEN:

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

APPLICATION FOR LEAVE AND JUDICIAL REVIEW

Sujit Choudhry
Circle Barristers
325 Front St. W., Suite 200
Toronto, ON M5V 2Y1
Tel: (416) 436-3679
sujit.choudhry@circlebarristers.com

Maureen Silcoff
Silcoff, Shacter
Barristers and Solicitors
951 Mount Pleasant Rd.
Toronto, ON M4P 2L7
Tel: (416) 322-1480
msilcoff@silcoffshacter.com

Solicitors for the Applicant

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

AFFIDAVIT OF JACQUELINE BONISTEEL

I, **Jacqueline Bonisteel**, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer in the Province of Ontario. I make this affidavit based on my professional knowledge and expertise except where otherwise stated.

Qualifications and Expertise

2. I hold a Juris Doctorate degree from the Faculty of Law, University of Ottawa. I was called to the Bar of Ontario in 2012. My Law Society of Ontario (**"LSO")** licence number is 62462D.

On April 12, 2023, I was designated by the LSO as a Certified Specialist in Citizenship and Immigration Law (both immigration and refugee protection sub-specialties).

3. My professional memberships include the Canadian Bar Association (**"CBA"**) Immigration Section, where I am currently *Pro Bono* Coordinator, and was previously a member-at-large of the executive, Young Lawyer Coordinator and Conference Organizing Committee Member; Canadian Immigration Lawyers Association (**"CILA"**); and the Canadian Association of Refugee Lawyers (**"CARL"**), where I was a member of Litigation Committee from 2014 to 2019, and am currently acting as co-counsel for CARL in *Tesfay Abraha Marsha et al v. MCI*, IMM-1670-24 and *Canadian Association of Refugee Lawyers v. MCI*, constitutional challenges to the Canada Border Services Agency's Pre-Removal Risk Assessment service practices under sections 7 and 15 of the *Charter*.

4. I have been a member of the Organizing Committee for the annual Ottawa Immigration Conference since 2017. I have previously been involved with the Immigration, Refugee and Citizenship Law Moot as a member of the content committee and as a judge (2021-2024).

5. Since 2012, I have been exclusively in private practice, in the areas of Canadian immigration, refugee and citizenship law. I began my legal career at Perley-Robertson, Hill & McDougall LLP in Ottawa. In February 2016, I moved to Corporate Immigration Law Firm (**"CILF"**), and opened an Ottawa office for the firm. In Fall 2022, I became a partner at CILF. I continue to lead CILF's Ottawa office.

6. My practice is restricted to immigration, refugee, and citizenship law. A significant portion of my practice includes permanent residence (**"PR"**), temporary residence, and citizenship applications. As a result, I represent clients before Immigration, Refugees, and Citizenship Canada (**"IRCC"**) and Employment and Social Development Canada (**"ESDC"**) regarding these applications. I also represent clients before the Federal Court, on Applications for Leave and Judicial Review of refused IRCC and ESDC applications.

7. I remain current on developments in immigration, refugee, and citizenship law, by: (a) regularly reviewing relevant case law; (b) discussing client-specific issues and broader issues with colleagues; (c) reading and reviewing IRCC, CBSA and ESDC announcements; (d) reading posts, and posting questions and information on the CBA Immigration Section and CILA listservs; and (e) attending continuing education webinars and conferences.

8. I am a regular guest lecturer at the University of Ottawa Faculty of Law on immigration law topics. I have spoken at Continuing Professional Development sessions run by LSO, the CBA Immigration Section, CILA, CARL, the Refugee Lawyers Association, and the Ottawa Immigration Conference, among others. I have been interviewed on immigration law topics by media outlets including CBC, Global News, the *Ottawa Citizen*, and the *Law Times*.

9. Over my 13 years of practice, I have represented clients in hundreds of applications per year. I also frequently consult with my colleagues at CILF, both in the Ottawa and Toronto offices, about case files regarding applications. In addition to frequent *ad hoc* discussions, we hold a weekly team meeting via Zoom to discuss cases and recent developments.

10. I attach my resume as **Exhibit "A"** to my affidavit.

Mandate

11. I have been asked to offer expert evidence on the importance of representation by counsel in IRCC and ESDC processing of applications under the *IRPA*, including the consequences for individuals of the failure of IRCC and ESDC to recognize counsel chosen by applicants. I am qualified to do so, as this topic falls within my area of expertise.

12. I am aware of my obligations as an expert and have read the *Code of Conduct for Expert Witnesses* set out in the schedule to the *Federal Courts Rules* and agree to be bound by it. I attach a signed copy of the *Code of Conduct for Expert Witnesses* as **Exhibit "B"** to my affidavit.

13. In my review of the importance of counsel in IRCC and ESDC processing, I offer evidence in the following areas:

a. my experience in various categories of immigration processing;

b. the high stakes of immigration processing, including threats to life, liberty, and security of the person;

c. the importance of counsel in immigration processing, including as a means to mitigate linguistic, cultural, educational, literacy, disability and trauma-based barriers faced by applicants;

d. the right to counsel under the *IRPA*, the Use of a Representative Form, and IRCC and ESDC right to counsel policies;

e. examples of counsel's role in immigration processing; and

f. IRCC and EDSC policies that impede the right to counsel.

Categories of immigration processing

14. Immigration processing includes representation of clients regarding applications for PR, temporary residence, citizenship, and other categories. I have experience in the following categories:

a. PR applications:
   i. Protected Persons
   ii. Humanitarian & Compassionate Grounds
   iii. Family Sponsorship (spouses, common-law partners, children, other relatives)
   iv. Canadian Experience Class
   v. Federal Skilled Worker Program
   vi. Ontario Immigrant Nominee Program
   vii. Caregiver PR Classes
   viii. Self-Employed Persons

b. Temporary residence applications:
   i. Work permits based on Labour Market Impact Assessments (**"LMIA"**) (high-wage, low-wage, Global Talent Stream)
   ii. Work permits in the International Mobility Program (Canada-International free trade agreement categories, International Experience Class, Canada-provincial/territorial exemptions, Significant benefit to Canada categories including intra-company transfers and entrepreneurs, Francophone mobility, Reciprocal employment, Charitable and religious workers, among others)
   iii. Open work permits for graduates of Canadian post-secondary institutions, dependents of foreign workers, dependents of students, refugee claimants and protected persons, vulnerable workers, those with pending permanent residence applications
   iv. Study permits

v. Temporary Resident Visas

vi. Electronic Travel Authorizations (**"eTA"**)

vii. Temporary Resident Permits

viii. Applications for extension of status in Canada as a worker, student or visitor

c. Citizenship applications

i. Grants of citizenship

ii. Proof of citizenship

d. Miscellaneous

i. Criminal rehabilitation

ii. Enforcement flag removal

iii. Leave and judicial review of refused or delayed applications in any of the above categories

High stakes of immigration processing

15. Immigration processing in the above-mentioned categories can involve high stakes. Unsuccessful or delayed applications can have a severely negative impact on applicants, including threats to their life, liberty, and security of the person.

16. Based on my professional experience, a significant reason for an unsuccessful or delayed application is an unintentional improperly completed application. Counsel reduces the risk of an improperly completed application, and offsets linguistic, cultural, educational, literacy-based, disability and trauma-based barriers for many applicants (addressed further below).

17. The negative consequences of an unintentional improperly completed application can be severe. An unintentional improperly completed application can involve omissions or inaccuracies which may constitute misrepresentation, and result in IRCC refusing an application based on a finding of inadmissibility to Canada under the provisions of the *IRPA*. For an individual who is already in Canada, inadmissibility could trigger removal. For some individuals, removal for inadmissibility may place at risk their life, liberty and security of the person.

18. An unintentional improperly completed application can lead to a refusal, even if there has been no misrepresentation. An unsuccessful citizenship application – for example, where a citizen parent sponsors a non-citizen child when both are outside Canada – may prevent a parent from

returning to Canada with their child and raising them here. A failed PR application requires that an individual try to obtain a legal remedy, attempt to reapply, or give up hope of becoming a Canadian PR. The refusal of a temporary visa to study or work in Canada carries significant consequences for an individual, as temporary entry is often time-sensitive. Refusal of a temporary study or work permit can cause significant economic loss, delay family reunification, and prevent an applicant from having a future path to Canadian PR.

19. A work permit refusal carries significant consequences for a business. Canadian businesses typically only support a work permit application in situations where they have been unable to find a Canadian or permanent resident to fill the role. This is always the case with work permits based on LMIAs, which involve proving to ESDC that issuance of a work permit to a temporary foreign worker will have a neutral or positive impact on the Canadian labour market. In these circumstances, the Canadian employer is depending on securing a temporary foreign worker to maintain or grow their business. If they are unable to do so, they may experience negative consequences, such as being unable to maintain production, fulfill obligations to customers or clients, maintain opening hours, provide essential services to their community, etc.

20. At a minimum, incomplete information can further delay processing in a delayed system that is plagued by chronic backlogs. These delays are not costless for individuals. They can affect their ability to come to Canada in a timely fashion to pursue professional and personal opportunities. For example, a delayed PR application may mean losing a job opportunity in Canada or losing promotion opportunities. A delayed visa visitor application may mean missing a child's university graduation ceremony or being unable to visit a terminally ill family member in their final days, which effectively ends the point of the visa application.

21. Conversely, successful applications are often positive, life-changing events. A successful PR application for a Protected Person is a necessary step in reuniting with a spouse and children who have remained in the country of origin. A successful PR application based on humanitarian and compassionate grounds protects a child's best interests, whereas removal from Canada may jeopardize them. A successful family sponsorship involves a significant life event: the opportunity to live in Canada with a spouse, partner, children and/or other relatives and start a life together. A successful citizenship application can offer a stateless person security in Canada that they would never have elsewhere.

22. A successful PR applicant is entitled to relocate permanently to Canada, where they can obtain employment, study, access social services, and have a pathway to Canadian citizenship. A successful temporary applicant also makes significant changes in their life when they come to Canada as a student or worker, to pursue opportunities for advancement that may be unique in Canada.

The importance of counsel in immigration processing

23. Counsel can play a vital role in immigration processing. In my experience, representation by counsel can increase the chances of a successful application, and lack of representation by counsel can lower the chances of success. The difference that counsel can make to the likelihood of success increases with the complexity of the application.

24. Counsel is important in immigration processing even though it involves an administrative as opposed to a judicial process. Counsel plays a vital role in guiding an applicant to the process under the *IPRA* whereby they would likely qualify, and advising against applications with no hope of success. Counsel's role is particularly important given the numerous, complex, and time-limited immigration programs that are created by way of policy.

25. Prior to a client retaining me, I engage in a consultation process to determine whether they qualify for an immigration program. At the outset of a significant number of consultations, the immigration pathway is unclear. The client may think they qualify for a certain program based on what they hear from friends or read on IRCC's website, but in fact they do not. Due to the multiplicity of programs and policies, and the fact that IRCC's practices play an important role in deciding on an option, resolving the question of whether the client qualifies for a program may take several hours of client interviews, document review, research, and consultation with colleagues. I can then determine whether there is a viable option, be retained, and represent an individual in the application process. This process ensures that counsel does not file meritless applications, in keeping with our obligation as lawyers.

26. Even when the option appears clear, e.g. an individual qualifies for a student visa, the importance of counsel lies not only in properly preparing an application, but in addressing any repeated problematic reasons that IRCC has issued in other applications. In the case of a student

visa, IRCC has repeatedly rejected applications based on reasons that the Federal Court has stated are unreasonable. Counsel can address these issues with the visa office to increase the chance of the same mistake not being repeated, and reduce the need to seek a remedy in the Federal Court.

27. I have observed the evolving nature of the policies from the IRCC Minister's use of section 25.2(1) of the *IRPA*, which allows the Minister to grant an individual PR status or exempt them from any requirement under the *IRPA* that is justified under policy considerations. Section 25.2(1) is the legal basis for several current temporary public policies (**"TPPs"**), including programs in response to humanitarian crises in Ukraine, Afghanistan, and Sudan, and programs that offer PR pathways for individuals with temporary status in Canada.

28. In addition, sections 10.3(1) and 14.1(1) of the *IRPA* allow the Minister to issue instructions (**"Ministerial Instructions"**) for the implementation and management of certain immigration applications. The Express Entry system is primarily governed by Ministerial Instructions. For example, Ministerial Instructions reset the number of points required to permit applications to move forward from a pool of candidates approximately every two weeks, which constantly changes the eligibility requirements. Many other programs and pilots are governed by Ministerial Instructions, such as the Caregiver Program, the Parents and Grandparent super visa, the Rural and Northern Immigration Pilot, and the Agri-Food Immigration Pilot.

29. When an individual wants to apply for a particular application, the IRCC website typically guides them to the appropriate application package. That application package includes a document checklist, all applicable immigration forms including a direction to the relevant portal, and instruction guides.

30. IRCC portals and immigration forms are the foundation of all immigration applications. These portals and forms involve intricate questions that may rest on specific legal tests under the *IRPA* and administrative law, and may raise *Charter* issues, but which are not expressly stated on the portals or forms or readily apparent to lay applicants. Unrepresented applicants may be unable to navigate these questions successfully on their own. Without counsel, they can unintentionally offer improper responses and fail to offer proper documentation to support an application.

31. Although IRCC and ESDC provide instructions and guidelines about portals and immigration forms to applicants, these instructions may not consider the many variations in individual circumstances that arise and that are legally relevant. As a result, these instructions do

not always clarify the questions asked in the portals and immigration forms. As counsel, I have experienced situations where this lack of clarity in instructions can result in applicants unintentionally providing inaccurate information regarding questions, as discussed below in detail at paras. 56 to 90.

32. In my experience, IRCC applications can be difficult for clients to navigate, particularly those who experience linguistic and cultural barriers, and have low levels of literacy or face disabilities or trauma which impede their ability to complete these applications themselves. Representation by counsel mitigates these barriers and promotes equal access to these applications.

33. Moreover, the growing digitization of IRCC and ESDC processes – for example, through portals and webforms – has not reduced the need for counsel. On the contrary, it often has had the opposite effect. In my experience, IRCC portals are no different from application forms in that they can be difficult for clients to navigate, particularly those facing language barriers, trauma, general literacy limitations, lack of technology literacy, disabilities, or lack of access to a computer. In addition, IRCC's and ESDC's portals can be plagued by glitches, outages and other problems. An outage can prevent access to the application system at certain times. A system glitch can make it impossible to complete and submit an application because it prevents an applicant from moving beyond a particular question or page. As a result, despite IRCC's and ESDC's seemingly user-friendly portals and online instructions, applications remain complex for lay persons to navigate without counsel.

34. An example of this problem can be found in the application process for two programs created on March 31, 2025 by Ministerial Instructions that offered PR status to certain individuals in Canada: the Home Care Worker Immigration Pilot (Child Care) and the Home Care Worker Immigration Pilot (Home Support). The Minister allotted 2,750 spots for each stream, which meant that applications were accepted on a first come, first served basis. Shortly after IRCC opened its application portal, the website presented obstacles to applicants because of intake volume. The caps were reached within hours. Based on my experience with this portal, counsel who were familiar with IRCC's portals had a much higher chance of navigating website issues than unrepresented applicants. Unrepresented individuals were more likely to lose out on this opportunity to secure PR status in Canada.

35. The Regulatory Impact Analysis Statement for proposed amendments to the *IRPR* and *Citizenship Regulations* (dated December 21, 2024) acknowledges the importance of counsel by stating that the proposed changes "would have a particularly positive impact on clients who are vulnerable due to language or cultural barriers and who rely extensively on those who provide immigration and citizenship services for navigating the application process". I attach copies of these documents as **Exhibits "C"** and **"D"** to my affidavit.

36. A problem that I see frequently illustrates IRCC's point. IRCC may ask applicants to provide a supplementary document through the portal after the initial submission. In my experience, applicants think that once they have uploaded the document, it has been submitted. But properly submitting requires clicking through additional screens. My clients have been shocked when IRCC subsequently informs them their applications have been refused for not providing the requested documents. The only way to rectify this situation is through reapplication. This is not always possible, as they may already be out of status, or may have lost a one-time opportunity to apply for PR.

Right to counsel: *IRPA*, IRCC Use of a Representative Form, ESDC Appointment of a Third Party Representative Form, IRCC and ESDC policies

Right to counsel under the IRPA

37. The right to counsel in the *IRPA* is limited to the context of proceedings before the Immigration and Refugee Board and does not include immigration processing. Section 167(1) of the *IRPA* provides:

> A person who is the subject of proceedings before any Division of the Board and the Minister may, at their own expense, be represented by legal or other counsel.

38. Under section 167(1), individuals have the right to counsel in proceedings before the following four divisions, each with specific jurisdiction. Broadly speaking:

a. the Immigration Division (**"ID"**) decides detention reviews and removal cases;

b. the Immigration Appeal Division (**"IAD"**) decides certain removal appeals from the ID and specific sponsorship appeals;

c. the Refugee Protection Division (**"RPD"**) decides claims to refugee protection; and

d. the Refugee Appeal Division (**"RAD"**) decides certain refugee claim appeals from the RPD.

These divisions have no jurisdiction over the immigration applications listed at para 14, although a limited category of applicants may have appellate rights to the IAD. For instance, a Canadian citizen or permanent resident seeking to sponsor their spouse may be able to appeal to the IAD if the sponsorship application is made outside of Canada and refused based on concerns about the genuineness of the relationship.

The IRCC Use of a Representative Form

39. Even though the *IRPA* limits the right to counsel to proceedings before the IRB, IRCC recognizes counsel of record in immigration processing through the Use of a Representative Form (IMM 5476). This form permits counsel to become counsel of record in all immigration processing applications (aside from particular portals listed below at para. 53 that preclude representation by counsel) and does not bar counsel representation as such. I attach a copy as **Exhibit "E"** to my affidavit.

40. However, the wording of the Use of a Representative Form also discourages the use of counsel. It states at the top of the first page: "You do not need to hire a representative, it is your choice. No one can guarantee the approval of your application. All the forms and information that you need to apply are available for free on the Immigration, Refugees and Citizenship Canada (IRCC) Website."

41. The Use of a Representative Form also indicates that a representative may be paid or unpaid, which also discourages the use of counsel. IRCC explains that paid representatives must be lawyers and paralegals who are members in good standing of a Canadian provincial or territorial law society, notaries who are members in good standing of the Chambre des notaires du Quebec, or citizenship or immigration consultants who are members in good standing of the College of Immigration and Citizenship Consultants.[1] This list also includes students-at-law under the supervision of lawyers.[2] Applicants are also permitted to retain unpaid representatives including

[1] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.

[2] Immigration, Refugees and Citizenship Canada, "Use of a Representative Form (IMM5476)" (last modified 1 May 2025), posted at https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5476.html.

family members, friends or other third parties who do not charge a fee.[3] IRCC indicates that "You do not need to hire a representative! It's your choice. Using one will not draw special attention to your application and doesn't mean we'll approve it. You can get all the forms and instructions you need to apply for a visa, a permit or citizenship for free on this website. If you follow the instructions, you should be able to fill out the forms and submit them yourself." The same section also warns about "fraudulent representatives".[4]

42. In my experience, IRCC sees the Use of a Representative Form as fundamental to counsel representation. It must be included with an immigration application or filed post-submission after an application file number has been assigned. The appointment of counsel is only valid for matters relating to the application for which the form was submitted. Appointment of counsel on any subsequent applications requires submission of a new form. When adding, updating or cancelling appointment of counsel after the initial application, the form typically must be submitted via IRCC's webform.[5]

43. When my clients complete a Use of a Representative Form, my understanding is that I am counsel of record on their IRCC application and that IRCC has recognized the right to counsel in that matter. My reasonable expectation is that I will be able to communicate with IRCC on my client's behalf until the application processing is complete, or until my appointment as their representative is cancelled. This expectation is based on IRCC's guidance (Use of a Representative Form (IMM5476)), which I attach as **Exhibit "F"** to my affidavit. It states that:[6]

> A **representative** is someone who provides advice, consultation, or guidance to you at any stage of the application process, or in a proceeding and, if you appoint them as your representative by filling out this form, has your permission to conduct business on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA).

---

[3] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.
[4] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.
[5] https://secure.cic.gc.ca/ClientContact/en/Application/Form/71.
[6] Immigration, Refugees and Citizenship Canada, "Use of a Representative Form (IMM5476)" (last modified 1 May 2025), posted at https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5476.html (emphasis in original).

Based on this language, my clients have a corresponding expectation that I will handle all communications with IRCC on their behalf and that they will no longer be responsible for sending or receiving communications to IRCC on their own. This expectation is reflected in the terms of my retainer agreements with my clients, which include language confirming that they should not contact government agencies directly with respect to their immigration matter once they have retained our firm.

44. I also expect that as counsel, IRCC will direct all communications about my client's applications to my attention. My expectation is based on the content of the form, which includes my full contact details (mailing address, telephone, fax and email), as well as IRCC's guidance indicating that "the representative will receive all correspondence from IRCC or the CBSA, not the applicant."

45. As detailed below, IRCC's and CBSA's policies and practices do not specifically refer to the right to counsel for applications and portals. IRCC and CBSA recognize the right to counsel in these contexts, although they discourage the use of counsel and create communication obstacles regarding counsel of record.

The ESDC Appointment of a Third Party Representative Form

46. To act as counsel on an application for an LMIA with ESDC, a third party representative must create an LMIA Online portal, which is connected to that representative's Government of Canada Job Bank account. The LMIA application includes a section to confirm the representative appointment and the representative's credentials. In addition, the LMIA application must include a completed Schedule A - Appointment of a Third-Party Representative Form (ESDC-EMP5575). I attach a copy of the Appointment of a Third-Party Representative Form currently in place as **Exhibit "G"** to my affidavit.

47. By signing the Appointment of a Third-Party Representative Form, employers authorize the representative to act on their behalf with regard to a particular LMIA application. The form states that the "appointment shall remain in full force and effect only for the processing of [the] application, unless due notice in writing of its revocation has been given to ESDC/Service Canada."

48. When my clients complete an Appointment of a Third-Party Representative Form, my understanding is that I am counsel of record for their ESDC application and that EDSC has recognized the right to counsel in that matter. My reasonable expectation is that I will be able to communicate with ESDC on my client's behalf until the application processing is complete or until my appointment is cancelled. This expectation is based on the above procedures that allow for appointment of a representative on the application.

49. Once I am appointed as their counsel of record, clients have a corresponding expectation that I will be either responsible or party to all communications with ESDC regarding the particular LMIA application. While ESDC's website states "[w]e may communicate directly with you to verify information provided on the application from the third-party representative," clients reasonably expect that by appointing counsel to act on their behalf, counsel will be responsible for the application filing and all follow-up communications, and ESDC will include counsel in all communications with the client.[7] These expectations are reflected in the terms of my retainer agreements with clients, which include language confirming that they should not contact ESDC directly with respect to their LMIA matter once they have retained our firm.

IRCC and EDSC right to counsel policies

50. IRCC and ESDC policies not only fail to recognize a right to counsel that the Use of a Representative Form creates, but also discourage the hiring of counsel and create impediments for counsel representation.

IRCC right to counsel policies

51. In addition to discouraging the hiring of counsel on the Use of a Representative Form itself, IRCC's policies (as reflected on its website) also state, clearly and repeatedly, that it is not necessary to retain counsel for immigration applications, that application materials are publicly available online free-of-charge, and that applicants should be extremely cautious in deciding whether to hire counsel for an immigration application.

52. For example, IRCC's website states:

[7] For example, Employment and Social Development Canada, "Program Requirements for the Global Talent Stream" (last modified 9 May 2025), posted at: https://www.canada.ca/en/employment-social-development/services/foreign-workers/global-talent/requirements.html.

a. applicants "don't need to hire a representative!" and whether to do so is an individual's choice; individuals can "get all the forms and instructions you need to apply for a visa, a permit or citizenship for free on this website"; and if people "follow the instruction, you should be able to fill out the forms and submit them yourself".[8]

b. "your application will not be given special attention nor can you expect faster processing or a more favourable outcome.[9]

c. "If you decide to use an immigration representative, **be careful whom you ask for advice**."[10]

53. Some IRCC portals expressly state that they are unavailable to counsel. Specifically, IRCC's website states that the online citizenship application portal is only available to individuals. It states: "You must apply on paper in the following situations: … You want your representative to complete and submit your application for you", and further states "If you want your representative's help with the online application, you must complete and submit the application yourself" and "We're working so everyone can apply online in the future."[11]

EDSC right to counsel policies

54. ESDC's website indicates that paid third-party representatives can include:

a. a member in good standing of a Canadian provincial or territorial law society or students-at-law under their supervision, or the Chambre des notaires du Québec

b. a paralegal in the Province of Ontario's law society

c. a member in good standing of the College of Immigration and Citizenship Consultants (CICC).[12]

---

[8] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.

[9] Immigration, Refugees and Citizenship Canada, "Use of a Representative Form (IMM5476)" (last modified 1 May 2025), posted at https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5476.html.

[10] IRCC website, "Help Centre: Do I need a representative to help me apply" (last modified June 10, 2024), posted at: https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=444&top=7 (emphasis in original).

[11] IRCC website, "Apply for citizenship: How to apply" (last modified 31 March 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/become-canadian-citizen/apply.html.

[12] Employment and Social Development Canada, "Program requirements for high-wage positions" (last modified 8 July 2025), posted at: https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/high/requirements.html#h2.4.

55. ESDC's website also states that they may communicate directly with the employer to verify information provided on the LMIA application by the third-party representative, and that they will not mediate disputes between employers and their third-party representatives.[13]

Examples of counsel's role in immigration processing

56. As explained above (at paras 15 to 22), in my experience, serious consequences can arise from an applicant's unintentional improper responses to questions in IRCC portals and immigration forms. For example, inaccurate responses to questions may lead to the denial of an application based on misrepresentation or other grounds of inadmissibility under the *IRPA*.

57. IRCC offers application guides that correspond to particular types of applications. Instructions may include: information on eligibility to the program, who can be included in an application, information about supporting documents including content and form, instructions about which immigration forms to use and limited information on how to respond to questions, information about IRCC application fees, whether to submit the application by portal or by mail, processing times, and updating applications. Depending on the type of application, IRCC may provide a section dealing with common mistakes.

58. Beyond this information, IRCC provides access to internal policies about issue-specific matters, such as program eligibility, factors that officers use to determine applications, and admissibility. This information can take the form of either website information or processing manuals. However, if an applicant does not understand that particular questions are meant to elicit factually or legally complex responses, they would not know to look beyond the instructions mentioned above.

59. IRCC also offers self-serve eligibility assessment tools for various temporary and PR applications. These tools link to other information sources on topics such as admissibility, but are not meant to provide clarity on required responses in the portals and immigration forms.

[13] Employment and Social Development Canada, "Program requirements for high-wage positions" (last modified 8 July 2025), posted at: https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/high/requirements.html#h2.4.

60. Based on my experience, the lack of clarity in questions in the areas listed below are most concerning, and are also where the lack of counsel can pose the most challenges. I provide the following examples that apply to both portals and immigration forms: (a) security screening questions; (b) personal history and education; (c) family status and relationships; and (d) best interests of the child. I also address the related issue of IRCC's limited response fields.

Security screening questions

61. Immigration admissibility screening applies to both temporary resident and PR applications. However, the screening questions relating to admissibility in the required forms do not clearly define what may need to be disclosed and may confuse unrepresented applicants. As an example, I refer to the *Schedule A: Background/Declaration Form* (IMM 5669) for PR applications, attached as **Exhibit "H"** to my affidavit.

62. Question 6 of IMM 5669 asks a series of 11 sub-questions about the applicant and listed family members.

63. Question 6(j) asks whether these individuals have "Been detained, incarcerated or put in jail?" The applicant may not understand what constitutes a detention for the purposes of the *IRPA*. If the police took them to a police station and questioned them, but did not charge them, some may believe that they were not detained, when in fact that constitutes a detention.

64. Question 6(e) asks whether these individuals have "Been refused admission to, or ordered to leave, Canada or any other country or territory?" The applicant may not understand that this question is not limited to having been refused entry at a port of entry, and includes having been refused a visitor visa or an eTA.

65. The on-line instructions for IMM 5669 do not address these legal complexities.[14]

66. The immigration consequences for applicants of providing unintentionally inaccurate answers to these questions can be severe. The consequences can include delayed processing if IRCC offers the applicant an opportunity to respond and refusal of an application, or refusal for misrepresentation under the *IRPA* based on non-disclosure of information because the applicant

[14] IRCC Website, "Schedule A: Background / Declaration Form (IMM 5669)" (last modified 26 June 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5669.html.

could not be properly screened for admission to Canada. A refusal for misrepresentation results in a five-year ban on entry to Canada.

67. For example, our office has recently had cases where we discovered in preparing work permit applications that the applicant had previously inadvertently worked without authorization or breached the terms of their work authorization. We counselled our clients on the need to disclose this information in their applications and how to do so. Without our involvement, they would not have properly disclosed the breaches and could have been at risk of a misrepresentation finding.

Personal history and education

68. IMM 5669 (**Exhibit "H"**) applies to PR applications. This form can be completed in a portal or by a paper form. IMM 5669's questions on an applicant's personal history can be misleading for unrepresented applicants.

69. Personal history must include the details of an applicant's personal history since the age of 18, or the past 10 years, whichever is most recent. The Applicant must start with the most recent information. Further instructions include:

> Under "Activity", write your occupation or job title if you were working. If you were not working, provide information on what you were doing (for example: unemployed, studying, travelling, retired, in detention, etc.). If you were outside your country or territory of nationality, indicate your status in that country or territory. Note: Please ensure that you do not leave any gaps in time.

70. IRCC does not provide information about how the work history listed in IMM 5669 will be used in assessing eligibility under a program.

71. The immigration consequences of the failure to disclose information on the form can include refusal or return of an application and processing delays. For example, in the context of economic permanent residence applications, if applicants do not appropriately list their job titles or make minor errors in the dates of their employment history, their applications could be refused for not aligning with details that they included in their Express Entry profile, or details on their supporting documents from employers. This includes the requirement to carefully categorize prior job experience within the qualifying National Occupational Classification (**"NOC"**) codes to meet eligibility requirements and to gain required points to be issued an Invitation to Apply from the

Express Entry pool. Errors of this nature can result in the return of applications with consequences to eligibility and having to re-enter the Express Entry pool, as explained above.

72. For example, I currently represent a client who first applied for permanent residence over ten years ago. He did not have counsel when he initially submitted his application for permanent residence in the Provincial Nominee category. In completing the IMM 5669 form, he indicated that he had not served in the armed forces of any country. In fact, he had completed 18 months of mandatory military service. He had misunderstood the question and thought that only non-obligatory military service needed to be listed on the form. This non-disclosure of the military service contributed to concerns that he was deliberately hiding information about his background and may be inadmissible to Canada. This file remains in security background checks at IRCC without a final decision.

Family status and relationships

73. IRCC asks for family members' information in many forms, including the *Generic Application Form* (IMM 0008), the *Additional Family Information Form* for PR applications (IMM 5406), and the *Family Information Form* (IMM 5707) for temporary applicants (which varies according to country) that asks for similar information. I attach these forms as **Exhibits "I" "J"** and **"K"** to my affidavit. An applicant may be misguided in responding to the family relationship questions due to cultural and religious norms for family members, which intersect with and reflect linguistic, literacy, educational, and trauma-based barriers.

74. For example, some applicants may consider children who are not legally adopted to be their children and include them in the form, without recognizing that these children would not meet the legal definition of adopted children in Canada, and which applies under the *IRPA*. Similarly, sibling relationships across cultures do not always mirror the North American/Western context and applicants may unintentionally improperly identify relationships, for example, listing a half-brother as a brother.

75. Based on my review of the on-line instructions for IMM 0008 and IMM 5406, and the instructions appended to IMM 5707, IRCC provides no guidance on how to respond to these questions.[15]

76. The immigration consequences of a failure to accurately provide information may include a finding of misrepresentation, due to IRCC's inability IRCC to screen all relevant family members, and inadmissibility.

77. For example, I was recently consulted by a Canadian citizen and her husband, an American citizen, whom she had applied to sponsor for Canadian permanent residence without representation. Their two minor children were already Canadian citizens. The sponsorship application had been returned unprocessed due to deficiencies in the IMM 5406 "Additional Family Information" section. They consulted me to attempt to discern what those deficiencies were. I saw that the applicant had not listed the two Canadian citizen children in this section. They had misread the instructions at the top of the screen, which state "You (the principal applicant) must fill out this form for yourself and on behalf of any of your family members 18 years of age or older who are not already Canadian citizens or permanent residents." They understood this to mean that Canadian children did not need to be listed, when in fact the instruction meant that Canadian family members did not need to fill out their own form but the applicant still needed to list Canadian children. I note that both the applicant and her husband are professors of English literature and were incredulous that they had misread the instructions – which further reinforces the importance of counsel.

Best interests of the child

78. The humanitarian and compassionate (**"H&C"**) application includes the *Supplementary Information Humanitarian and Compassionate Considerations Form* (IMM 5283), which I attach as **Exhibit "L"** to my affidavit. The questions included in this form, which are used by officers to assess substantive and complex legal questions relating to the assessment of H&C applications, are general, vague and do not include instructions or guidance to applicants about what they should

[15] For IMM 0008: IRCC website, "How to complete immigration forms for paper applications" (last modified 23 August 2024), https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/complete-0008-5669.html. For IMM 5406: IRCC website, "Additional Family Information (IMM 5406)" (last modified 23 August 2024), https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5406.html.

include, the thresholds they need to meet or the consequences if questions are not answered in detail.

79. Question 8 asks the applicant to identify if they are inadmissible or do not meet a requirement of *IRPA*, and to explain any exemptions they are requesting to the *IRPA* requirements. This is a highly technical legal question which a lay applicant may answer incorrectly without counsel.

80. Question 10 addresses the "best interests of the child". This concept is complex, and involves an understanding Canadian and international law in order to offer a relevant submission and supporting evidence. IRCC's instructions do not explain this term.[16]

81. The form specifically states: "You are entirely responsible to provide ALL the evidence to support any statement you make on this form. You will NOT be solicited for additional information or documentation." But in fact, applicants do retain the ability to provide additional evidence at a later stage of the process. This language implies otherwise and may lead an applicant to not offer evidence once it becomes available. Counsel would enable applicants to avail themselves of their right to offer new evidence.

82. The immigration consequences of inaccurate responses can be the return of an application, processing delays, or a refusal. These issues can mean that applicants who base their applications on mental health issues or have minor children with H&C factors are removed from Canada, despite having a compelling H&C case.

83. I recently prepared an H&C application for a woman and her husband who had been living and working in Canada for many years with temporary status. When we initially discussed the application, they had indicated to me that there was no impacted child. As we delved deeper into preparing the application, I learned that they were living with the woman's Canadian sister, brother-in-law, and 12-year-old nephew. My client explained that she and her husband had been unable to have children of their own, and that their Canadian nephew held a very special place in their hearts. They had been part of his life on a daily basis since he was a young child, and saw themselves as additional parental figures in his life. As such, there was an important "best interests

[16] IRCC Website, "Supplementary Information: Humanitarian and Compassionate Considerations (IMM 5283)" (last modified 28 May 2024), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5283.html.

of the child" argument to be made, but my clients had misunderstood that the best interests of a child who was already a Canadian citizen and not their own biological child could not be raised.

IRCC's limited response fields

84. IRCC form fields are limited across many types of forms for both PR and temporary resident application contexts.

85. For example, IMM0008 (**Exhibit "I"**) asks questions for which there may be insufficient room to fully and accurately respond. In such cases, a complete response would require an addendum or explanation to be completed alongside this form. IRCC's forms and instructions usually do not indicate that an addendum may be required.

86. Further, application portals do not provide a field for an addendum. For example, the PR portal provides drop down options to add certain additional documents, but does not contain a drop down option for "addendum", "additional information", "additional personal history" or another general option that would clearly encompass an addendum or explanation.

87. The questions to which this concern applies include:

a. Education, employment and address history.

b. Marriage/common-law relationship: application forms only include space for *one* prior relationship and one current marriage, and for example, does not provide space to disclose a polygamous marriage.

c. Use of more than one nickname, maiden name or alias: for example, if an applicant had a maiden name and a nickname, they could not include both in the form.

d. Unrepresented applicants may only complete details in the available fields and not appreciate that additional information is needed to complete a form.

88. IRCC instructions for some applications note in a "common mistakes" section that an addendum can be added in order to offer complete details. However, an applicant must have the capacity to look for that instruction and then understand the importance of providing an addendum. For example, the IRCC guide for family sponsorships, *Sponsor your spouse, common-law partner,*

conjugal partner or dependent child – Complete Guide (IMM5289), offers this guidance, but it is 92 pages long.[17]

89. As above, the immigration consequences of the failure to disclose information in this situation can include refusal or the return of an application and processing delays. For example, if a PR application under an Economic category must be resubmitted, the applicant's Express Entry Invitation to Apply (**"ITA"**) may have expired, in which case they would need to re-enter the Express Entry pool and wait for another ITA, which may never materialize. In the context of not disclosing prior or polygamous relationships, IRCC may not receive complete information needed to screen for admissibility or to properly determine program eligibility, particularly in the family sponsorship context. Similarly, in the context of not disclosing all prior or other names used, IRCC may not be able to adequately conduct security and admissibility screening. This information may come to light through IRCC's security screening processes, IRCC's follow-up requests for additional information, during an interview with an officer, or on subsequent applications. When additional details are provided that were not included in the initial application, an allegation of misrepresentation could result.

90. For example, I represented a family of two adults and two children on their visitor visa applications to attend a family wedding in Canada. They had previously applied on their own, and were refused due to concerns that they would not leave Canada at the conclusion of their visit. They had reviewed the application guide and followed the document checklist, but had not appreciated that they should supplement their application with an addendum consisting of documents such as proof of their children's ongoing enrollment in school outside Canada and upcoming school examinations, proof of previous international travels, etc. The subsequent applications that included this additional evidence were approved.

[17] IRCC website, "Sponsor your spouse, common-law partner, conjugal partner or dependent child – Complete Guide (IMM 5289)" (last modified 29 October 2024), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5289-sponsor-your-spouse-common-law-partner-conjugal-partner-dependent-child-complete-guide.html.

IRCC and ESDC processes impede the right to counsel of record

91. For applicants who do retain counsel, certain IRCC and ESDC processes create impediments to representation for counsel of record. This may take the form of communication barriers and/or IRCC portals that bar counsel. These barriers curtail my ability to represent clients as they make it difficult to resolve issues that arise, delay the resolution of issues, cause my clients stress, increase workload for counsel and expense to clients, and/or can lead to an application being unsuccessful. I explore these issues below.

IRCC processes: communication barriers and circumventing counsel

92. IRCC has created impediments for counsel to navigate the immigration process on behalf of a client, by severing long-standing avenues for counsel to communicate with them. My observations are based on my own experiences, those of CILF colleagues, and other immigration lawyers.

93. One issue is IRCC's use of the webform as the sole direct way of contacting IRCC on a file. In the past, counsel could email an IRCC program manager for a particular overseas visa office to make an urgent processing request, to add information to a file, or to request reconsideration of a refusal decision, among other matters. More recently, program managers have indicated that they are unable to communicate with counsel. Emails to program managers now often bounce back, or an automatic email reply is sent indicating that any inquiries must be submitted by webform and no reply will be sent. Phone access to managers is not available.

94. While applicants or counsel may submit webform requests to obtain an update on the file status, submit additional documents, withdraw an application, add or remove a representative, or request urgent processing, responses to webform requests are often generic and fail to respond directly to the inquiry made. For example, I have contacted IRCC via webform to ask them to reconsider a work permit refusal. I received only generic acknowledgements of receipt with no substantive response to the request for reconsideration.

95. In my experience, documents submitted by webform frequently do not get added to the file before an officer renders a decision, as it may take up to 30 days to address a webform, by which time the application has already been refused because relevant documents were missing. When I have filed a request for reconsideration – which must also be submitted by webform –

the request may never be addressed. The applicant then must resort to an Application for Leave and Judicial Review in Federal Court to resolve the situation, at considerable expense, or to filing a new application with a previous refusal on their record, also at additional expense and with a lower likelihood of success. Both courses of action also increase effort for IRCC.

96. As well, even when I have included a properly completed Use of a Representative Form with the application, I frequently receive responses to webform inquiries indicating that I am not authorized on the file, or that the Form was not properly completed and therefore that information about the client's file cannot be communicated. Resolving these issues often takes days or weeks, resulting in delays, added work for counsel, frustration for clients, and increased effort for IRCC.

97. For example, I recently contacted IRCC to inquire about the status of a citizenship application. I had been the authorized representative on the application from the time of filing, and a complete Use of a Representative Form was included with the application package. I filed a first webform in April 2024, and received a response that the application was in process and that all required documents had been received. I filed a second webform in July 2024, and received a response that the IMM 5476 was incomplete, and as such, no updates could be communicated to me. Also in July 2024, I secured the GCMS notes on the file via an Access to Information Request. The notes confirmed that I was listed as Authorized Representative on the file. I sent another webform inquiry in September 2024 to explain this, and only then did I receive a substantive response with an update on the file status.

98. Based on my communications with colleagues at CILF and other colleagues practicing immigration law, such refusals to communicate with counsel via webform based on perceived issues with the Use of a Representative Form are common. While the situation is often resolved, the additional time required leads to delays in IRCC processing, because counsel cannot communicate on behalf of clients and resolve issues in an efficient matter. It also undermines applicants' confidence in the ability of counsel to provide them with effective representation, and forces them to incur unnecessary legal costs. Finally, repeated interactions with IRCC increase their work.

99. If counsel were able to contact an IRCC program manager directly, they could resolve these issues more efficiently, with less expense for clients and less effort for IRCC.

100. Nor does the IRCC Client Support Centre offer a substitute. This is a call centre staffed by IRCC agents from 8 AM to 4 PM ET Monday to Friday, and available only to callers in Canada. In theory, it is a means to inquire about the status of a file, provide updated information, or request urgent processing. But it is often difficult to connect with an agent, as wait times may be over an hour, and the line will drop when too busy. Finally, Call Centre agents often do not recognize counsel despite a valid Use of a Representative Form being on file. They may not be able to see the form in their system, or will perceive deficiencies with the form, similar to the situation with agents responding to webform requests by counsel. Agents frequently refuse to provide status updates until the alleged issue with Use of a Representative Form is resolved via webform.

ESDC processes: direct contact with employers

101. Based on my experience, and that of CILF colleagues and other immigration lawyers, ESDC agents regularly contact employers directly by telephone and email, even when they are represented by counsel on an LMIA application. In so doing, ESDC leaves clients confused as to whether they are permitted to involve counsel in discussions with ESDC regarding their applications. ESDC's practice of direct contact with employers raises questions about why they retained counsel, since counsel is not able to advise and assist on these communications. It can also lead to delay, because employers who expected to rely on counsel for communications with ESDC about their LMIA applications are not expecting to receive direct communications from ESDC, and as such may not check their email or voicemail as frequently as counsel.

102. The following is a typical example.

103. On September 25, 2023, I applied to ESDC for an LMIA on behalf of a client, a major Canadian insurer. I submitted the application online via my LMIA Online Portal, which allows an authorized third-party to submit LMIA applications electronically on behalf of employer clients. The application materials included an *Appointment of a Third-Party Representative Form* properly signed by me as the client representative.

104. On May 17, 2024, a Service Canada Senior Program Development Officer called the client contact listed on the LMIA application, leaving a voicemail and following up with an email. I was not copied on the email or called. When the client contact spoke with the ESDC officer, the officer scheduled an interview with no mention of participation by counsel. The client contact asked about

my attendance at the interview; the officer stated that the client should be aware that counsel cannot answer the questions during the interview.

105. I then contacted the Service Canada officer and informed them that I would be attending the interview with the client contact, and requested that I be copied on all email correspondence going forward. The officer responded that it is standard practice to first contact the applicant as a precautionary measure to ensure the authenticity of LMIA applications. It is my reasonable belief that had I not contacted the Service Canada officer, they would have never included me in future communications with my client.

106. This interaction undermined my role as counsel. It left my client uncertain about whether I was permitted to be involved in the process at all, and with the sense that listing a representative on the LMIA application might negatively impact processing due a perception at ESDC that counsel should not be directly involved.

IRCC portals that bar counsel

107. IRCC requires that certain online applications be filed through a client application portal that is not accessible to counsel. The existence of portals that counsel cannot access reinforces IRCC's suggestion that counsel are not needed for applications. This discourages applicants from hiring counsel or relegates counsel to representing clients from the sidelines. As a result, applicants may make mistakes that lead to delays or refusals.

108. For example, IRCC prohibits counsel from filing online citizenship applications on behalf of clients, as explained at para. 53 above. In my experience, clients perceive this bar as discouragement by IRCC to retain counsel, on the basis that counsel is not necessary. Even if counsel is hired, the applicant must either handle all the online processes on their own, or use a paper process, which is perceived to be inferior to online processing. While it appears to date that the processing times for online applications and paper-based applications are similar, based on my discussions with clients and with other immigration lawyers, the messaging and resultant perceptions discourage the use of counsel.

109. Another example are PR pathways for temporary residents that sidelined counsel from the portal process. In April 2021, IRCC created a series of TPPs that allowed certain individuals with temporary status to apply for PR. IRCC was unclear about whether counsel could represent clients

through the newly created portals or whether clients had to initiate and complete the portal themselves. There was no time to get clarity on this point, because the intake caps and the limited application period necessitated submitting applications without delay. I attach a copy of two TPPs as **Exhibit "M"** to my affidavit. Soon after the program had launched, IRCC issued a statement indicating that counsel cannot "open a portal account or electronically sign the application for their clients" but can "help prepare the documents applicants must upload to the portal". IRCC also stated "[i]n other words, an immigration consultant or lawyer may assist clients with their application, but they should not log in to the portal using a client's credentials or sign the application for them."[18]

110. Based on my conversations with my clients, colleagues at CILF and other immigration lawyers, in my opinion, for many applicants, this program was their one and only opportunity to obtain PR status. My clients informed me that they wished to retain counsel in order to ensure that their application was not rejected based on an inadvertent error or technical issue. Many also wished to have counsel handle the filing because of the very limited window to submit. The program targeted essential workers in domains such as healthcare and social work. Due to factors such as demanding work schedules, childcare commitments, internet connectivity issues, lack of access to the necessary technology, etc., many applicants were not able to be online and login to the portal at the necessary time. Others lacked the technical competency to very quickly upload multiple documents in the correct places within a very limited window of time. Many wished to retain experienced counsel to handle the processes of preparing and uploading the necessary documents and submitting the application on their behalf.

111. Counsel were left uncertain about proper practices, and as a result, uncertain about whether their involvement was in breach of IRCC requirements.

[18] IRCC website, "Temporary public policies: Temporary resident to permanent resident pathway – How to apply," (last modified 30 January, 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/tr-pr-pathway/how-to-apply.html.

112. A final example is that IRCC prevents counsel representation in confirmation of PR portals. IRCC terminates the right to counsel after it confirms and approves an inside-Canada PR application. IRCC's online instructions for the PR confirmation portal state:[19]

> An immigration *representative* (also known as an immigration consultant or lawyer) can give you advice and help you with the portal for a fee. But they can't
> - sign into the portal using your username and password
> - declare that you're in Canada for you

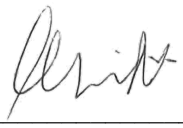
113. The confirmation process requires PR applicants to set up a new portal account. Completion of this portal involves is an integral and important step in the PR process. It must be done correctly to avoid delays and ensure that a person does not mistakenly provide incorrect information that could prevent them from obtaining PR.

114. As a consequence, my practice is to provide clients with detailed instructions to help them to navigate the PR confirmation process without my direct involvement. However, my indirect involvement forces me to represent clients from the sidelines. It also prevents me from resolving delays and other issues that arise during the confirmation process.

115. I make this affidavit for no improper purpose.

DECLARED REMOTELY at the City of Ottawa in the Province of Ontario before me at the City of Toronto in the Province of Ontario, on August 19, 2025 in accordance with O. Reg. 431.20, Administering Oath or Declaration Remotely.)

Jacqueline Bonisteel



Maureen Silcoff
a Commissioner for Taking Affidavits

[19] IRCC website, "Confirm your permanent residence from inside Canada," (last modified 3 December 2024), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/pr-confirmation-portal.html.

This is Exhibit **"A"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

PROFESSIONAL EXPERIENCE

Corporate Immigration Law Firm, Ottawa, ON — Feb 2016 - Present
- Lead the Ottawa office of one of the top 10 boutique immigration law firms in Canada
- Named Partner in 2022

Perley-Robertson, Hill & McDougall LLP, Ottawa ON
- Associate Lawyer (Immigration, Refugee and Citizenship Law) — 2012 – 2016
- Articling Student (various practice areas including Immigration Law, Litigation, Labour, Family) — 2011-2012

South Ottawa Community Legal Services, Ottawa, ON
- Student Clinic Worker (Immigration and Refugee Law) — 2010-2011

The Refugee Forum, Ottawa, ON
- Research Assistant to the Director, Professor Peter Showler — 2010-2011

Immigration and Refugee Board of Canada, Ottawa, ON
- Fellowship, IRB Research Directorate — Summer 2009

EDUCATION

Law Society of Ontario — June 2012
- Called to the Bar in the Province of Ontario
- Certified Specialist in Citizenship and Immigration Law (Immigration and Refugee Protection)

2007 - 2011

University of Ottawa Faculty of Law (Common Law Section), J.D. (Magna Cum Laude)
- Osgoode Society Prize (top ten students in graduating class)
- Clarey B. Sproule Award (for contributions to Community Legal Clinic)

Norman Paterson School of International Affairs, Carleton University, M.A. (International Affairs) — 2007 - 2011
- Major research on prosecutions at the International Criminal Court; defended with distinction

Western University, Honours B.A. (Specialization in International Relations) — 2003 - 2007
- Gold Medallist (top academic standing in Scholar's Electives Program)
- Honours thesis on reconciliation and transitional justice in Rwanda
- 3rd year abroad at University of St. Andrews in Scotland (Bobby Jones Scholarship)

COMMUNITY AND PUBLIC SERVICE ACTIVITIES

Canadian Immigration Lawyers Association (CILA) 2021 – Present
- Member

Canadian Bar Association, Immigration Law Section 2012 - Present
- Member
- Pro bono coordinator (2022 – Present)
- Annual Conference Organizing Committee (2015 and 2023)
- Executive Member-at-Large and Young Lawyer Coordinator (2014-2017)

Ottawa Immigration Law Conference 2015 - Present
- Organizing Committee

Canadian Association of Refugee Lawyers (CARL) 2012-Present
- Member
- Member of Litigation Committee (2014-2019)

Immigration, Refugee and Citizenship Law Moot
- Content sub-committee member and volunteer judge 2021 – 2024

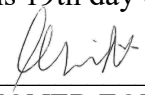
Ottawa Board of Trade
- Member 2019-2024
- 40 Under 40 honouree (2023)

Refugee Lawyers Association
- Member 2012-2024

Refugee Sponsorship Support Program 2015 - 2023
- Member of expert panel, pro bono legal support to refugee sponsors

English Language Tutoring for the Ottawa Community (ELTOC) 2013-2018
- President of Board of Directors

This is Exhibit **"B"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

FORM 52.2 **Court File: IMM-12116-25**

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

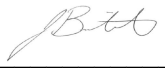
THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

Certificate Concerning Code of Conduct for Expert Witnesses

I, Jacqueline Bonisteel, having been named as an expert witness by the Applicant, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the *Federal Courts Rules* and agree to be bound by it.

Dated August 19, 2025

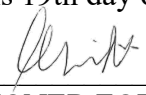


Jacqueline Bonisteel

Corporate Immigration Law Firm
86 Centrepointe Drive, Top Floor
Nepean, ON K2G 6B1
Phone: 613-319-8555

SOR/2010-176, s. 12.

This is Exhibit **"C"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

Canada Gazette, Part I, Volume 158, Number 51: Regulations Amending the Citizenship Regulations (Administrative Penalties and Consequences)

Please be advised that the consultation period for this proposed regulation is now closed. Submitted comments will be posted once they have been reviewed. If you have concerns, please contact us using our Contact the Canada Gazette Directorate page.

December 21, 2024

Statutory authority

Citizenship Act

Sponsoring department

Department of Citizenship and Immigration

REGULATORY IMPACT ANALYSIS STATEMENT

For the Regulatory Impact Analysis Statement, see the *Regulations Amending the Immigration and Refugee Protection Regulations (Administrative Penalties and Consequences)*.

PROPOSED REGULATORY TEXT

Notice is given that the Governor in Council proposes to make the annexed *Regulations Amending the Citizenship Regulations (Administrative Penalties and Consequences)* under paragraphs 27(1)(k.6) to (k.9) [a] and subsection 27(3) [b] of the *Citizenship Act* [c].

Interested persons may make representations concerning the proposed Regulations within 45 days after the date of publication of this notice. They are strongly encouraged to use the online commenting feature that is available on the *Canada Gazette* website but if they use email, mail or any other means, the representations should cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be sent to Tina Matos, Director General, Admissibility Branch, Department of Citizenship and Immigration, 180 Kent Street, 8th Floor, Ottawa, Ontario K1P 0B6 (email: IRCC.APC-SCA.IRCC@cic.gc.ca).

Ottawa, December 13, 2024

Wendy Nixon
Assistant Clerk of the Privy Council

Regulations Amending the Citizenship Regulations (Administrative Penalties and Consequences)

Amendments

1 Section 2 of the *Citizenship Regulations* [1] is amended by adding the following in alphabetical order:

reviewer
means a person appointed by order under subsection 27(4) of the Act. (*réviseur*)

2 The Regulations are amended by adding the following after section 33:

System of Administrative Penalties and Consequences — Representation and Advice

Purpose

34 The purpose of the administrative penalties and consequences provided for in these Regulations is to encourage compliance with the provisions of the Act and these Regulations and not to punish.

Violations

35 The contravention — including a contravention committed outside of Canada — of any of the following provisions in connection with a proceeding or application under the Act is designated as a violation:

(a) section 36;

(b) paragraph 37(a);

(c) paragraph 37(b);

(d) paragraph 37(c); and

(e) subsection 38(3).

Prohibitions

36 A person must not knowingly, directly or indirectly, represent or advise a person for consideration — or offer to do so — in connection with a proceeding or application under the Act unless they are a person or entity referred to in any of subsections 21.1(2) to (4) of the Act.

37 A person who, directly or indirectly, represents or advises a person for consideration — or offers to do so — in connection with a proceeding or application under the Act must not knowingly

(a) counsel, induce, aid or abet or attempt to counsel, induce aid or abet that person to directly or indirectly misrepresent or withhold material circumstances relating to a relevant matter, which induces or could induce an error in the administration of the Act;

(b) for any of the purposes of the Act, directly or indirectly, make any false representation, commit fraud or conceal any material circumstances; or

(c) communicate, directly or indirectly, by any means, false or misleading information or representations with the intent to induce a person to make, or deter a person from making, an application to become a citizen, to obtain a certificate of citizenship or another document establishing citizenship or to renounce citizenship.

Inspection

38 (1) If a citizenship officer has reasonable grounds to suspect that a person has committed a violation, the citizenship officer may conduct any inspection that they consider to be necessary in order to verify that the person is in compliance with sections 36 and 37, including the inspection of any entity for which that person conducts business relating to the provision of immigration and citizenship representation and advice.

(2) When conducting an inspection under subsection (1), a citizenship officer may, in writing, require the person or entity to provide any relevant document.

(3) The person or entity that is required by a citizenship officer to provide documents must provide them within the period and in the manner specified in writing by the citizenship officer.

(4) A failure to comply with subsection (3) is justified if the person or entity made all reasonable efforts to comply or if the failure results from anything done or omitted to be done by the person or entity in good faith.

Notice of Preliminary Finding

39 (1) A citizenship officer who, on the basis of information obtained by any citizenship officer in the exercise of the powers set out in section 38 and of any other relevant information, believes, on reasonable grounds, that a person has committed a violation may issue to them a notice of preliminary finding.

(2) The notice of preliminary finding must list all violations identified in the course of the inspection conducted under subsection 38(1) and must indicate

(a) the name of the person who is believed to have committed the violation;

(b) the relevant facts and provisions with respect to each violation;

(c) the preliminary finding and the reasons for the finding;

(d) the amount of the administrative monetary penalty for each violation;

(e) the total amount of the administrative monetary penalties;

(f) the effect on the amount of the administrative monetary penalty of any previous notice of violation issued to the person;

(g) the right of the person to, within 30 days after the date of receipt of the notice of preliminary finding, make written submissions with respect to the information referred to in paragraphs (b) to (d) and the address to which the submissions must be sent; and

(h) the fact that, if the person is found liable for a violation, the information referred to in subsection 49(1) will be made public.

40 (1) A person to whom a notice of preliminary finding is issued may, within 30 days after the date of receipt of the notice,

(a) make written submissions with respect to the information referred to in paragraphs 39(2)(b) to (d); or

(b) request an extension of the 30-day period.

(2) A notice of preliminary finding is deemed to have been received 30 days after the day on which it is sent.

(3) A citizenship officer may extend the 30-day period referred to in subsection (1) if there is a reasonable justification for the extension.

Notice of Violation

41 (1) A citizenship officer who, on the basis of information obtained by any citizenship officer in the exercise of the powers set out in section 38 and of any other relevant information, determines on a balance of probabilities that a person has committed a violation may issue a notice of violation to them.

(2) The notice of violation must list all violations for which a determination has been made under subsection (1), and must indicate

(a) the name of the person who is believed to have committed the violation;

(b) the relevant facts and provisions with respect to each violation;

(c) the determination and the reasons for the determination;

(d) the amount of the administrative monetary penalty for each violation;

(e) the total amount of the administrative monetary penalties;

(f) the effect on the amount of the administrative monetary penalty of any previous notice of violation issued to the person;

(g) the right of the person to request, within 30 days after the date of receipt of the notice of violation, a review of the facts that constitute the violation or of the amount of the administrative monetary penalty or of both;

(h) the fact that the person must pay the administrative monetary penalty within 30 days after the date of receipt of the notice of violation, unless they request a review or enter into an agreement with the Minister with respect to payment within those 30 days;

(i) the method of payment for the administrative monetary penalty; and

(j) the fact that, if the person is found liable for a violation, the information referred to in subsection 49(1) will be made public.

(3) A notice of violation is deemed to have been received 30 days after the day on which it is sent.

42 No administrative monetary penalty may be imposed on a person with respect to any acts or omissions that occurred before the date of issuance of their most recent notice of violation.

Administrative Monetary Penalty Amount

43 (1) The amount of the administrative monetary penalty for a violation in respect of any of section 36 and paragraphs 37(a), (b) and (c) is determined by the formula

$$(A + B + C) \times D$$

where

A
is the applicable baseline penalty amount set out in subsection (2);

B
is the amount, if any, related to the impact of the violation as set out in subsection (3);

C
is the financial advantage amount, if any, determined under subsection (4); and

D
is the multiplier for prior violations as determined under subsection (5).

(2) The baseline penalty amount is the following:

(a) for a violation in respect of section 36, $5,000;

(b) for a violation in respect of paragraph 37(a), $15,000;

(c) for a violation in respect of paragraph 37(b), $15,000; and

(d) for a violation in respect of paragraph 37(c), $15,000.

(3) If an error in the administration of the Act results from a violation in respect of paragraph 37(a) or (b), the amount related to the impact of the violation is $15,000.

(4) If the person who is believed to have committed the violation derives a financial advantage from the violation, the financial advantage amount is equal to the total of any amounts that they received in connection with the violation.

(5) The multiplier for any prior violations is

(a) 0.5, if the person has not previously been found liable for a violation referred to in section 35;

(b) 1, if the person has on one previous occasion been found liable for a violation referred to in section 35; and

(c) 1.5, if the person has on two or more previous occasions been found liable for a violation referred to in section 35.

44 (1) The amount of the administrative monetary penalty for a violation in respect of subsection 38(3) is $10,000, multiplied by the multiplier for prior violations as determined under subsection 43(5).

(2) A failure to comply with subsection 38(3) on more than one occasion in the course of an inspection conducted under subsection 38(1) gives rise to one administrative monetary penalty only.

45 If a notice of preliminary finding or a notice of violation lists more than one violation, the administrative monetary penalty amounts are cumulative, but the total must not exceed $1.5 million.

Payment

46 Subject to section 47, an administrative monetary penalty that is assessed under these Regulations must be paid within 30 days after the date of receipt of the notice, unless the person enters into an agreement with the Minister with respect to payment within those 30 days.

Review

47 A person to whom a notice of violation is issued may, instead of paying the administrative monetary penalty indicated in the notice, make a written request, within 30 days after the date of receipt of the notice, for a review of the facts that constitute the violation or of the amount of the penalty, or of both.

48 (1) A reviewer must determine, on a balance of probabilities, whether the person who requests the review is liable for the violation and, if so, whether the amount of the administrative monetary penalty has been determined in accordance with these Regulations.

(2) The reviewer must make their decision based on the information that was available to the citizenship officer who issued the notice of violation, and no new evidence is admissible.

(3) If the reviewer determines that the person is not liable for the violation, the reviewer must cancel the administrative monetary penalty.

(4) If the reviewer determines that the person is liable for the violation, the reviewer must verify that the amount of the administrative monetary penalty was determined in accordance with these Regulations and

(a) if they consider that the amount was so determined, confirm the amount of the penalty; or

(b) if they consider that the amount was not so determined, substitute an amount that they consider to be in accordance.

(5) On completion of the review, the reviewer must confirm, amend or cancel the notice of violation by issuing to the person a notice of decision.

(6) The notice of decision must list all violations for which a determination under this section has been made and must indicate

(a) the name of the person who requested the review;

(b) the relevant facts and provisions with respect to each violation;

(c) the decision and the reasons for the decision;

(d) the amount of the administrative monetary penalty for each violation, if applicable;

(e) the total amount of the administrative monetary penalties, if applicable;

(f) the right of the person to apply for leave to commence an application for judicial review of the decision;

(g) the fact that the person must pay the administrative monetary penalty, if applicable, within 30 days after the date of receipt of the notice of decision, unless they enter into an agreement with the Minister with respect to payment within those 30 days;

(h) the method of payment for the administrative monetary penalty, if applicable; and

(i) the fact that, if the person is found liable for a violation, the information referred to in subsection 49(1) will be made public.

(7) The notice of decision is deemed to have been received 30 days after the day on which it is sent.

(8) The person must pay the administrative monetary penalty that is set out in the notice of decision within 30 days after the date of receipt of the notice unless they enter into an agreement with the Minister respecting the penalty within those 30 days.

Consequences

49 (1) Subject to subsection (2), the Minister must publish the following information on the website of the Department of Citizenship and Immigration with respect to each person who has been found liable for a violation referred to in section 35:

(a) their name;

(b) the name and address of their business or place of employment, if any;

(c) the date on which the notice of violation or the notice of decision, if any, was issued to the person;

(d) the relevant facts and provisions with respect to the violation;

(e) the amount of the administrative monetary penalty; and

(f) an indication as to whether or not the person has paid the administrative monetary penalty.

(2) The Minister must not publish the information before the end of the period set out in section 47.

Coming into Force

3 These Regulations come into force on the day on which they are registered.

General Comment

Footnotes

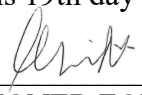
a 2019, c. 29, s. 294(1)

b 2023, c. 26, s. 298

c R.S., c. C-29

1 SOR/93-246; SOR/2009–108, s. 1

This is Exhibit **"D"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

Canada Gazette, Part I, Volume 158, Number 51: Regulations Amending the Immigration and Refugee Protection Regulations (Administrative Penalties and Consequences)

Please be advised that the consultation period for this proposed regulation is now closed. Submitted comments will be posted once they have been reviewed. If you have concerns, please contact us using our Contact the Canada Gazette Directorate page.

December 21, 2024

Statutory authority

Immigration and Refugee Protection Act

Sponsoring department

Department of Citizenship and Immigration

REGULATORY IMPACT ANALYSIS STATEMENT

(*This statement is not part of the regulations*.)

General Comment

Issues

Individuals seeking to immigrate to Canada or become Canadian citizens often rely on the advice and expertise of other people to help them navigate immigration and citizenship processes and applications. Individuals committing infractions such as providing advice and representation for remuneration without authorization or counselling fraud and misrepresentation on their clients' applications has a negative effect on the integrity of Canada's immigration and citizenship systems. The impacts on clients can be particularly egregious when the victims are vulnerable due to language and cultural barriers. Under the existing regulatory framework there are no tools for Immigration, Refugees and Citizenship Canada (IRCC) to sanction individuals who commit these kinds of infractions.

Background

Only authorized immigration and citizenship practitioners are permitted to provide advice and representation for payment on immigration and citizenship-related matters. Authorized practitioners include members in good standing of one of the following groups: the College of Immigration and Citizenship Consultants (the College), a provincial or territorial law society, or the Chambre des notaires du Québec. These practitioners are authorized to provide services such as explaining immigration and citizenship options, advising as to the most appropriate programs, assisting in the completion of applications, and communicating with IRCC. Their specialized expertise allows them to help applicants navigate Canada's immigration and citizenship processes and ensure applicants meet the requirements.

According to the College's Annual Report, in 2023 there were 11 750 licensees of the College. All lawyers and Quebec notaries are authorized to provide immigration and citizenship advice and representation, though many practice in other unrelated areas. Authorized practitioners receive specialized training and are effectively regulated, meaning that they are held to a high standard of practice and there are options for complaints and potential recourse through their professional regulators should they not meet those standards.

In addition to licensed practitioners, there is an unknown number of unauthorized individuals both in and outside Canada who provide paid advice and representation, despite not being legally permitted to do so. Unauthorized individuals are a problem in the current immigration and citizenship system and solutions are needed to help deter their actions. For example, an average of 282 leads of suspected consultant offences are brought to the attention of the Canada Border Services Agency (CBSA) annually and of these, an average of 50 (17%) involve alleged unauthorized individuals. On average, a quarter of charges laid annually are against those who are not authorized to provide immigration and citizenship consultant services (this data represents the 2018–2022 calendar years inclusively).

Despite existing professional discipline measures and criminal penalties, clients continue to face issues like fraud in applications and documents. These may have dire consequences for applicants, including refusal of citizenship or immigration applications, financial hardship and losing legal immigration status in Canada.

In June 2017, the House of Commons Standing Committee on Citizenship and Immigration (CIMM) published a report entitled *Starting Again: Improving Government Oversight of Immigration Consultants*. CIMM studied the framework governing immigration and citizenship consultants and found it inadequate. The Committee made 21 recommendations focusing on three areas of concern: (1) weakness in governance; (2) insufficient resources for investigations and enforcement; and (3) lack of public awareness and the need to better service serve clients.

In response to these persistent issues and the CIMM recommendations, the *Immigration and Refugee Protection Act* (IRPA) and the *Citizenship Act* were amended in 2019 to allow the establishment of an administrative penalties and consequences (APC) regime by regulation. This initiative aims to address the observed gaps by enabling IRCC to directly respond to and sanction those who commit violations while

providing paid immigration and citizenship advice. The proposed amendments to the *Immigration Refugees and Protection Regulations* (IRPR) and the *Citizenship Regulations* (CR) are crucial steps towards enhancing the integrity of the immigration system and more effectively safeguarding the interests of those seeking to navigate it.

Objective

The proposed regulatory amendments would

- Provide more oversight and accountability for authorized immigration and citizenship practitioners and unauthorized individuals by providing an additional enforcement tool;
- Encourage compliance by those who provide immigration and citizenship services with the provisions of the IRPA and the CA and these proposed regulations; and
- Protect immigration and citizenship applicants from harmful situations, such as receiving fraudulent or unauthorized advice and representation.

The expected outcomes of the proposed amendments are to

- Decrease fraudulent applications by deterring those who provide immigration and citizenship services from committing or counselling misrepresentation and informing the public of individuals who have committed violations;
- Decrease the number of applications involving unauthorized individuals; and
- Increase public confidence in the regulation of licensed practitioners.

Description

The proposed regulatory amendments below would be made to both the IRPR and the CR.

Violations

The proposed regulations would prohibit a person from providing or offering to provide representation for payment unless they are authorized to do so under the CA or IRPA.

The proposed regulations would prohibit a person who represents or advises someone for payment from misrepresenting or withholding information, advising them to misrepresent or withhold information, or communicating misleading information.

The proposed amendments would designate unauthorized practice and misrepresentation as violations.

Inspections

The proposed regulatory amendments would provide IRCC officers the authority to require, in writing, that a person or entity provide any relevant documents to verify compliance in circumstances where the officer has reasonable grounds to believe they have committed a violation. If the individual fails to submit relevant

documents, the failure would be justified if the individual made reasonable efforts to comply.

Notice of preliminary findings

Under the proposed regulations, an IRCC officer who has reasonable grounds to believe that a person committed a violation would have the authority to issue a notice of preliminary finding (NOPF).

Under the proposed regulations, the notice would be required to include

- the name of the person who is believed to have committed the violation or violations;
- the relevant facts and provisions with respect to each violation;
- the preliminary finding and the reasons for the finding;
- the amount of the administrative monetary penalty for each violation and the total amount of the administrative monetary penalties;
- the effect (increase or reduction) on the amount of the administrative monetary penalty of any previous notice of violation issued to the person;
- the person's right to, within 30 days after the date of receipt of the notice, provide information about the relevant facts and the amount of the penalties to IRCC; and
- the fact that, if the person is found liable for a violation, certain information will be made public.

Notice of violation

The proposed amendments would give an IRCC officer the authority to issue a Notice of Violation (NOV). Following the issuance of an NOPF and after having reviewed any information submitted in response, an officer would have the authority to issue an NOV if they determine, on a balance of probabilities, that a person committed a violation.

The NOV would be required to include

- the name of the person who is believed to have committed the violation or violations;
- the relevant facts and provisions with respect to each violation;
- the determination and the reasons for the determination;
- the amount of the administrative monetary penalty for each violation;
- the total amount of the administrative monetary;
- penalties;
- the effect (increase or reduction) on the amount of the administrative monetary penalty of any previous notice of violation issued to the person;
- the right of the person to request, within 30 days after the date of receipt of the notice of violation, a review of the facts that constitute the violation or of the amount of the administrative monetary

penalty, or of both;

- the fact that the person must pay the administrative monetary penalty within 30 days after the date of receipt of the notice of violation, unless they request a review or enter into an agreement with the Minister with respect to payment within those 30 days;
- the method of payment for the administrative monetary penalty; and
- the fact that, if the person is found liable for a violation, their information will be made public.

The proposed amendments would also provide that no administrative monetary penalty could be imposed on a person if any acts or omissions occurred prior to the date of issuance of their most recent NOV.

Administrative monetary penalties and amounts

The proposed regulatory amendments would introduce a formula and baseline penalty amounts to be used when calculating the administrative monetary penalty for unauthorized practice and misrepresentation:

Administrative monetary penalty = (A + B + C) × D

Where:

A

is the baseline penalty amount, which would be determined depending on the type of violation:

- Representation or advice without authorization: $5,000
- Misrepresentation: $15,000

B

is the amount added when a misrepresentation violation had an additional impact by inducing an error in the administration of the relevant Act by causing an application to be approved when it otherwise would not have been.

- Additional impact amount: $15,000

C

is the financial advantage gained as a result of the violation:

- If an individual gained a financial advantage as a result of committing a violation (e.g. any money that they were paid by a client to provide unauthorized advice or to assist with misrepresentation), this amount is included in the penalty amount.

D

considers the individual's previous history with the regime. Specifically:

- if the person has not previously been issued a notice of violation, the penalty amount would be multiplied by 0.5 (halved)
- if the person has on one previous occasion been issued a notice of violation, the penalty amount would stay the same (multiplied by 1)
- if the person has been issued a notice of violation on two or more previous occasions, the penalty amount would be multiplied by 1.5

Failure to comply with an inspection

The proposed regulations would establish the penalty for an individual who does not comply with a request for submission of relevant documents by an officer to verify compliance at $10,000, multiplied by the factor in element D of the formula for other violations. A failure to comply on more than one occasion in the course of an inspection would result in one administrative monetary penalty.

Maximum amount per notice of violation

The proposed regulatory amendments would specify that if a NOPF or a NOV includes multiple violations. The penalties are cumulative and the total amount for all violations could not be more than $1,500,000.

Payment

The proposed regulations would require that an administrative monetary penalty be paid within 30 days after receipt of the notice of violation, unless the person has entered into an agreement with the Minister with respect to payment within 30 days.

Review

The proposed regulations would allow a person who received an NOV to make a written request, within 30 days of receipt of the notice, for a review of the facts of the violation or of the amount of the penalty, or both, instead of paying the administrative monetary penalty. As per IRPA and the CA, the review would be conducted by a reviewer appointed by the Governor in Council for that purpose.

The proposed regulations would require that the reviewer determine whether the person was liable for the violation and the amount of the penalty, based on the information that was available to the officer who issued the notice; the proposed regulations would not allow the reviewer to consider new evidence.

Based on the findings of their review, the proposed regulations would require the reviewer to cancel, confirm, or amend the notice of violation, and to state in writing the reasons for their decision.

The proposed regulations would require that the person pay the penalty set out in the Notice of Decision within 30 days unless they enter into an agreement with the Minister.

Consequences

The proposed amendments would require that the Minister publish information concerning persons found liable for a violation on IRCC's website, including

- their name;
- the name and address of their business or place of employment (if applicable);
- the date on which a notice of violation was issued to served on the person;
- the date of the reviewer's decision (if applicable);
- the nature of the violation;

- the amount of the administrative monetary penalty; and
- an indication of whether the person has paid the penalty.

Regulatory development

Consultation

IRCC consulted with the CBSA and the Royal Canadian Mounted Police (RCMP) on the proposed regulatory amendments and they did not express any concerns. Their mandates would be impacted as they investigate and prosecute those who commit immigration and citizenship fraud under IRPA and the CA as well. Primary responsibility for IRPA criminal investigations belongs to the CBSA, and CA investigations to the RCMP.

The Federation of Canadian Law Societies was consulted in August 2024 regarding the high-level concepts of the proposed APC regime and did not register any concerns. The College was consulted in August 2024 on the high-level concepts and is supportive of the proposed regime.

Modern treaty obligations and Indigenous engagement and consultation

The assessment did not identify any modern treaty implications or obligations for the IRPA or CA for consultants. There is no anticipated impact on Indigenous peoples for the proposed regulatory amendments.

Instrument choice

Regulation is the only instrument that was considered because it is the only viable instrument to establish the APC regime for non-compliant and fraudulent individuals who provide immigration and citizenship services.

Regulatory analysis

Benefits and costs

An important first step in developing a cost-benefit methodology is establishing a baseline scenario against which options may be measured. For this analysis, the baseline scenario is one where an APC would not be implemented, contributing to the existing gap in regulatory tools as IRCC cannot impose penalties and consequences on individuals who provide advice and representation for remuneration without authorization or counsel fraud and misrepresentation on their clients' applications. The baseline scenario is then compared with the regulatory scenario, in which IRCC would introduce an APC regime, addressing the existing lack of tools for IRCC to sanction misrepresentation and unauthorized representation. The regime would allow for the issuance of penalties and consequences and provide the power to inspect individuals who are suspected of misrepresenting, counselling misrepresentation, or advising clients without authorization in the context of immigration and citizenship.

The estimated costs and benefits of the regulatory amendments are monetized for 10 periods of 12 months (2025 to 2034) and are expressed in 2023 dollars. The proposed regulatory amendments would come into force on the day they are registered. For further details regarding the methodology, a detailed cost-benefit analysis report is available upon request at the following email address: IRCC.APC-SCA.IRCC@cic.gc.ca. As the impacts pertain to penalties and consequences issued to those that contravene the law, no consultations were conducted on the cost-benefit analysis (CBA) for the proposed regulatory amendments.

The proposed regulatory amendments would result in a net cost of $5,969,356 present value (PV) however, additional qualitative impacts are expected to offset these costs. Costs to the Government of Canada are estimated at $13,766,908 PV over 10 periods. Benefits to the Government of Canada in the form of penalty payments are estimated at $7,797,552 PV over 10 periods.

Costs

Introducing the proposed APC regime would result in incremental costs to the Government of Canada. These costs would be incurred by IRCC. Although the RCMP and CBSA are involved in the criminal investigations as related to enforcement of the CA and IRPA respectively, the proposed regulatory amendments are not expected to impose any costs on them as they are not involved in the proposed IRCC's APC regime itself.

The total costs to IRCC are estimated at $13,766,908 PV over 10 years. These include $1,795,758 PV in transition costs from developing IT functionality to issue penalties; training staff, draft initial operating procedures, program delivery instructions and document templates; and prepare communications material related to the regime and regulatory amendments. Ongoing costs to IRCC are estimated at $11,971,150 PV and include costs for investigating possible violations, issuing and reviewing penalties, managing communications, reviewing requests from alleged violators, setting up penalty accounts, sending statements to violators, following-up to obtain missed payments, engaging in additional collection activities when needed, developing regime reports, and providing legal advice where needed.

Impacts on those who provide immigration and citizenship services

The implementation of the APC regime would impose monetary penalties on individuals who are found to have committed a violation, and in some cases, costs related to the request of a review of their penalty amount and/or a review of the facts of the violation. It is estimated that penalty amounts per NOV would range from $5,000 to $1.5 million, as listed in the Description section. Determining a precise number of NOVs that would be issued each period can be challenging, especially given the absence of historical data, and the proposal being the introduction of a new IRCC regime. For the purpose of this analysis, simplifying assumptions were made to estimate the costs and benefits of the regulatory amendments. As such, it is assumed that the regulatory amendments would result in approximately 20 NOVs being issued per period,

except in period 1, when approximately 10 NOVs are assumed to be issued. This estimate is based on an analysis of historical trends and data from past IRCC investigations where IRCC would anticipate meeting the evidentiary burden and ensuring procedural fairness, ultimately leading to the issuance of a NOV.

Although the proposed regulatory amendments would impose monetary penalties on violators, penalty costs do not have standing for the purpose of cost-benefit analysis. Penalties are a result of activities contrary to prevailing laws and regulations in Canada and are thus not included in the monetized costs. Similarly, some individuals may choose to make a request for a review of the violation or penalty if they feel there is an error in their case. While preparing this request would require time and effort, these impacts are not included as monetized costs as they also pertain to possible non-compliance of prevailing laws and regulations. However, they are acknowledged qualitatively.

IRPA and the CA extend outside Canada's borders (most applications received by IRCC are from clients outside Canada, and applicants may be working with individuals providing immigration and citizenship services outside Canada, but those individuals are still subject to these two Acts), allowing IRCC to issue monetary penalties and consequences to individuals outside Canada. The proposed APC regime also includes the publication of the offender's name and business information, and this could potentially have a significant impact on offenders (whether inside or outside Canada).

Benefits

Administrative penalties offer an effective and direct way to motivate compliance without involving expensive and time-consuming court proceedings. As an increasingly useful regulatory tool, administrative penalties widen the range of enforcement options available, allowing the flexibility to modify a response to specific compliance issues. As discussed in the Impacts on those who provide immigration and citizenship services section, for the purpose of this analysis, it is assumed that approximately 20 NOVs would be issued per period, except in period 1, when approximately 10 NOVs are assumed to be issued. For each NOV, it is estimated that there would be 5.5 citizenship or immigration applications where a violation has been committed. Per NOV, the average total penalty is estimated at approximately $70,000.

Although IRCC would allocate resources and efforts to collection activities, such as follow-ups to collect payments, and on some occasions refer payments to collection agencies, it may be challenging to collect monetary penalties issued to individuals outside of Canada. As a result, it is anticipated that a portion of penalties may not be collected. Estimates presented in this analysis take possible non-payments into account. The total penalty payments collected are estimated at $7,797,552 PV over 10 periods. Amounts recovered through the payment of administrative penalties are directed to the Consolidated Revenue Fund of the Government of Canada.

Implementation of a regime that imposes penalties and consequences for misrepresentation and unauthorized representation would provide IRCC with additional tools to enforce compliance, other than referring all cases for criminal prosecution (which requires significant resources and higher evidentiary thresholds). Moreover, the proposed regime would also include publication of the offender's name and

business information in IRCC's website. The introduction of this APC regime is expected to reinforce compliance and motivate behavioural change by those who provide immigration and citizenship services. The regulatory amendments are also expected to increase public awareness of non-compliant or unethical individuals, as their names would be published on IRCC's website.

Cost benefit statement

Number of periods: 10 periods of 12 months (2025 to 2034)

Price year: 2023

Present value base year: Period 1 (2025)

Discount rate: 7%

Monetized benefits

Impacted stakeholder	Description of benefit	Period 1	Period 5	Period 10	Total (present value)	Annualized value
Government of Canada	Monetary penalty payments collected	$421,325	$1,179,710	$1,179,710	$7,797,552	$1,110,196
All stakeholders	**Total benefits**	**$421,325**	**$1,179,710**	**$1,179,710**	**$7,797,552**	**$1,110,196**

Monetized costs

Impacted stakeholder	Description of cost	Period 1	Period 5	Period 10	Total (present value)	Annualized value
Government of Canada	**Transition costs**	$1,795,758	$0	$0	$1,795,758	$255,676
	Ongoing costs	$1,366,061	$1,573,060	$1,573,060	$11,971,150	$1,704,422
All stakeholders	**Total costs**	**$3,161,820**	**$1,573,060**	**$1,834,102**	**$13,766,908**	**$1,960,098**

Summary of monetized benefits and costs

Impact	Period 1	Period 5	Period 10	Total (present value)	Annualized value
Total benefits	$421,325	$1,179,710	$1,179,710	$7,797,552	$1,110,196
Total costs	$3,161,820	$1,573,060	$1,573,060	$13,766,908	$1,960,098
Net cost	**$2,740,495**	**$393,350**	**$393,350**	**$5,969,356**	**$849,902**

Qualitative impacts

Positive impacts

- The proposed regulatory amendments would deter authorized and unauthorized individuals from committing or advising misrepresentation, further protecting clients from unethical behaviour.
- The establishment of an APC regime with clearly defined violations and corresponding penalties and consequences would help strengthen the integrity of Canada's immigration system, bolstering public trust.

Negative impacts

- Some individuals may choose to make a request for a review of the facts of the violation or of the amount of the penalty. This would require spending time and effort on the request for a review. These costs are not included in the monetized costs as they pertain to possible non-compliance of prevailing laws and regulations, but potential efforts are acknowledged qualitatively.

Small business lens

Analysis under the small business lens concluded that the proposed regulation would not impose administrative or compliance burden on Canadian small businesses.

The great majority (99%) [1] of licensed practitioners are estimated to be small businesses, so it is expected that most of the penalties issued as a result of the regulatory amendments would impact small businesses. However, those impacts would be related to the issuance of penalties and consequences as a result of activities contrary to prevailing laws and regulations in Canada. Penalties are not considered to be administrative or compliance burden as defined in the *Policy on Limiting Regulatory Burden on Business*.

One-for-one rule

The one-for-one rule does not apply as there is no incremental change in administrative burden on business and no regulatory titles are repealed or introduced.

The proposed regulations would allow individuals to request a review of their NOV. This task is expected to result in minor costs to those who provide immigration and citizenship services. However, those impacts would be related to the issuance of penalties and consequences as a result of activities contrary to prevailing laws and regulations in Canada. Those impacts are not considered to be administrative burden as defined in the *Red Tape Reduction Act* and the *Policy on Limiting Regulatory Burden on Business*.

Regulatory cooperation and alignment

To assess whether there are opportunities for cooperation or alignment, IRCC identified jurisdictions that regulate the provision of immigration and citizenship advice and representation to identify possibilities for alignment. It was determined that regulatory cooperation or alignment with international or domestic partners is not feasible and would not achieve the desired policy objectives since the target individuals are providing advice for the purposes of immigrating to or obtaining citizenship in Canada, based on federal laws.

Effects on the environment

In accordance with the Cabinet Directive on Strategic Environmental and Economic Assessment (SEEA), a preliminary scan concluded that a SEEA is not required.

Gender-based analysis plus

The gender-based analysis plus (GBA+) assessment considered the effects on IRCC clients who rely on immigration practitioners and unauthorized individuals providing immigration and citizenship services. The APC regime is expected to have a positive effect on IRCC clients, including the hundreds of thousands of IRCC clients from all over the world who apply to its immigration or citizenship programs each year. These measures will help to ensure that applicants have access to quality immigration and citizenship advice and expertise, and that those who are providing services operate in a professional manner. The APC regime would have a particularly positive impact on clients who are vulnerable due to language or cultural barriers and who rely extensively on those who provide immigration and citizenship services for navigating the application process.

Furthermore, it was determined that these Regulations are not expected to negatively impact any group of persons disproportionately on the basis of identity factors such as gender, race, ethnicity, sexuality, religion, and age. During consultations with stakeholders, no concerns were raised about disproportionate negative impacts to specific groups.

Implementation, compliance and enforcement, and service standards

Implementation

The proposed Regulations would come into force on the day they are registered.

Before the amendments come into force, IRCC would prepare IT updates to include the APC functionality into GCMS. IRCC would develop Notice of Preliminary Findings, NOVs, and Notice of Decision letter templates. New training and guidance materials would also be developed so that officers are informed, have the support needed to become familiar with the regime, have the skills and information to conduct inspections and collection processes and can issue penalties and consequences for determinations of non-compliance. IRCC is also developing a formal process to collect payments and to conduct reviews of the APCs.

Compliance and enforcement

Inspections would involve those who provide immigration and citizenship services being inspected based on a reason to suspect non-compliance on client immigration and citizenship applications, such as a complaint or an anonymous tip.

Individuals who are found to have violated one or more of the prohibitions on applications may be subject to consequences, which include administrative monetary penalties, up to a maximum of $1.5 million. Factors such as previous non-compliance and the impact of the violation would be taken into consideration

when issuing administrative monetary penalties. Individuals found to be non-compliant would have their names and other information about the non-compliance posted on a publicly available Government of Canada website.

The APC regime is an additional tool designed to complement existing measures that apply to the same regulated parties. Existing tools include professional discipline by regulators such as the College and provincial law societies, as well as criminal enforcement agencies such as the CBSA and the RCMP. These measures work together to ensure compliance, deter violations, and promote ethical conduct across the sector.

The APC regime would have mechanisms in place to ensure procedural fairness for those who provide immigration and citizenship services. If non-compliance was identified during an inspection, individuals would be given a formal opportunity to provide additional information to demonstrate compliance or to justify instances of non-compliance.

Once a notice of violation is issued and final decision rendered, the individual would have an opportunity to request a review of that decision from a reviewer. Once the IRCC review process was completed, the individual would be bound by the decision, but would be able to apply for leave to the Federal Court to commence an application for judicial review of the decision.

Contact

Tina Matos
Director General
Admissibility Branch
Immigration, Refugees and Citizenship Canada
Email: IRCC.APC-SCA.IRCC@cic.gc.ca

PROPOSED REGULATORY TEXT

Notice is given that the Governor in Council proposes to make the annexed *Regulations Amending the Immigration and Refugee Protection Regulations (Administrative Penalties and Consequences)* under subsections 5(1) and 91.1(1) [a] and (2) [b] of the *Immigration and Refugee Protection Act* [c].

Interested persons may make representations concerning the proposed Regulations within 45 days after the date of publication of this notice. They are strongly encouraged to use the online commenting feature that is available on the *Canada Gazette* website but if they use email, mail or any other means, the representations should cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be sent to Tina Matos, Director General, Admissibility Branch, Department of Citizenship and Immigration, 180 Kent Street, 8th Floor, Ottawa, Ontario K1P 0B6 (email: IRCC.APC-SCA.IRCC@cic.gc.ca).

Ottawa, December 13, 2024

Wendy Nixon

Assistant Clerk of the Privy Council

Regulations Amending the Immigration and Refugee Protection Regulations (Administrative Penalties and Consequences)

Amendment

1 The *Immigration and Refugee Protection Regulations* [2] are amended by adding the following after section 315.43:

PART 19.2

System of Administrative Penalties and Consequences — Representation and Advice

Interpretation

Definition of reviewer

315.44 In this Part, ***reviewer*** means a person appointed by order under subsection 91.1(3) of the Act.

Purpose

Purpose

315.45 The purpose of the administrative penalties and consequences provided for in this Part is to encourage compliance with the provisions of the Act and these Regulations and not to punish.

Violations

Designated provisions

315.46 The contravention — including a contravention committed outside of Canada — of any of the following provisions in connection with the submission of an expression of interest under subsection 10.1(3) of the Act or a proceeding or application under the Act, is designated as a violation:

(a) section 315.47;

(b) paragraph 315.48(a);

(c) paragraph 315.48(b);

(d) paragraph 315.48(c); and

(e) subsection 315.49(3).

Prohibitions

Unauthorized practice

315.47 A person must not knowingly, directly or indirectly, represent or advise a person for consideration — or offer to do so — in connection with the submission of an expression of interest under subsection 10.1(3) of the Act or a proceeding or application under the Act unless they are a person or entity referred to in any of subsections 91(2) to (4) of the Act.

Misrepresentation

315.48 A person who, directly or indirectly, represents or advises a person for consideration — or offers to do so — in connection with the submission of an expression of interest under subsection 10.1(3) of the Act or a proceeding or application under the Act must not knowingly

(a) counsel, induce, aid or abet or attempt to counsel, induce, aid or abet that person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of the Act; or

(b) directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of the Act; or

(c) communicate, directly or indirectly, by any means, false or misleading information or declarations with intent to induce or deter immigration to Canada.

Inspection

Inspection

315.49 (1) If an officer has reasonable grounds to suspect that a person has committed a violation, the officer may conduct any inspection that they consider to be necessary in order to verify that the person is in compliance with sections 315.47 and 315.48, including the inspection of any entity for which that person conducts business relating to the provision of immigration and citizenship representation and advice..

Inspection of documents

(2) When conducting an inspection under subsection (1), an officer may, in writing, require the person or entity to provide any relevant document.

Requirement to provide documents

(3) The person or entity that is required by an officer to provide documents must provide them within the period and in the manner specified in writing by the officer.

Justification

(4) A failure to comply with subsection (3) is justified if the person or entity made all reasonable efforts to comply or if the failure results from anything done or omitted to be done by the person or entity in good faith.

Notice of Preliminary Finding

Notice — issuance by officer

315.5 (1) An officer who, on the basis of information obtained by any officer in the exercise of the powers set out in section 315.49 and of any other relevant information, believes, on reasonable grounds, that a person has committed a violation may issue to them a notice of preliminary finding.

Notice — contents

(2) The notice of preliminary finding must list all violations identified in the course of the inspection conducted under subsection 315.49(1) and must indicate

(a) the name of the person who is believed to have committed the violation;

(b) the relevant facts and provisions with respect to each violation;

(c) the preliminary finding and the reasons for the finding;

(d) the amount of the administrative monetary penalty for each violation;

(e) the total amount of the administrative monetary penalties;

(f) the effect on the amount of the administrative monetary penalty of any previous notice of violation issued to the person;

(g) the right of the person to, within 30 days after the date of receipt of the notice of preliminary finding, make written submissions with respect to the information referred to in paragraphs (b) to (d) and the address to which the submissions must be sent; and

(h) the fact that, if the person is found liable for a violation, the information referred to in subsection 315.6 (1) will be made public.

Submissions

315.51 (1) A person to whom a notice of preliminary finding is issued may, within 30 days after the date of receipt of the notice,

(a) make written submissions with respect to the information referred to in paragraphs 315.5 (2)(b) to (d); or

(b) request an extension of the 30-day period.

Deemed receipt

(2) Despite subsection 9.3(2), a notice of preliminary finding is deemed to have been received 30 days after the day on which it is sent.

Extension of filing period

(3) An officer may extend the 30-day period referred to in subsection (1) if there is a reasonable justification for the extension.

Notice of Violation

Notice of violation — issuance

315.52 (1) An officer who, on the basis of information obtained by any officer in the exercise of the powers set out in section 315.49 and of any other relevant information, determines, on a balance of probabilities, that a person has committed a violation may issue a notice of violation to them.

Notice of violation — contents

(2) The notice of violation must list all violations for which a determination has been made under subsection (1), and must indicate

(a) the name of the person who is believed to have committed the violation;

(b) the relevant facts and provisions with respect to each violation;

(c) the determination and the reasons for the determination;

(d) the amount of the administrative monetary penalty for each violation;

(e) the total amount of the administrative monetary penalties;

(f) the effect on the amount of the administrative monetary penalty of any previous notice of violation issued to the person;

(g) the right of the person to request, within 30 days after the date of receipt of the notice of violation, a review of the facts that constitute the violation or of the amount of the administrative monetary penalty, or of both;

(h) the fact that the person must pay the administrative monetary penalty within 30 days after the date of receipt of the notice of violation unless they request a review or enter into an agreement with the Minister with respect to payment within those 30 days;

(i) the method of payment for the administrative monetary penalty; and

(j) the fact that, if the person is found liable for a violation, the information referred to in subsection 315.6(1) will be made public.

Deemed receipt

(3) Despite subsection 9.3(2), a notice of violation is deemed to have been received 30 days after the day on which it is sent.

No administrative monetary penalty

315.53 No administrative monetary penalty may be imposed on a person with respect to any acts or omissions that occurred before the date of issuance of their most recent notice of violation.

Administrative Monetary Penalty Amount

Calculation of penalty amount

315.54 (1) The amount of the administrative monetary penalty for a violation in respect of any of section 315.47 and paragraphs 315.48(a), (b) and (c) is determined by the formula

$$(A + B + C) \times D$$

where

A is the applicable baseline penalty amount set out in subsection (2);

B is the amount, if any, related to the impact of the violation as set out in subsection (3);

C is the financial advantage amount, if any, determined under subsection (4); and

D is the multiplier for prior violations as determined under subsection (5).

Baseline penalty amount

(2) The baseline penalty amount is the following:

(a) for a violation in respect of section 315.47, $5,000;

(b) for a violation in respect of paragraph 315.48(a), $15,000;

(c) for a violation in respect of paragraph 315.48(b), $15,000; and

(d) for a violation in respect of paragraph 315.48(c), $15,000.

Impact of violation

(3) If an error in the administration of the Act results from a violation in respect of paragraph 315.48(a) or (b), the amount related to the impact of the violation is $15,000.

Financial advantage

(4) If the person who is believed to have committed the violation derives a financial advantage from the violation, the financial advantage amount is equal to the total of any amounts that they received in connection with the violation.

Prior violations

(5) The multiplier for any prior violations is

(a) 0.5, if the person has not previously been found liable for a violation referred to in section 315.46;

(b) 1, if the person has, on one previous occasion, been found liable for a violation referred to in section 315.46; and

(c) 1.5, if the person has, on two or more previous occasions, been found liable for a violation referred to in section 315.46.

Calculation of administrative monetary penalty — inspection

315.55 (1) The amount of the administrative monetary penalty for a violation in respect of subsection 315.49(3) is $10,000 multiplied by the multiplier for prior violations as determined under subsection 315.54(5).

Clarification

(2) A failure to comply with subsection 315.49(3) on more than one occasion in the course of an inspection conducted under subsection 315.49(1) gives rise to one administrative monetary penalty only.

Maximum amount

315.56 If a notice of preliminary finding or a notice of violation lists more than one violation, the administrative monetary penalty amounts are cumulative, but the total must not exceed $1.5 million.

Payment

Payment

315.57 Subject to section 315.58, an administrative monetary penalty that is assessed under this Part must be paid within 30 days after the date of receipt of the notice, unless the person enters into an agreement with the Minister with respect to payment within those 30 days.

Review

Request for review

315.58 A person to whom a notice of violation is issued may, instead of paying the administrative monetary penalty indicated in the notice, make a written request, within 30 days after the date of receipt of the notice, for a review of the facts that constitute the violation or of the amount of the penalty, or of both.

Review

315.59 (1) A reviewer must determine, on a balance of probabilities, whether the person who requests the review is liable for the violation and, if so, whether the amount of the administrative monetary penalty has been determined in accordance with this Part.

No new evidence

(2) The reviewer must make their decision based on the information that was available to the officer who issued the notice of violation, and no new evidence is admissible.

Determined not liable — impact

(3) If the reviewer determines that the person is not liable for the violation, the reviewer must cancel the administrative monetary penalty.

Determined liable — impact

(4) If the reviewer determines that the person is liable for the violation, the reviewer must verify that the amount of the administrative monetary penalty was determined in accordance with this Part and

(a) if they consider that the amount was so determined, confirm the amount of the penalty; or

(b) if they consider that the amount was not so determined, substitute an amount that they consider to be in accordance.

Decision on completion of review

(5) On completion of the review, the reviewer must confirm, amend or cancel the notice of violation by issuing to the person a notice of decision.

Notice of decision — contents

(6) The notice of decision must list all violations for which a determination under this section has been made and must indicate

(a) the name of the person who requested the review;

(b) the relevant facts and provisions with respect to each violation;

(c) the decision and the reasons for the decision;

(d) the amount of the administrative monetary penalty for each violation, if applicable;

(e) the total amount of the administrative monetary penalties, if applicable;

(f) the right of the person to apply for leave to commence an application for judicial review of the decision;

(g) the fact that the person must pay the administrative monetary penalty, if applicable, within 30 days after the date of receipt of the notice of decision, unless they enter into an agreement with the Minister with respect to payment within those 30 days;

(h) the method of payment for the administrative monetary penalty, if applicable; and

(i) the fact that, if the person is found liable for a violation, the information referred to in subsection 315.6(1) will be made public.

Deemed receipt

(7) Despite subsection 9.3(2), the notice of decision is deemed to have been received 30 days after the day on which it is sent.

Obligation to pay

(8) The person must pay the administrative monetary penalty that is set out in the notice of decision within 30 days after the date of receipt of the notice unless they enter into an agreement with the Minister respecting the penalty within those 30 days.

Consequences

Publication

315.6 (1) Subject to subsection (2), the Minister must publish the following information on the Department's website with respect to each person who has been found liable for a violation referred to in section 315.46:

(a) their name;

(b) the name and address of their business or place of employment, if any;

(c) the date on which the notice of violation or the notice of decision, if any, was issued to the person;

(d) the relevant facts and provisions with respect to the violation;

(e) the amount of the administrative monetary penalty; and

(f) an indication as to whether or not the person has paid the administrative monetary penalty.

Time period

(2) The Minister must not publish the information before the end of the period set out in section 315.58.

Coming into Force

2 These Regulations come into force on the day on which they are registered.

Footnotes

a S.C. 2019, c. 29, s. 297

b 2023, c. 26, s. 299

c S.C. 2001, c. 27

1 Statistics Canada. Table 33-10-0568-01 Canadian Business Counts, with employees, June 2022. NAICS 54119.

2 SOR/2002-227

This is Exhibit **"E"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

USE OF A REPRESENTATIVE

You do not need to hire a representative, it is your choice. No one can guarantee the approval of your application. All the forms and information that you need to apply are available for free on the Immigration, Refugees and Citizenship Canada (IRCC) Website.

By filling out this form, you are appointing a representative to conduct business on your behalf throughout the application process. Your representative will be able to complete or update your application and act on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA). You may only have **one** representative at a time per application. If you appoint a new representative, the previous representative will no longer be authorized to conduct business on your behalf and receive information on your application.

Note: You must use this form to appoint a paid or unpaid representative to conduct business with IRCC or the CBSA on your behalf. You must also use this form: 1. to notify IRCC if your representative's contact information changes, 2. if you wish to cancel the appointment of your current representative and represent yourself, 3. if you wish to cancel the appointment of your current representative and appoint a new representative or, 4. to withdraw yourself as the representative on the application

I am:

- ◯ appointing a representative. **Complete Sections A, B and E.**
- ◯ updating contact information of an appointed representative. **Complete Sections A, B and E.**
- ◯ cancelling the appointment of a representative. **Complete Section A, C and E.**
- ◯ cancelling the appointment of a representative and appointing a new representative. **Complete Section A, B, C and E.**
- ◯ withdrawing role as a representative. **Complete Section A, D and E.**

SECTION A: APPLICANT INFORMATION

1. Your full name

Family name (Surname) (as shown on your passport or travel document)

Given name(s) (as shown on your passport or travel document)

2. Your date of birth (YYYY-MM-DD)

3. Your email address

If you do not have an email address, provide either your telephone number or your address

4. Application Information

Type of application (permanent residence, extension of study permit, etc.)

Application number *(if known)*

5. Unique Client Identifier (UCI) number *(if known)*

SECTION B: APPOINTMENT OF REPRESENTATIVE

- I authorize the following individual to serve as my representative, as the primary point of contact on my application, and to conduct business on my behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency. **Note**: Even if a representative is being paid or compensated by someone other than you (the applicant), the representative is still considered to be a paid representative.
- I authorize Immigration, Refugees and Citizenship Canada and Canada Border Services Agency to release information from my application and that of my dependent children under 18 years of age to my representative. This authorization is in accordance with the *Privacy Act*.
- I am aware that any information which would be subject to exemption, if I had the right of access under the *Privacy Act* or the *Access to Information Act*, will likely not be released.

6. Your representative's full name

Family name (Surname)

Given name(s)

7. Your representative (Select one option):

(i) is UNPAID and is a

- ◯ Friend or family member
- ◯ Member in good standing of the College of Immigration and Citizenship Consultants (CICC)

  Membership ID number
- ◯ Member in good standing of a Canadian Provincial or Territorial law society or student-at-law

  Which Province/Territory? Membership ID number (if applicable)
- ◯ Member in good standing of the Chambre des notaires du Québec

  Membership ID number
- ◯ Other (please specify)

OR

(ii) is, or will be, PAID and is a member in good standing of

- ◯ The College of Immigration and Citizenship Consultants (CICC)

  Membership ID number
- ◯ A Canadian Provincial or Territorial law society or student-at-law

  Which Province/Territory? Membership ID number (if applicable)
- ◯ The Chambre des notaires du Québec

  Membership ID number

8. Your representative's contact information

Name of firm or organization (if applicable)

If student-at-law, write the name of the supervising lawyer Supervising lawyer membership ID

Mailing address

Apt/Unit Street no. Street name

City/Town Province/State/Territory Country or territory Postal code/ZIP

Telephone number

Country Code Area Code and Telephone number

Fax number (if applicable)

Country Code Area Code and Telephone number

E-mail address (if applicable)

By indicating your representative's e-mail address, you are hereby authorizing Immigration, Refugees and Citizenship Canada to send your personal information to this specific email address.

9. Your representative's declaration:

- I declare that the information in Section B is truthful, complete and correct.
- I understand and accept that I am the person appointed by the applicant to conduct business on the applicant or sponsor's behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

Signature of representative | Date (YYYY-MM-DD)

(if applicable) Signature of supervising lawyer | Date (YYYY-MM-DD)

SECTION C: CANCEL THE APPOINTMENT OF A REPRESENTATIVE

I, the applicant, withdraw my authorization for this person to serve as my representative, to receive information on my application and to conduct business on my behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

10. Representative's full name

Family name (Surname) | Given name(s)

Name of firm or organization (if applicable)

The applicant's email provided in section A will be used for further communication from Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

SECTION D: WITHDRAWING ROLE AS A REPRESENTATIVE

I, the representative, withdraw myself as the applicant's representative.

11. Representative's full name

Family name (Surname) | Given name(s)

Name of firm or organization (if applicable)

The applicant's email provided in section A will be used for further communication from Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

(if applicable)I have been unsuccessful in obtaining the applicant's agreement and/or signature on this form (Section E), and attest to having taken reasonable steps to do so.

Signature of representative | Date (YYYY-MM-DD)

SECTION E: YOUR DECLARATION

12. Your declaration

- I declare that I have fully and truthfully answered all questions on this form and any attached application (if applicable).
- I also declare that I have read and understood all the statements on this form, having asked and obtained an explanation for every point that was not clear to me.

Signature of applicant or Parent/Legal Guardian for a person under 18 years of age	Date (YYYY-MM-DD)
If a sponsorship application: Signature of spouse or common-law partner	Date (YYYY-MM-DD)

Warning! It is a serious offence to give false or misleading information on this form.

Personal information provided on this form is collected by Immigration, Refugees and Citizenship Canada (IRCC) under the authority of the *Immigration and Refugee Protection Act* (IRPA) and of the Citizenship Act. The personal information of the applicant is used for identification and authorization purposes. The personal information of the immigration representative is used to verify that the representative is authorized to offer representation services according to the provisions of IRPA and of the Citizenship Act.

The personal information of both the applicant and the representative may be disclosed to other federal government institutions, non-governmental and inter-governmental organizations, regulatory bodies, investigative bodies, and provincial/territorial governments for the purposes of validating identity, information, and supporting an investigation.

Personal information of both the applicant and the representative may be used for other purposes including research, statistics, program and policy evaluation, internal audit, compliance, risk management, strategy development and reporting.

Failure to complete the form in full will result in a delay to processing. The *Privacy Act* gives individuals the right of access to, protection, and correction of their personal information. If you are not satisfied with the manner in which IRCC handles your personal information, you may exercise your right to file a complaint to the Office of the Privacy Commissioner of Canada. The collection, use, disclosure and retention of your personal information is further described in IRCC's Personal Information Bank - IRCC PPU 013, 042, 054, 068.

This is Exhibit **"F"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Use of a Representative Form (IMM 5476)

⚠ A new version of this form is available (05-2025). Make sure you are using the most recent version. We will continue to accept the previous versions of the form until August 1st, 2025.

Download the form

Use of a Representative Form [IMM 5476] (PDF, 1.9 MB)

Last updated: May 2025

▼ How to download, save and open this form

1. Use your computer. **The form may not open on tablets or mobile phones**.
2. **Save the form on your computer** in a place you can remember.
   - For most Internet browsers, clicking on the link above will automatically download the form.

- If the form **doesn't** automatically download, right-click on the link and select "Save as."

3. **After you download the form, open** it using Adobe Acrobat Reader.

Open this form in Acrobat Reader

1. Open Acrobat Reader.
   - You need **Acrobat Reader version 10 or higher** to open our forms.
   - Get the latest version of Acrobat Reader.
2. Select "**File**" from the top menu.
3. Click "**Open.**"
4. Find the location where you saved the form, click on the file, and click "**Open.**"

Complete the form

Read the step by step instructions on how to complete the form.

When to use this form

Complete this form **only** if you are:

- appointing a representative;
- updating contact information for your previously appointed representative;
- cancelling a representative's appointment;
- cancelling the appointment of a representative and appointing a new representative; **or**
- withdrawing your role as a representative

If you have dependent children aged 18 years or older, they are required to complete their own copy of this form if a representative is also conducting business on their behalf.

▼ Who is a representative?

A **representative** is someone who provides advice, consultation, or guidance to you at any stage of the application process, or in a proceeding and, if you appoint them as your representative by filling out this form, has your permission to conduct business on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA).

You are not obliged to hire a representative. We treat everyone equally, whether they use the service of a representative or not.

When you appoint a representative:

- you also authorize IRCC and CBSA to share information from your application with this person in place of you. **Please note the representative will receive all correspondence from IRCC or the CBSA, not the applicant;**
- your application will not be given special attention nor can you expect faster processing or a more favourable outcome;
- the representative is authorized to represent you only on citizenship or immigration matters related to the application you submit with this form; and
- you can appoint only **one (1)** representative at a time for each application you submit.

Important information: Notify IRCC about any changes.

You must notify IRCC if your representative's contact information changes, or if you change your representative, or cancel the appointment of your representative. For more information on updating IRCC with your representative's information, please see the section "How to submit this form" below.

▼ Types of representatives

There are two (2) types of representatives.

Unpaid representatives

Unpaid representatives **do not** charge fees or receive any other form of consideration or compensation for providing advice or services to represent you before IRCC or the CBSA.

Unpaid representatives include:

- Friends, family members or other third parties who do not, and will not, charge a fee or receive any other consideration for their advice and services;
- consultants, lawyers and Quebec notaries, and students-at-law under their supervision, who do not, and will not, charge a fee or receive any other consideration to represent you.

Note: You do not have to pay someone for them to be your representative. IRCC will conduct business with an unpaid representative if an applicant appoints them on their behalf.

Paid representatives

Paid representatives charge a fee or receive some other form of consideration or compensation in exchange for the representation that they provide.

It is important to know that anyone who represents or advises you for payment - or offers to do so - in connection with IRCC proceedings or applications is breaking the law **unless** they are an authorized representative or they have a specific agreement or arrangement with the Government of Canada that allows them to represent or advise you. This applies to advice or consultation which happens before or after a citizenship or an immigration application is made or a proceeding begins.

IRCC will only conduct business with paid representatives who are in good standing with their designated regulatory body. Find out if your representative is authorized.

Note: If a representative is being paid or compensated by someone other than you, the representative is still considered to be a paid representative.

Paid representatives are:

- consultants who are members in good standing of the College of Immigration and Citizenship Consultants (CICC);
- lawyers and paralegals who are members in good standing of a Canadian provincial or territorial law society, and students-at-law under their supervision;
- notaries who are members in good standing of the Chambre des notaires du Québec and students-at-law under their supervision.

If you appoint a paid representative who is not a member in good standing of one of these designated bodies, your application will be returned. Learn about using a representative.

Release of information to other individuals

To authorize IRCC to release information from your application to someone other than a representative, you will need to complete the form Authority to Release Personal Information to a Designated Individual (IMM 5475).

The person you designate under that form (IMM 5475) will be able to obtain information on your application, such as the status. However, they will **not** be able to conduct business on your behalf with IRCC.

Hide instructions

Expand all | Collapse all

General application information

Appoint a representative

- Check box to indicate if you are appointing a representative to represent you with your application process. Complete sections A, B and E.

Update contact information of an appointed representative

- Check box to indicate if you are updating the contact information of a previously appointed representative. Complete sections A, B and E.

Cancel a representative

- Check box to indicate if you are cancelling a representative. Complete sections A, C and E.

Cancel a representative and appoint a new representative

- Check box to indicate if you are cancelling a representative and appointing a new representative. Complete sections A, B, C and E.

Withdrawing role as a representative

- Check box to indicate if you are the representative and withdrawing yourself. Complete sections A, D and E; and
- Sign the declaration in section D if you are unable to obtain applicant signature in section E.

Note: if you are both cancelling a representative and appointing a new one please check the appropriate box. Complete sections A, B, C and E.

▾ Section A – Applicant Information

Question 1

Write your last name (surname or family name) and given name(s).

Question 2

Write your date of birth.

Question 3

Write your email address. If you have no email address, provide other contact information, such as a phone number.

Question 4

If you have already submitted your application, write:

- The type of application you have submitted;

- The Application number (if known)

Question 5

Write your IRCC's Identification (ID) or Unique Client Identifier (UCI) number (if known). If you have not dealt with IRCC since 1973, you will not have a UCI or a Client ID.

▼ Section B – Appointment of Representative

Question 6

Write your representative's full name.

If your representative is a member of the College of Immigration and Citizenship Consultants (CICC), a law society in Canada or the Chambre des notaires du Québec, write their name as it appears on the organization's membership list.

Question 7

Check one box to indicate if your representative is unpaid or paid.

If your representative is authorized, write the membership ID number of:

- the College of Immigration and Citizenship Consultants (CICC); or
- a Canadian provincial or territorial law society; or
- the Chambre des notaires du Québec.

Question 8

Write your representative's contact information.

If you are appointing a student-at-law to represent you, include their supervising lawyer's information including their membership ID.

Question 9

To accept responsibility for conducting business on your behalf, your representative must:

- Sign the declaration; and
- Date the declaration.

If you are appointing a student-at-law to represent you, their supervising lawyer must also sign and date the declaration.

▾ Section C – Cancel the Appointment of a Representative

Question 10

Fill in this sections if you wish to cancel the appointment of a representative. Write the representative's full name.

Complete sections A, B, C, and E of the form if you wish to both cancel a representative **and appoint a new one.**

▾ Section D – Withdrawing Role as a Representative

Question 11

The representative will fill in this section if they want to withdraw themselves as your representative.

To withdraw representation without applicant signature, your representative must:

- Sign the declaration; and
- Date the declaration.

▾ Section E – Your Declaration

Question 12

By signing, you authorize IRCC to complete your request for yourself and your dependent children under 18 years of age.

For sponsorship application, your spouse or common-law partner does not have to complete a separate request. If your spouse or common-law partner is included in this request, they must sign in the box provided.

For any other application, the representative is considered to be acting on behalf of the applicant identified in section A and (if applicable), their dependents. Separate authorization forms are required for a spouse or common-law partner even if they are included in the same application.

The form is **signed** by the applicant and representative **submitted through a portal or secure account**
Hand signature (also called a wet signature): Print and sign the form by hand.

E-Signature: Any type of insert on PDF forms:

- Typed name
- Adobe's Fill & Sign or DocuSign (or other 3rd party app/software)
- Scan or an image of a signature
- Check box as indicated

Thumbprint: acceptable if a person is illiterate or cannot make a mark (e.g., an X) for a physical reason.

The form is **signed** by the applicant and representative **submitted outside a portal or secure account**
Hand signature (also called a wet signature): Print and sign the form by hand.

- Note: This can be submitted via a scanned document.

Thumbprint: acceptable if a person is illiterate or cannot make a mark (e.g., an X) for a physical reason.

Release of information to other individuals

To authorize IRCC to release information from your application to someone other than a representative, you will need to complete the form Authority to Release Personal Information to a Designated Individual (IMM 5475).

The person you designate under that form (IMM 5475) will be able to obtain information on your application, such as the status of your application. However, they will **not** be able to conduct business on your behalf with IRCC.

How to submit this form

Online applications

If you have not yet submitted your immigration or citizenship application:

Upload this form along with your online application

If you have already submitted your immigration or citizenship application:

You may use this Web form to submit the IMM 5476 form.

Paper applications

If you have not yet submitted your immigration or citizenship application:

Send this form along with your application to the office listed in the guide of your application.

If you have already submitted your immigration or citizenship application:

You may use this Web form to submit the IMM 5476 form.

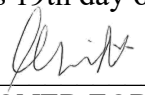
or;

If you know which IRCC office is processing your immigration or citizenship application, send the completed form to the office mailing address. Consult IRCC office mailing addresses.

You must notify IRCC about any changes in the information of the person you authorized to represent you on your application.

Date modified:
2025-05-01

This is Exhibit **"G"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

SCHEDULE A
APPOINTMENT OF A THIRD-PARTY REPRESENTATIVE

Privacy Notice Statement

The personal information you provide is collected by Employment and Social Development Canada (ESDC) under the authority of the *Immigration and Refugee Protection Act* (IRPA) and *Immigration and Refugee Protection Regulations* (IRPR), for the purpose of administering and enforcing the Temporary Foreign Worker (TFW) Program.

The information that you provide may be shared with: Immigration, Refugees and Citizenship Canada and the Canada Border Services Agency for the administration and enforcement of the TFW Program and IRPA/IRPR; the Canada Revenue Agency for the administration and enforcement of the TFW Program; and, provincial/territorial governments for the administration and enforcement of provincial/territorial legislation and programs. The information may also be used by ESDC for research and evaluation purposes and to support the administration or enforcement of other programs in ESDC, including Service Canada and the Labour Program.

This information may also be shared with any Party identified by the employer on the Labour Market Impact Assessment (LMIA) application form or in the employment agreement.

Your personal information is administered in accordance with the IRPA, IRPR, the *Privacy Act*, the *Department of Employment and Social Development Act* (DESDA) and other applicable laws. You have the right to the protection of, access to, and correction of your personal information, which is described in Personal Information Banks: TFWP ESDC PPU 440 and TFW Program Inspections ESDC PPU 715. Instructions for obtaining this information are outlined on the Treasury Board of Canada Secretariat website.

This website may also be accessed on-line at any Service Canada Centre. You have the right to file a complaint with the Privacy Commissioner of Canada regarding the institution's handling of your personal information on the Office of the Privacy Commissioner of Canada website.

A person, who contravenes a provision set out under sections 126 or 127 of the *Immigration and Refugee Protection Act* (misrepresentation), could be liable to a fine or to imprisonment, or to both. Also, providing inaccurate information, in the context of this application, may lead to an administrative penalty such as being ineligible to access the Program for a specified period.

THIRD-PARTY BUSINESS INFORMATION			
1. Business Legal Name (as registered with Canada Revenue Agency (CRA)):		2. Canada Revenue Agency Payroll deductions program account number (15 digits): _____ RP _____	
3. Business Operating Name (if different from Legal Name):		4. Third Party Identification number (if applicable):	
5. Business Address:			
6. City:	7. Province/State:	8. Country:	9. Postal/Zip Code:

THIRD-PARTY CONTACT INFORMATION *(Authorized representative acting on behalf of the employer)*			
1. First name:	Middle name:	Last Name:	
2. Job title:			
3. Telephone Number (999) 999-9999:	Ext:	4. Other Telephone number (999) 999-9999:	Ext:
5. Fax Number (999) 999-9999):	6. E-mail Address:		
7. Email Preference: Do not contact via email ☐	8. Preferred Official Language of Correspondence: ◯ English ◯ French		

9. Indicate which one of the following applies to the third-party representative

The representative is **UNPAID** and is:

- ◯ a family member or a friend
- ◯ a member of a non-governmental or a religious organization
- ◯ a member in good standing of the College of Immigration and Citizenship Consultants (CICC), a provincial or territorial law society or the Chambre des notaires du Québec
- ◯ other (please describe):

10. The representative is, has been, or will be **PAID** and is a member in good standing of:

- ☐ the College of Immigration and Citizenship Consultants (CICC)

  MEMBERSHIP ID: _____

- ☐ a provincial/territorial law society

  PROVINCE/TERRITORY: _____ **MEMBERSHIP ID:** _____

- ☐ The Chambre des notaires du Québec

  MEMBERSHIP ID: _____

- ☐ other (please describe):

DECLARATION OF THE THIRD-PARTY REPRESENTATIVE

I, hereby, declare that the above information is true, accurate and complete.

Signature of the Third-party Representative	**Printed name of the Third-party Representative**	**Date (YYYY-MM-DD)**

DECLARATION OF EMPLOYER

1. Canada Revenue Agency Payroll deductions program account number (15 digits):	2. Business Legal Name (as registered with CRA):
_____ RP _____	

FOR THE PURPOSE OF THIS LABOUR MARKET IMPACT ASSESSMENT APPLICATION:

I _____, located at
(Name of employer)

_____
(Complete employer business address)

Telephone Number (999) 999-9999: _____ Fax number (999) 999-9999: _____

and I _____, located at
(Name of employer number 2, if applicable)

_____
(complete employer address of employer number 2, if applicable)

Telephone Number (999) 999-9999: _____ Fax number (999) 999-9999: _____

I hereby appoint the third-party indicated on this form as my representative to act on my behalf with ESDC/Service Canada related to Labour Market Impact Assessment application number: _____ (LMIA number)

I, hereby, agree to ratify and confirm all that my third-party representative shall do or cause to be done by virtue of this appointment.

This appointment shall remain in full force and effect only for the processing of this application, unless due notice in writing of its revocation has been given to ESDC/Service Canada.

Note: The employer is responsible for all decisions made on their behalf by the third-party, for the purpose of this LMIA application.

Signature of employer	**Printed name of employer**	**Date (YYYY-MM-DD)**
Signature of employer number 2 (if applicable)	**Printed name of employer number 2**	**Date (YYYY-MM-DD)**
Signature of witness	**Printed name of witness**	**Date (YYYY-MM-DD)**

This is Exhibit **"H"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

SCHEDULE A
BACKGROUND / DECLARATION

FOR CIC USE ONLY
Client ID/UCI/FOSS ID

Before you start completing this form, make enough photocopies for your needs. You can also print all or part of this form from our Web site at www.cic.gc.ca.

If there is not enough space to provide all the necessary information, attach to this form a separate sheet of paper with further details. Print your name at the top of each additional sheet and indicate the form's title and the number of the question you are answering.

BEFORE YOU START, READ THE INSTRUCTION GUIDE
TYPE or PRINT in black ink

Indicate whether you are

☐ The principal applicant ☐ The spouse, common-law partner or dependent child aged 18 years or older of the principal applicant

1. Your full name

Family name _____ Given name(s) _____

2. Your full name written in your native language or script
(e.g. Arabic, Cyrillic, Chinese, Korean, Japanese characters or Chinese commercial/telegraphic code)

_____

3. Your date of birth (YYYY-MM-DD)

_____

4. Personal details of your father

Family name _____ Given name(s) _____

Date of birth (YYYY-MM-DD) _____ Town/City of birth _____ Country or territory of birth _____ Date of death, if deceased (YYYY-MM-DD) _____

5. Personal details of your mother

Family name at birth _____ Given name(s) _____

Date of birth (YYYY-MM-DD) _____ Town/City of birth _____ Country or territory of birth _____ Date of death, if deceased (YYYY-MM-DD) _____

6. Have you, or, if you are the principal applicant, any of your family members listed in your application for permanent residence in Canada, ever:

	YES	NO
a) been convicted of a crime or offence in Canada for which a pardon has not been granted under the *Criminal Records Act of Canada*?	☐	☐
b) been convicted of, or are you currently charged with, on trial for, or party to a crime or offence, or subject of any criminal proceedings in any other country or territory?	☐	☐
c) made previous claims for refugee protection in Canada or at a Canadian visa office abroad, in any other country(ies) or territory(ies), or with the United Nations High Commissioner for Refugees (UNHCR)?	☐	☐
d) been refused refugee status, an immigrant or permanent resident visa (including a *Certificat de sélection du Québec* (CSQ) or application to the Provincial Nominee Program) or visitor or temporary resident visa, to Canada or any other country or territory?	☐	☐
e) been refused admission to, or ordered to leave, Canada or any other country or territory?	☐	☐
f) been involved in an act of genocide, a war crime or in the commission of a crime against humanity?	☐	☐
g) used, planned or advocated the use of armed struggle or violence to reach political, religious or social objectives?	☐	☐
h) been associated with a group that used, uses, advocated or advocates the use of armed struggle or violence to reach political, religious or social objectives?	☐	☐
i) been member of an organization that is or was engaged in an activity that is part of a pattern of criminal activity?	☐	☐
j) been detained, incarcerated or put in jail?	☐	☐
k) had any serious disease or physical or mental disorder?	☐	☐

If your answer to any of these questions is YES, provide details below.

This form is made available by Citizenship and Immigration Canada and is not to be sold to applicants.

7. Education

Give the number of years of school you successfully completed for each of the following levels of education.

Elementary/ primary school	Secondary/ high school	University/ college	Trade school or other post secondary school

Give full details of all the secondary and post secondary education (including university, college and apprenticeship training) you have had.

From (YYYY-MM)	To (YYYY-MM)	Name of institution	City and country or territory	Type of certificate or diploma issued	Field of study

8. Personal history

Provide the details of your personal history since the age of 18, or the past 10 years, whichever is most recent.
Start with the most recent information. Under "Activity", write your occupation or job title if you were working. If you were not working, provide information on what you were doing (for example: unemployed, studying, travelling, retired, in detention, etc.). If you were outside your country or territory of nationality, indicate your status in that country or territory.

Note: Please ensure that you do not leave any gaps in time.

Failure to account for all time periods will result in a delay in the processing of your application.

From (YYYY-MM)	To (YYYY-MM)	Activity	City or town and country or territory	Status in country or territory	Name of company, employer, school, facility, as applicable

9. Membership of association with organizations

What organizations have you supported, been a member of or been associated with? Include any political, social, youth or student organization, trade unions and professional associations. Do not use abbreviations. Indicate the city and country or territory where you were a member.
Write "NONE" in the box if you have not been a member of any association/organization.

From (YYYY-MM)	To (YYYY-MM)	Name of organization	Type of organization	Activities and/or positions held within organization	City and country or territory

10. Government positions

List any government positions (such as civil servant, judge, police officer, employee in a security organization) you have held. Include positions you have held before or after your retirement. Do not use abbreviations. Write "NONE" in the box if you have not held any government positions.

From (YYYY-MM)	To (YYYY-MM)	Country or territory and level of jurisdiction(e.g. national, regional, municipal)	Department/Branch	Activities and/or positions held

11. Military and/or paramilitary service

Provide below complete details of military and/or paramilitary service for each of the countries in whose armed forces you served.
Write "NONE" in the box if you have not undertaken military and/or paramilitary service. Do not leave any gaps in time.

Name of country or territory

From (YYYY-MM)	To (YYYY-MM)	Branch of service, unit numbers and names of your commanding officers	Rank(s)	Dates and places of any active combat	Reason for end of service

Name of country or territory

From (YYYY-MM)	To (YYYY-MM)	Branch of service, unit numbers and names of your commanding officers	Rank(s)	Dates and places of any active combat	Reason for end of service

12. Addresses

List all addresses where you have lived since your 18th birthday or the past 10 years, whichever is most recent. Do not use P.O. box addresses.

From (YYYY-MM)	To (YYYY-MM)	Street and number	City or town	Province, State or District	Postal code/ Zip code	Country or territory

Authority to disclose personal information

By submitting this form, you consent to the release to Canadian government authorities of all records and information any government authority, including police, judicial and state authorities in all countries in which you have lived may possess on your behalf concerning any investigations, arrests, charges, trials, convictions and sentences.This information will be used to assist in evaluating your suitability for admission to Canada or remaining in Canada pursuant to Canadian legislation.

Declaration of applicant

I declare that the information I have given is truthful, complete and correct.

_____

Signature Date (YYYY-MM-DD)

DO NOT COMPLETE THE FOLLOWING SECTION NOW. YOU MAY BE ASKED TO SIGN IN THE PRESENCE OF A REPRESENTATIVE OF THE CANADIAN GOVERNMENT OR AN OFFICIAL APPOINTED BY THE CANADIAN GOVERNMENT.

Interpreter declaration

I, _____ , do solemnly declare that I have faithfully and accurately interpreted in the

_____language the content of this application and any related forms to the person concerned.

I have been informed by the person concerned, and I do verily believe, that they completely understands the nature and effect of these forms, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as is made under oath.

_____

Signature of interpreter

Solemn declaration

I, _____ , do solemnly declare that the information I have given in the foregoing application is truthful, complete and correct, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

_____

Signature of applicant

Declared before me at _____ this _____ day of _____ of the year _____

_____ _____

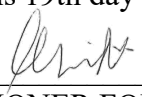
Canadian government official Name (Please print or type) Signature

Personal information provided on this form is collected by Immigration, Refugees, and Citizenship Canada (IRCC) under the authority of the Immigration and Refugee Protection Act (IRPA). The personal information will be used for the purpose of processing an application. The personal information provided may be disclosed to other federal government institutions for the purpose of validating information and eligibility. The personal information may also be disclosed to law enforcement bodies for the purpose of validating identity, eligibility and admissibility. The personal information may also be disclosed to provincial/territorial governments and foreign governments for the purpose of validating eligibility and admissibility.

Personal information may also be used for other purposes including research, statistics, program and policy evaluation, internal audit, compliance, program integrity, risk management, subsequent program eligibility, strategy development and reporting.

Failure to complete the form in full may result in a delay or the application not being processed. The Privacy Act gives individuals the right of access to, protection, and correction of their personal information. If you are not satisfied with the manner in which IRCC handles your personal information, you may exercise your right to file a complaint to the Office of Privacy Commissioner of Canada. The collection, use, disclosure and retention of your personal information is further described in IRCC's Personal Information Bank - IRCC PPU 009, 013, 039, 042

This is Exhibit **"I"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

GENERIC APPLICATION FORM FOR CANADA

APPLICATION DETAILS

1 *Program under which you are applying	2 * Category under which you are applying	Office use only validated

3 * How many family members, including you, are in this application (see instructions guide)? ▶	

4 Language preference for:			5 Where do you intend to live in Canada?	
*a) Correspondence	*b) Interview	*c) Interpreter requested	a) Province/Territory	b) City/Town

6 a) Have you received your Certificat de Sélection du Québec (CSQ)? ☐ No ☐ Yes	b) if yes, please indicate the number	c) If no, when did you apply for your CSQ? ▶ YYYY-MM-DD

PERSONAL DETAILS

1 Full Name	
* Family name(s) (exactly as shown on your passport or travel document)	Given name(s) (exactly as shown on your passport or travel document)

2 a) **Have you ever used any other name (e.g. Nickname, maiden name, alias, etc.)?** ☐ * No ☐ * Yes

b) **If you answered "yes" to question 2a)**, please provide the name (e.g. Nickname, maiden name, alias, etc.)

Family name(s)	Given name(s)

3 UCI	4 *Sex	5 Height ▶	*cm	OR	ft.	in.	6 *Eye colour

7 Date of Birth	8 Place of Birth	
* YYYY * MM * DD	* City/Town	*Country

9 Citizenship(s)	
*1) ▶	2) ▶

10 **Current country of residence:**

Country	Status	Other	From	To
*	*		YYYY-MM-DD	YYYY-MM-DD

11 Date and place of your last entry to Canada ▶	Date YYYY-MM-DD	Place

12 a) **Previous countries of residence:** During the past five years have you lived in any country other than your country of citizenship or your current country of residence (indicated above) for more than six months? ☐ * No ☐ * Yes

b) **If you answered "yes" to question 12 a),** please provide details

Country	Status	Other	From	To
			YYYY-MM-DD	YYYY-MM-DD
			YYYY-MM-DD	YYYY-MM-DD

Applicant Name | Date of Birth

13 * a) Your current marital status

b) (If you are married or in a common-law relationship) Provide the date on which you were married or entered into the common-law relationship ▶ Date YYYY-MM-DD

c) Provide the name of your current spouse/common-law partner

Family name(s) | Given name(s)

14 a) **Have you previously been married or in a common-law relationship?** ☐ * No ☐ * Yes

b) Provide the following details for your previous spouse/common-law partner:

Family name(s) | Given name(s)

c) Type of relationship | d) From YYYY-MM-DD | To YYYY-MM-DD | e) Date of Birth YYYY MM DD

CONTACT INFORMATION

1 **Current mailing address**

- All correspondence will go to this address unless you indicate your e-mail address below.
- Indicating an e-mail address will authorize all correspondence, including file and personal information, to be sent to the e-mail address you specify.
- If you wish to authorize the release of information from your application to a representative, indicate their e-mail and mailing address(es) in this section and on the IMM5476 form.

P.O. box | Apt./Unit | Street no. | *Street name

City/Town | *Country | Province/State | Postal code | District

2 **Residential address** Same as mailing address? ☐ * No ☐ * Yes

Apt./Unit | Street no. | Street name | City/Town

Country | Province/State | Postal code | District

3 **Telephone no.** ☐ Canada/US ☐ Other

Type | Country Code | No. | Ext.

4 **Alternate Telephone no.** ☐ Canada/US ☐ Other

Type | Country Code | No. | Ext.

5 **Fax no.**

☐ Canada/US ☐ Other

Country Code | No. | Ext.

6 **E-mail address**

PASSPORT

1 Do you have a valid passport/travel document? ☐ * No ☐ * Yes

2 Passport/Travel document number (exactly as shown on your passport or travel document) | **3** Country of issue | **4** Issue date YYYY-MM-DD | **5** Expiry date YYYY-MM-DD

5 * For this trip, will you use a passport issued by the Ministry of Foreign Affairs in Taiwan that includes your personal identification number? ☐ *No ☐ *Yes

6 * For this trip, will you use a National Israeli passport? ☐ *No ☐ *Yes

NATIONAL IDENTITY DOCUMENT

1 Do you have a national identity document? ☐ * No ☐ * Yes

2 Document number | **3** Country of issue | **4** Issue date YYYY-MM-DD | **5** Expiry date YYYY-MM-DD

Applicant Name | Date of Birth

US PR CARD

1 Are you a lawful permanent resident of the United States? ☐ * No ☐ * Yes

2 U.S. Citizenship and Immigration Services (USCIS) number

3 Expiry date YYYY-MM-DD

EDUCATION/OCCUPATION DETAIL

1 * Highest level of education

2 * Number of years of education in total

3 * Current occupation

4 * Intended occupation

LANGUAGE DETAIL

1 *a) Native language/Mother Tongue

*b) Are you able to communicate in English and/or French?

c) In which language are you most at ease?

d) Have you taken a test from a designated testing agency to assess your proficiency in English or French? ☐ * No ☐ * Yes

DEPENDANT(S)

You must provide the following details about each of your family members, whether they will be accompanying you to Canada or not. **You must include your spouse or common-law partner, if applicable, and all of your dependent children, and those of your spouse or common-law partner, who are not already permanent residents or citizens of Canada.**

PERSONAL DETAILS

1 **Full Name**

* Family name(s) (exactly as shown on your passport or travel document)

Given name(s) (exactly as shown on your passport or travel document)

2 a) **Have you ever used any other name (e.g. Nickname, maiden name, alias, etc.) ?** ☐ * No ☐ * Yes

b) **If you answered "yes" to question 2a)**, please provide the name (e.g. Nickname, maiden name, alias, etc.)

Family name(s)

Given name(s)

3 **UCI**

4 ***Sex**

5 **Height** ▶ cm **OR** ft. in.

6 **Eye colour**

7 **Date of Birth** * YYYY * MM * DD

8 **Place of birth**

* City/Town

*Country

9 **Citizenship(s)**

*1) ▶

2) ▶

10 *a) Relationship to principal applicant

b) Other

11 a) Will accompany principal applicant to Canada? ☐ * No ☐ * Yes

b) Reason why dependant is non-accompanying

12 **Dependant Type**

13 **Current country of residence:**

Country	Status	Other	From	To
			YYYY-MM-DD	YYYY-MM-DD

Applicant Name | Date of Birth

14	Date	Place
Date and place of your last entry to Canada ▶	YYYY-MM-DD	

15 a) **Previous countries of residence:** During the past five years have you lived in any country other than your country of citizenship or your current country of residence (indicated above) for more than six months? ☐ * No ☐ * Yes

b) **If you answered "yes" to question 15 a),** please provide details

Country	Status	Other	From	To
			YYYY-MM-DD	YYYY-MM-DD
			YYYY-MM-DD	YYYY-MM-DD

16 *a) Your current marital status	b) (If you are married or in a common-law relationship) Provide the date on which you were married or entered into the common-law relationship ▶ Date YYYY-MM-DD

c) Provide the name of your current spouse/common-law partner

Family name(s)	Given name(s)

17 a) **Have you previously been married or in a common-law relationship?** ☐ * No ☐ * Yes

b) Provide the following details for your previous spouse/common-law partner:

Family name(s)	Given name(s)

c) Type of relationship	d) From YYYY-MM-DD	To YYYY-MM-DD	

PASSPORT

1 Do you have a valid passport/travel document? ☐ * No ☐ * Yes

2 Passport/Travel document number (exactly as shown on your passport or travel document)	3 Country of issue	4 Issue date YYYY-MM-DD	5 Expiry date YYYY-MM-DD

5 * For this trip, will you use a passport issued by the Ministry of Foreign Affairs in Taiwan that includes your personal identification number? ☐ *No ☐ *Yes

6 * For this trip, will you use a National Israeli passport? ☐ *No ☐ *Yes

NATIONAL IDENTITY DOCUMENT

1 Do you have a national identity document? ☐ * No ☐ * Yes

2 Document number	3 Country of issue	4 Issue date YYYY-MM-DD	5 Expiry date YYYY-MM-DD

EDUCATION/OCCUPATION DETAIL

1 * Highest level of education	2 * Number of years of education in total

3 * Current occupation	4 * Intended occupation

LANGUAGE DETAIL

1 *a) Native language/Mother Tongue	*b) Are you able to communicate in English and/or French?	c) In which language are you most at ease?

d) Have you taken a test from a designated testing agency to assess your proficiency in English or French? ☐ * No ☐ * Yes

Applicant Name

Date of Birth

Applicant Name

Date of Birth

CONSENT AND DECLARATION OF APPLICANT

Citizenship and Immigration Canada (CIC), or an organization at CIC' request, may want to contact you in the future to ask you about any services you received from CIC prior to the application process (such as participation in an information forum), during the application process (including the application process itself as well as orientation or accreditation services), and services received after arriving in Canada (including settlement, integration and citizenship). CIC will use this information, along with the information provided by other individuals, for research, performance measurement or evaluation purposes. CIC will not use this information to make any decisions about you personally.

Do you consent to be contacted by CIC, or an organization at CIC's request, in the future? ☐ No ☐ Yes

Consent to release information to intended province/territory of destination

I, (first name, last name) _____ on behalf of myself and all dependants included in this application, authorize Citizenship and Immigration Canada to share the information collected in this application as well as supporting documentation with Provincial and Territorial authorities with responsibility for immigration for the purposes of the *Immigration and Refugee Protection Act*.

I agree that the information contained in this application related to my intended occupation, education and work experience may be shared with prospective employers in order to assist them in hiring workers. ☐ No ☐ Yes

Consent to release information for Evaluation purposes

This declaration covers the information I have provided on this form and all the information submitted in my application as well as in the attached schedules and accompanying documents.
I understand that any false statements or concealment of a material fact may result in my inadmissibility to Canada and may be grounds for my prosecution or removal.
I also understand that should I be found to be inadmissible for misrepresentation under section 40 of the *Immigration and Refugee Protection Act*, I may be ineligible to apply to certain IRCC programs for a period of five years following a final determination of my inadmissibility or, if this determination is made in Canada, following my removal from Canada.
I understand that if I wish to work in a regulated occupation, it is my responsibility to obtain information on the licensing requirements from the appropriate regulatory body in Canada and that should I be issued a visa for Canada, I am not guaranteed employment in Canada in my occupation or in any other occupation.
I understand that should I be issued a visa for Canada, conditions may be imposed on me at the time of its issuance and that I will be required to meet them.
I understand all the foregoing statements, having asked for and obtained an explanation on every point that was not clear to me.
I realize that once this document has been completed and signed, it will form part of my Immigration Record and will be used to verify my family details on future applications.
I will immediately inform the visa office where I submitted my application if any of the information or the answers provided in my application forms change.

Declaration of applicant

I declare that the information I have given is truthful, complete and correct.

Signature of Applicant or Parent/Legal Guardian's for a person under 18 years of age.

Date: YYYY-MM-DD

IMPORTANT NOTE:
This application must be signed and dated before it is submitted.
Do not forget to include: photos, fees (if applicable), and any other documents required by the visa office. Review application guide and kit for more information and verify you have completed all of the required documents as per the document checklist.

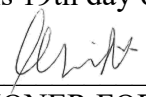
DISCLOSURE

Information provided to CIC is collected under the authority of the Immigration and Refugee Protection Act (IRPA) to determine admissibility to Canada. Information provided may be shared with other Canadian government institutions such as, but not limited to, the Canada Border Services Agency (CBSA), The Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS), The Department of Foreign Affairs, Trade and Development (DFATD), Employment and Social Development Canada (ESDC), Canada Revenue Agency (CRA), provincial and territorial governments and foreign governments in accordance with subsection 8(2) of the Privacy Act. Information may be disclosed to foreign governments, law enforcement bodies and detaining authorities with respect to the administration and enforcement of immigration legislation where such sharing of information may not put the individual and or his/her family at risk. Information may also be systematically validated by other Canadian government institutions for the purposes of validating status and identity to administer their programs.

Where biometrics are provided as part of an application, the fingerprints collected will be stored and shared with the RCMP. The fingerprint record may also be disclosed to law enforcement agencies in Canada in accordance with subsection 13.11(1) of the Immigration and Refugee Protection Regulations. The information may be used to establish or verify the identity of a person in order to prevent, investigate or prosecute an offence under any law of Canada or a province. This information may also be used to establish or verify the identity of an individual whose identity cannot reasonably be otherwise established or verified because of physical or mental condition. Canada may also share immigration information related to biometric records with foreign governments with whom Canada has an agreement or arrangement.

Depending on the type of application made, the information you provided will be stored in one or more Personal Information Banks (PIB) pursuant to section 10(1) of Canada's Privacy Act. Individuals also have a right to protection and access to their personal information stored in each corresponding PIB under the Access to Information Act. Further details on the PIBs pertaining to CIC's line of business and services and the Government of Canada's access to information and privacy programs are available at the Infosource website (http://infosource.gc.ca) and through the CIC Call Centre. Infosource is also available at public libraries across Canada.

This is Exhibit **"J"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

ADDITIONAL FAMILY INFORMATION

The principal applicant, their spouse, common-law or conjugal partner (if applicable), and all **dependent children** 18 years of age or older must complete their own copy of this form.

Complete **ALL** names in English and in your **native language** (for example, Arabic, Cyrillic, Chinese, Chinese commercial/telegraphic code, Korean, or Japanese characters). If you require more space for any section, please either add lines to the form by pressing the + button to the right or attach a separate sheet with the additional information.

If a section does not apply, write "Not applicable".

BEFORE YOU START, READ THE INSTRUCTION GUIDE. TYPE or PRINT in black ink.

SECTION A

APPLICANT

Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)

Country or territory of birth (as shown on passport/travel document)	Present address	Marital status	E-mail address

SPOUSE, COMMON-LAW PARTNER OR CONJUGAL PARTNER

Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)

Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

PARENT 1 (MOTHER OR FATHER)

Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)

Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

PARENT 2 (MOTHER OR FATHER)

Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)

Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

SECTION B - CHILDREN

Include **ALL** sons and daughters, including **ALL** adopted and step-children, regardless of age or place of residence.

I do not have any children ☐

Relationship	Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

Relationship	Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

Relationship	Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

SECTION C - BROTHERS AND SISTERS (Including half- and step-brothers and sisters)

I do not have brothers or sisters ☐

Relationship	Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

Relationship	Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

Relationship	Family Name (as shown on passport/travel document)	Given Name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	Present address (if deceased: give city/town, country or territory and date)	Marital status	E-mail address

SECTION D - CERTIFICATION

I certify that the information contained on this document is complete, accurate and factual. I also realize that once this document has been completed and signed that it will form part of my Immigration Record and will be used to verify my family details on future applications.

Signature: _____ Date (YYYY-MM-DD) _____

Personal information provided on this form is collected by Immigration, Refugees, and Citizenship Canada (IRCC) under the authority of the *Immigration and Refugee Protection Act* (IRPA). The personal information will be used for the purpose of processing an application. The personal information provided may be disclosed to other federal government institutions for the purpose of validating information and eligibility. The personal information may also be disclosed to law enforcement bodies for the purpose of validating identity, eligibility and admissibility. The personal information may also be disclosed to provincial/territorial governments and foreign governments for the purpose of validating eligibility and admissibility.

Personal information may also be used for other purposes including research, statistics, program and policy evaluation, internal audit, compliance, program integrity, risk management, subsequent program eligibility, strategy development and reporting.

Failure to complete the form in full may result in a delay or the application not being processed. The *Privacy Act* gives individuals the right of access to, protection, and correction of their personal information. If you are not satisfied with the manner in which IRCC handles your personal information, you may exercise your right to file a complaint to the **Office of Privacy Commissioner of Canada**. The collection, use, disclosure and retention of your personal information is further described in IRCC's Personal Information Bank - IRCC PPU 009, 013, 042, 054.

This is Exhibit **"K"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

FAMILY INFORMATION

Complete **ALL** names in English and in your **native language** (for example, Arabic, Cyrillic, Chinese, Chinese commercial/telegraphic code, Korean, or Japanese characters). Include **ALL** family members even if they are not accompanying you. If you apply on paper and additional space is required, print and attach an additional form.

TYPE OR PRINT IN BLACK INK.

Important: Instructions are available at the end of this form to help you complete the sections below.

SECTION A

APPLICANT

Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Name in native language (if applicable)

Date of birth (YYYY-MM-DD)	Country or territory of birth (as shown on passport/travel document)	Marital status	Present occupation

YOUR SPOUSE, COMMON-LAW PARTNER OR CONJUGAL PARTNER

Will accompany you to Canada? ☐ YES ☐ NO

Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Name in native language (if applicable)

Date of birth (YYYY-MM-DD)	Country or territory of birth (as shown on passport/travel document)	Present address (If deceased give city/town, country and date of death)	Marital status	Present occupation

YOUR PARENT 1 (MOTHER OR FATHER)

Will accompany you to Canada? ☐ YES ☐ NO

Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)

Country or territory of birth (as shown on passport/travel document)	Present address (If deceased give city/town, country and date of death)	Marital status	Present occupation

YOUR PARENT 2 (MOTHER OR FATHER)

Will accompany you to Canada? ☐ YES ☐ NO

Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Date of birth (YYYY-MM-DD)

Country or territory of birth (as shown on passport/travel document)	Present address (If deceased give city/town, country and date of death)	Marital status	Present occupation

NOTE 1: If no spouse, common-law or conjugal partner is listed in Section A, read and sign below.

I certify that I do not have a spouse, common-law or conjugal partner.

Signature: _____ Date (YYYY-MM-DD) _____

SECTION B - CHILDREN

Include **ALL** sons and daughters, including **ALL** adopted and step-children, regardless of age or place of residence.

If you require more space, please either add lines to the form by pressing the + button to the right or attach a separate sheet with the additional information.

☐ I do not have any children

☐ Will accompany you to Canada? ☐ YES ☐ NO

Relationship	Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Date of birth (YYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	**Present address (If deceased give city/town, country and date of death)**	**Marital status**	**Present occupation**

☐ Will accompany you to Canada? ☐ YES ☐ NO

Relationship	Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Date of birth (YYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	**Present address (If deceased give city/town, country and date of death)**	**Marital status**	**Present occupation**

☐ Will accompany you to Canada? ☐ YES ☐ NO

Relationship	Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Date of birth (YYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	**Present address (If deceased give city/town, country and date of death)**	**Marital status**	**Present occupation**

☐ Will accompany you to Canada? ☐ YES ☐ NO

Relationship	Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Date of birth (YYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	**Present address (If deceased give city/town, country and date of death)**	**Marital status**	**Present occupation**

Will accompany you to Canada?	☐ YES	☐ NO

Relationship	Family name (as shown on passport/travel document)	Given name(s) (as shown on passport/travel document)	Date of birth (YYY-MM-DD)
Country or territory of birth (as shown on passport/travel document)	**Present address (If deceased give city/town, country and date of death)**	**Marital status**	**Present occupation**

NOTE 2: If no children are listed in Section B, read and sign below.

I certify that I do not have any natural, adopted nor step-children.

Signature: _____ Date (YYYY-MM-DD) _____

SECTION C - CERTIFICATION

I certify that the information contained in this document is complete, accurate and factual. I also realize that once this document has been completed and signed that it will form part of my Immigration Record and will be used to verify my family details on future applications.

Signature: _____ Date (YYYY-MM-DD) _____

The information you provide on this form is collected under the authority of the *Immigration and Refugee Protection Act* to determine if you may be admitted to Canada as a temporary resident. It will be stored in Personal Information Bank CIC PPU 055, Visitor Case File. It is protected and accessible under the *Privacy Act* and the *Access to Information Act*.

INSTRUCTIONS

Who needs to fill out this application form?

This form must be completed by:
- each person, **18 years of age or older**, **or**
- a minor (**less than 18 years of age**) travelling alone.

SECTION A

Write the personal details for:
- **yourself,**
- **your spouse, common-law or conjugal partner, (if applicable)**
- **your mother and**
- **your father**
- **or parent.**

Include: full name (family name and given name), name in native language (if applicable), date of birth, country or territory of birth, present address (e.g. street name and number, city, country, postal code), marital status and present occupation (job).
Check Yes or **No** to indicate if the person will accompany you to Canada.
If a person is deceased, indicate in which city/town, country and the date of death under "Present address".
If a person is not employed, indicate whether the person is retired, studying, etc.
If a section does not apply to you write "Not applicable" or "N/A".

Note: If you do not have a spouse, a common-law or conjugal partner, read "**Note 1**", sign and date the declaration.

SECTION B

Write the personal details for your children. It is very important that you list all of your children (even if they are already permanent residents or citizens of Canada). This includes:
- married children,
- adopted children,
- children of your spouse (step-children) or common-law partner,
- any of your children who have been adopted by others,
- any of your children who are in the custody of an ex-spouse, former common-law partner or other guardian.

Check **Yes** or **No** to indicate if the person will accompany you to Canada.
Include: relationship (e.g. son, adopted daughter), full name (family name and given name), name in native language (if applicable), date of birth, country or territory of birth, present address (e.g. street name and number, city, country, postal code), marital status and present occupation (job).
If a person is deceased, indicate in which city/town, country and the date of death under "Present address".
If a person is not employed, indicate whether the person is retired, studying, etc.

Note: If you do not have any children, check the box 'I do not have any children' and read "**Note 2**", sign and date the declaration.

SECTION C

Signature
Sign and date in the sections provided.

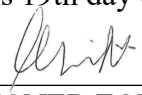
Note: By signing, you certify that you fully understand the questions asked, and that the information you have provided is complete, accurate and factual. If you do not sign or date the form, your application will be returned to you

Personal information provided on this form is collected by Immigration, Refugees, and Citizenship Canada (IRCC) under the authority of the Immigration and Refugee Protection Act (IRPA). The personal information provided will be used for the purpose of processing an application. The personal information provided may be disclosed to other federal government institutions, law enforcement bodies, provincial/territorial governments, foreign governments for the purpose of validating identity, eligibility and admissibility. The personal information may also be disclosed to medical practitioners for the purpose of validating identity and eligibility.

Personal information may also be used for other purposes including research, statistics, program and policy evaluation, internal audit, compliance, risk management, subsequent program eligibility, and strategy development and reporting.

Failure to complete the form in full may result in a delay or the application not being processed. The Privacy Act gives individuals the right of access to, protection, and correction of their personal information. If you are not satisfied with the manner in which IRCC handles your personal information, you may exercise your right to file a complaint to the Office of the Privacy Commissioner of Canada. The collection, use, disclosure and retention of your personal information is further described in IRCC's Personal Information Bank - IRCC PPU 013, 051, 068.

This is Exhibit **"L"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

SUPPLEMENTARY INFORMATION HUMANITARIAN AND COMPASSIONATE CONSIDERATIONS

FOR OFFICIAL USE ONLY
Client ID no.
Client file no.

This form must be completed by:
- **you, the principal applicant;**
- **your family members ONLY IF they have different humanitarian and compassionate grounds AND they are included in this application.**

Warning:
You must provide truthful and accurate information. The information provided may be verified. Enforcement action may be initiated if you give false or misleading information.

IMPORTANT:
Ensure you include **any and all** factors you wish to have considered by Citizenship and Immigration Canada during the processing of your application for permanent residence. You must also provide evidence to support any statements you make on this form. Additional information or documentation **not** submitted with your application **may not be considered at a later date**.

It is your responsibility to list all factors you wish to have considered **at the time you submit your application.** You may not have another opportunity to provide the information.

While you may be required to attend an interview, note that there is **no right** to an interview.

- This form is part of your *Generic Application Form for Canada* (IMM 0008).
- Canadian immigration law requires applicants to obtain a permanent resident visa at a visa office outside of Canada and to be admissible to Canada. In your application, you must clearly indicate the special circumstances that would exempt you from these, or other, requirements.
- This form is not for claiming any fear of persecution, danger of torture or of risk to your life or of cruel and unusual treatment or punishment in your country or territory of origin.
  For information concerning refugee claims in Canada, refer to: http//www.cic.gc.ca/english/refugees/inside/index.asp and http://www.irb-cisr.gc.ca/eng/port/refasi/cladem/pages/index.aspx
- It is your responsibility to keep Citizenship and Immigration Canada informed of any change of circumstances such as marital status or the birth of a child.

Did you make a refugee claim that was rejected by the Refugee Protection Division or the Refugee Appeal Division of the Immigration and Refugee Board of Canada, or did you abandon a refugee claim?

☐ No ☐ Yes ▶ If yes, see question A, if no, go to question 1. Personal information

A. Was your refugee claim rejected or abandoned within the last 12 months?

☐ No ☐ Yes

OR Did you withdraw your refugee claim during your Refugee Protection Division hearing, which occurred with the last 12 months?

☐ No ☐ Yes

If the answer to either of those question sunder A is yes, you may not apply for permanent residence on humanitarian and compassionate grounds until at least 12 months have passed since the day your refugee claim was rejected.

There are exceptions to the 12-month bar. You may be excepted if:
- **you provide sufficient credible and objective evidence that there are children under 18 years of age who would be directly and adversely affected if you were removed from Canada; or**
- **you provide sufficient credible and objective evidence that you or a failed refugee claimant included in your application, if returned to home country or territory, would be subject to a risk to life caused by the inability of your country(ies) or territory(ies) of nationality, or former habitual residence if you don't have a nationality, to provide adequate health or medical care.**

If you are requesting an exception from the 12-month bar indicate on what grounds:

☐ Best interests of the child **AND/OR**

☐ You or a failed refugee claimant included in your application suffer from a medical condition that would result in a risk to life if you are returned to your home country or territory

1. Personal information

Family name		Given name(s)
Date of birth (YYYY-MM-DD)	Citizenship	Status in Canada

2. With whom were you living before coming to Canada?

Family name		Given name(s)	
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.			
City or town	Province/State/District	Country or territory	

3. Details of your immediate family (parents, non-dependant children, brothers and sisters) living in Canada

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	Province	City or town	

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	Province	City or town	

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	Province	City or town	

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	Province	City or town	

4. Person you are living with in Canada

Are you living with someone in Canada? ☐ No ☐ Yes ▶ If yes, provide details below.

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	City or town	Province	Postal Code

5. Details of your immediate family (parents, non-dependant children, brothers and sisters) living abroad

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	City or town	Province/State/District	Country or territory

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	City or town	Province/State/District	Country or territory

Family name	Given name(s)		
Gender ☐ F Female ☐ M Male ☐ X Another gender	Relationship to you	Country or territory of birth	Date of birth (YYYY-MM-DD)
Address			
Street and no.	City or town	Province/State/District	Country or territory

NOTE: The information you provide should not be limited by the space allowed to answer a question. If you need more space, attach another sheet of paper. Indicate the number of the question you are answering.

You are entirely responsible to provide ALL the evidence to support any statement you make on this form. You will NOT be solicited for additional information or documentation

6. **Are you currently subject to a removal order?** ☐ No ☐ Yes

7. **Explain the humanitarian and compassionate reasons that prevent you from leaving Canada. Humanitarian and compassionate reasons can NOT include fear of persecution, torture or risk to life or cruel and unusual treatment or punishment in your country or territory of origin.**

8. **If you are requesting an exemption because you or a family member are inadmissible, or do not meet any applicable criteria or obligation of the *Immigration and Refugee Protection Act*, you must:**
   - **clearly indicate in your application the specific exemption(s) you are requesting; and**
   - **provide all details related to this request, including the reasons why you should be granted an exemption on humanitarian and compassionate grounds.**

9. **If applicable, describe the circumstances of your family and other relationships that would support your humanitarian and compassionate application.**

10. **If applicable, considering the best interest of the child, provide information on any child affected by this decision.**

11. **How have you established yourself in Canada?**

12. How do you support yourself financially in Canada?

13. Indicate any other information you want to have considered in your application.

You are entirely responsible to provide ALL the evidence to support any statement you make on this form.
You will NOT be solicited for additional information or documentation

DECLARATION OF APPLICANT

I declare that the information I have given on this supplementary information form is truthful and correct.

Signature of APPLICANT

Date (YYYY-MM-DD)

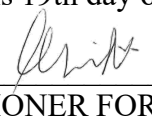
WARNING: It is an offence under Section 127 of the *Immigration and Refugee Protection Act* to knowingly make a false statement on this form.

Personal information provided on this form is collected by Immigration, Refugees, and Citizenship Canada (IRCC) under the authority of the Immigration and Refugee Protection Act (IRPA). The personal information will be used for the purpose of processing an application. The personal information provided may be disclosed to other federal government institutions, non-governmental organizations for the purpose of validating information and eligibility. The personal information may also be disclosed to law enforcement bodies for the purpose of validating identity, eligibility and admissibility. The personal information may also be disclosed to provincial/territorial governments and foreign governments for the purpose of validating eligibility and admissibility.

Personal information may also be used for other purposes including research, statistics, program and policy evaluation, internal audit, compliance, program integrity, risk management, subsequent program eligibility, strategy development and reporting.

Failure to complete the form in full may result in a delay or the application not being processed. The Privacy Act gives individuals the right of access to, protection, and correction of their personal information. If you are not satisfied with the manner in which IRCC handles your personal information, you may exercise your right to file a complaint to the Office of the Privacy Commissioner of Canada. The collection, use, disclosure and retention of your personal information is further described in IRCC's Personal Information Bank - IRCC PPU 013, 042.

This is Exhibit **"M"** referred to in the affidavit
of JACQUELINE BONISTEEL sworn before
me this 19th day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

Temporary public policy to facilitate the granting of permanent residence for foreign nationals in Canada, outside of Quebec, with recent Canadian work experience in essential occupations

Background

In November 2020, Canada announced a target of 401,000 admissions of new permanent residents in 2021 as part of its 2021-2023 Immigration Levels Plan. In light of the extended border closures and challenges in admitting new permanent residents from overseas, it is important to further consider temporary residents currently in Canada who could contribute to economic immigration objectives. These foreign nationals are already employed in Canada and are contributing to the labour market, consistent with the goals of Canada's economic immigration programming. In granting permanent residence to these individuals who have work experience in critical occupations, Canada will benefit from their skills and

abilities over the long-term. In the absence of this public policy, it is unlikely that Canada would be in a position to attain the ambitious level of newcomers necessary to help support the country's economic recovery and growth.

As a result of the pandemic, attention has been placed on the ongoing need to fill certain essential occupations. By granting permanent resident status to those with experience in these occupations, Canada will be leveraging immigration, including Francophone immigration outside of Quebec, to help stabilize this workforce both for pandemic recovery and into the future. In addition, these existing temporary foreign workers have made extraordinary contributions to Canada during the COVID-19 pandemic and in some cases face difficulty in qualifying and applying for permanent residence. The public policy responds directly to this contribution and these challenges by implementing measures that create a temporary pathway to permanent residence.

Public Policy Considerations

The pandemic has highlighted the contribution of foreign nationals in Canada, across all sectors and skill levels. During the global COVID-19 pandemic, there is an increased need to ensure that Canada has the necessary workforce to support the physical health and wellbeing of individuals, as well as the economic recovery. The public policy targets foreign nationals with at least one year of work experience in Canada in an essential occupation, in recognition of their economic contribution and in acknowledgement of the ongoing need that Canada has for these professionals. In addition, the public policy helps retain French and French immersion teachers to address the shortage of French-language teachers in Canada outside of Quebec and by doing so, supports the Government of Canada's objectives on official languages.

While applications for permanent residence have been accepted and processed throughout the pandemic, the global travel restrictions and capacity constraints have led to a shortfall in admissions in 2020. The 401,000 new admissions announced for 2021 in the 2021-2023 Immigration Levels Plan are key to ensuring Canada has the workers it needs to fill key essential positions and remain competitive in attracting global talent.

As such, I hereby establish that, pursuant to my authority under section 25.2 of the *Immigration and Refugee Protection Act (Act)*, there are sufficient public policy considerations that justify the granting of permanent resident status or an exemption from certain requirements of the *Immigration and Refugee Protection Regulations (Regulations)*, to foreign nationals who meet the conditions (eligibility requirements) listed below.

Conditions (eligibility requirements) applicable to principal applicants

Based on public policy considerations, delegated officers may grant permanent resident status to foreign nationals who meet the following conditions.

The foreign national must:

a. Have accumulated at least one (1) year of full-time work experience, or the equivalent in part-time experience (1,560 hours), in Canada, in an eligible occupation listed in Annex A or Annex B in the three (3) years preceding the date when the application for permanent residence is received. The one year of work experience must be obtained in one or more of the eligible occupations as follows:
    - Stream A: the one year of work experience must have been acquired in one or more occupations listed in Annex A. Experience cannot be combined with Annex B occupations.

- Stream B: the one year of work experience must have been acquired in one or more occupations listed in Annex B, or a combination of occupations in Annexes A and B.

b. Be employed in Canada in any occupation at the time that the application for permanent residence is received;
c. The employment described in both a) and b) must meet the definition of work under subsection 73(2) of the *Regulations,* must have been authorized pursuant to the *Act* and *Regulations* and must not have been self-employed, unless working as a medical doctor in a fee-for-service arrangement with a health authority;
d. Have attained a level of proficiency of at least benchmark 4 in either official language for each of the four language skill areas, as set out in *the Canadian Language Benchmarks* or the *Niveaux de compétence linguistique canadiens*. This must be demonstrated by the results of an evaluation by an organization or institution designated by the Minister for the purpose of evaluating language proficiency under subsection 74(3) of the *Regulations*; and the evaluation must be less than two (2) years old when the permanent residence application is received;
e. Reside in Canada with valid temporary resident status (or be eligible to restore their status) and be physically present in Canada at the time the application for permanent residence is received and when the application is approved;
f. Intend to reside in a province or territory other than Quebec;
g. Have submitted an application for permanent residence using the forms provided by the Department for this public policy and which must include at the time of application all proof necessary to satisfy an officer that the applicant meets the conditions (eligibility requirements) of this public policy, except for evidence required to demonstrate physical presence in Canada at the time of application approval;

h. Have submitted their application for permanent residence under this public policy using electronic means (apply online). Foreign nationals who, because of a disability are unable to meet the requirement to make an application, submit any document or provide a signature or information using electronic means may submit this application by any other means that is made available or specified by the Minister for that purpose; and
i. The foreign national is not inadmissible under the *Act* and *Regulations.*

While all supporting documentation necessary to assess whether a foreign national meets the conditions of this public policy must be included at the time of application, officers retain discretion to request additional supporting documentation to confirm admissibility and eligibility throughout the processing of the application.

Conditions (eligibility requirements) applicable to family members in Canada:

In-Canada family members of a principal applicant who applies for permanent residence under this public policy are eligible to be granted permanent residence pursuant to this public policy if they meet the following conditions:

1. the foreign national is in Canada;
2. the foreign national has been included as an accompanying family member in an application for permanent residence by a principal applicant under this public policy;
3. the foreign national meets the definition of a “family member” in subsection 1(3) of the *Regulations*;
4. the foreign national is not inadmissible pursuant to the *Act* and *Regulations*; and

5. a delegated officer has determined that the principal applicant meets all conditions (eligibility requirements) to receive permanent residence pursuant to this public policy.

Conditions (eligibility requirements) applicable to family members abroad:

Based on public policy considerations, when processing an application for a permanent resident visa, delegated officers may grant an exemption from the requirements of the *Regulations* identified below when a foreign national meets the following conditions:

1. the foreign national residing overseas has been included as an accompanying family member in an application for permanent residence by a principal applicant under this public policy;
2. the foreign national meets the definition of family member in subsection 1(3) of the *Regulations*;
3. the foreign national is not inadmissible pursuant to the *Act* and *Regulations*; and
4. a delegated officer has determined that the principal applicant meets all conditions (eligibility requirements) to receive permanent residence pursuant to this public policy.

Provisions of the *Regulations* for which an exemption may be granted to the family member abroad:

1. paragraph 10(2)(c) of the *Regulations* – the requirement to indicate the class prescribed by these *Regulations* for which the application is made;

2. paragraph 70(1)(a) of the *Regulations* – the requirement to apply for a permanent resident visa as a member of a class referred to in subsection 70(2) of the *Regulations*;
3. paragraph 70(1)(c) of the *Regulations* – the requirement to be a member of an immigration class; and
4. paragraph 70(1)(d) of the *Regulations* – the requirement to meet the selection criteria and other requirements applicable to that class.

Intake Cap

Distinct intake caps will apply to each stream of the public policy:

- Stream A – a maximum of 20,000 applications will be accepted for processing;
- Stream B – a maximum of 30,000 applications will be accepted for processing.

For greater clarity, applications will continue to be accepted in one stream even if the cap has been reached in the other stream.

Fees

Any applicable fees, including fees for processing an application for permanent residence or for a permanent resident visa under subsection 25.2(1) of the *Act*, and the Right of Permanent Residence Fee, must be paid at the time of application.

Start and end dates

This public policy comes into effect on May 6, 2021 and will end on November 5, 2021 or once the intake cap of the applicable stream (20,000 applications received under stream A and 30,000 applications received under stream B) has been reached, whichever comes first. As with all public policies, this public policy may be revoked by the Minister, without prior notice.

Applications received pursuant to this public policy on or after May 6, 2021 up until November 5, 2021, or the date of revocation, if applicable, will be processed under this temporary public policy, subject to the applicable intake cap. Any applications received after the intake cap for the respective stream has been reached, will not be processed.

Marco Mendicino
Minister of Citizenship and Immigration
Dated at Ottawa, April 12 , 2021

Annex A – Eligible Health-Related Occupations

Eligible health care occupations include all broad occupational category 3 occupations (Health occupations) from the National Occupational Classification (NOC) with the exception of Veterinarians (NOC 3114) and Animal health technologists and veterinary technicians (NOC 3213). Five

occupations from broad occupational category 4 (Occupations in education, law and social, community and government services) are also eligible occupations.

Eligible Occupations:

NOC Occupation

3011 Nursing co-ordinators and supervisors
3012 Registered nurses and registered psychiatric nurses
3111 Specialist physicians
3112 General practitioners and family physicians
3113 Dentists
3121 Optometrists
3122 Chiropractors
3124 Allied primary health practitioners
3125 Other professional occupations in health diagnosing and treating
3131 Pharmacists
3132 Dietitians and nutritionists
3141 Audiologists and speech-language pathologists
3142 Physiotherapists
3143 Occupational therapists
3144 Other professional occupations in therapy and assessment
3211 Medical laboratory technologists
3212 Medical laboratory technicians and pathologists' assistants
3214 Respiratory therapists, clinical perfusionists and cardiopulmonary technologists
3215 Medical radiation technologists
3216 Medical sonographers
3217 Cardiology technologists and electrophysiological diagnostic technologists, n.e.c.
3219 Other medical technologists and technicians (except dental health)

3221 Denturists
3222 Dental hygienists and dental therapists
3223 Dental technologists, technicians and laboratory assistants
3231 Opticians
3232 Practitioners of natural healing
3233 Licensed practical nurses
3234 Paramedical occupations
3236 Massage therapists
3237 Other technical occupations in therapy and assessment
3411 Dental assistants
3413 Nurse aides, orderlies and patient service associates
3414 Other assisting occupations in support of health services
4151 Psychologists
4152 Social workers
4153 Family, marriage and other related counsellors
4165 Health policy researchers, consultants and program officers
4212 Social and community service workers
4412 Home support workers, housekeepers and related occupations

ANNEX B – Other Eligible Essential Occupations

1. Major Unit Groups

Major Unit Group	NOC Code	Occupation
66 - Sales support occupations	6611	Cashiers
	6621	Service station attendants
	6622	Store shelf stockers, clerks and order fillers
	6623	Other sales related occupations

Major Unit Group	NOC Code	Occupation
72- Industrial, electrical and construction trades	7201	Contractors and supervisors, machining, metal forming, shaping and erecting trades and related occupations
	7202	Contractors and supervisors, electrical trades and telecommunications occupations
	7203	Contractors and supervisors, pipefitting trades
	7204	Contractors and supervisors, carpentry trades
	7205	Contractors and supervisors, other construction trades, installers, repairers and servicers
	7231	Machinists and machining and tooling inspectors
	7232	Tool and die makers
	7233	Sheet metal workers
	7234	Boilermakers
	7235	Structural metal and platework fabricators and fitters
	7236	Ironworkers
	7237	Welders and related machine operators

Major Unit Group	NOC Code	Occupation
	7241	Electricians (except industrial and power system)
	7242	Industrial electricians
	7243	Power system electricians
	7244	Electrical power line and cable workers
	7245	Telecommunications line and cable workers
	7246	Telecommunications installation and repair workers
	7247	Cable television service and maintenance technicians
	7251	Plumbers
	7252	Steamfitters, pipefitters and sprinkler system installers
	7253	Gas fitters
	7271	Carpenters
	7272	Cabinetmakers
	7281	Bricklayers
	7282	Concrete finishers
	7283	Tilesetters

Major Unit Group	NOC Code	Occupation
	7284	Plasterers, drywall installers and finishers and lathers
	7291	Roofers and shinglers
	7292	Glaziers
	7293	Insulators
	7294	Painters and decorators (except interior decorators)
	7295	Floor covering installers
74 - Other installers, repairers and servicers and material handlers	7441	Residential and commercial installers and servicers
	7442	Waterworks and gas maintenance workers
	7444	Pest controllers and fumigators
	7445	Other repairers and servicers
	7451	Longshore workers
	7452	Material handlers

Major Unit Group	NOC Code	Occupation
75 - Transport and heavy equipment operation and related maintenance occupations	7511	Transport truck drivers
	7512	Bus drivers, subway operators and other transit operators
	7513	Taxi and limousine drivers and chauffeurs
	7514	Delivery and courier service drivers
	7521	Heavy equipment operators (except crane)
	7522	Public works maintenance equipment operators and related workers
	7531	Railway yard and track maintenance workers
	7532	Water transport deck and engine room crew
	7533	Boat and cable ferry operators and related occupations
	7534	Air transport ramp attendants
	7535	Other automotive mechanical installers and servicers

Major Unit Group	NOC Code	Occupation
76 - Trades helpers, construction labourers and related occupations	7611	Construction trades helpers and labourers
	7612	Other trades helpers and labourers
	7621	Public works and maintenance labourers
	7622	Railway and motor transport labourers
86 - Harvesting, landscaping and natural resources labourers	8611	Harvesting labourers
	8612	Landscaping and grounds maintenance labourers
	8613	Aquaculture and marine harvest labourers
	8614	Mine labourers
	8615	Oil and gas drilling, servicing and related labourers
	8616	Logging and forestry labourers

2. Minor Unit Groups

Minor Unit Group	NOC Code	Occupation
151 - Mail and message distribution occupations	1511	Mail, postal and related workers
	1512	Letter carriers
	1513	Couriers, messengers and door-to-door distributors
642 - Retail salesperson	6421	Retail salespersons
673 - Cleaners	6731	Light duty cleaners
	6732	Specialized cleaners
	6733	Janitors, caretakers and building superintendents
843 - Agriculture and horticulture workers	8431	General farm workers
	8432	Nursery and greenhouse workers
844 - Other workers in fishing and trapping and hunting occupations	8441	Fishing vessel deckhands
	8442	Trappers and hunters

Minor Unit Group	NOC Code	Occupation
946 - Machine operators and related workers in food, beverage and associated products processing	9461	Process control and machine operators, food and beverage processing
	9462	Industrial butchers and meat cutters, poultry preparers and related workers
	9463	Fish and seafood plant workers
	9465	Testers and graders, food and beverage processing

3. Specific 4 digit unit groups

NOC Code	Occupation
0821	Managers in agriculture
0822	Managers in horticulture
4031	French and French Immersion Secondary school teachers (language of instruction must be French)
4032	French and French Immersion Elementary school and kindergarten teachers (language of instruction must be French)
4411	Home child care providers
4413	Elementary and secondary school teacher assistants

NOC Code	Occupation
6331	Retail butchers
6523	Airline ticket and service agents
6524	Ground and water transport ticket agents, cargo service representatives and related clerks
6541	Security guards and related security service occupations
6551	Customer services representatives - financial institutions
6552	Other customer and information services representatives
8252	Agricultural service contractors, farm supervisors and specialized livestock workers
8255	Contractors and supervisors, landscaping, grounds maintenance and horticulture services
9617	Labourers in food and beverage processing
9618	Labourers in fish and seafood processing

Date modified:

2021-04-14

Temporary public policy to facilitate the granting of permanent residence for foreign nationals in Canada, outside of Quebec, with a recent credential from a Canadian post-secondary institution

Background

In November 2020, Canada announced a target of 401,000 admissions of new permanent residents in 2021 as part of its 2021-2023 Immigration Levels Plan. In light of the extended border closures and challenges in admitting new permanent residents from overseas, Canada has looked at temporary residents currently in Canada who could contribute to economic immigration objectives. These foreign nationals, who are already employed in Canada and contributing to the labour market, represent the key talent that Canada strives to retain through economic immigration programming. In granting permanent residence to these individuals who have been granted a Canadian educational credential, Canada will be able

to benefit from their education and experience over the long-term. In the absence of this public policy, it is unlikely that Canada would be in a position to welcome the ambitious level of newcomers necessary to help support the country's economic recovery and growth.

Canada has long valued international graduates as a source of key talent to help support economic growth and counteract the country's aging demographic. By granting permanent resident status to recent international graduates from Canadian post-secondary institutions who are currently employed in Canada, the economy will be able to continue to benefit from their training and expertise for pandemic recovery and into the future. In addition, these international graduates from both college and university programs have the education required to support their long-term economic establishment in Canada, but as a result of the pandemic may face challenges in qualifying and applying for permanent residence. The public policy responds directly to these pandemic-related challenges by creating a temporary pathway which accelerates the expected trajectory that many international graduates take to permanent residence.

Public Policy Considerations

The pandemic has highlighted the contribution of immigrants to the well-being of our society. Our economy relies on immigration to fill critical labour market needs across a wide variety of occupations and sectors, and as Canada rebounds from the global COVID-19 pandemic, there is an increased need to ensure stability in its workforce.

The public policy targets foreign nationals who have been granted an eligible Canadian credential, and who are currently employed in Canada, to provide an influx of talent across the economic landscape. In so doing, the public policy recognizes the economic contribution of recent international

graduates and acknowledges Canada's ongoing need for the talent, skills, Canadian education and work experience of these skilled immigrants, which has been exacerbated during this exceptional time.

While applications for permanent residence have been accepted and processed throughout the pandemic, the global travel restrictions and capacity constraints have led to a shortfall in admissions in 2020. The 401,000 new admissions announced for 2021 in the 2021-2023 Immigration Levels Plan are key to ensuring Canada has the workers it needs to fill key essential positions and remain competitive in attracting global talent.

As such, I hereby establish that, pursuant to my authority under section 25.2 of the *Immigration and Refugee Protection Act (Act)*, there are sufficient public policy considerations that justify the granting of permanent resident status or an exemption from certain requirements of the *Immigration and Refugee Protection Regulations (Regulations)* to foreign nationals who meet the conditions (eligibility requirements) listed below.

Conditions (eligibility requirements) applicable to principal applicants

Based on public policy considerations, delegated officers may grant permanent resident status to foreign nationals who meet the following conditions.

The foreign national must:

a. Have completed, prior to the date on which the application for permanent residence is received and no earlier than January 2017, a program of study at one of the following "Designated Learning Institutions" in Canada as defined in section 211.1 of the *Regulations*:

- a public post-secondary institution, such as a college, trade/technical school, university or in Quebec CEGEP
- a private post-secondary school in Quebec that operates under the same rules and regulations as public institutions in Quebec
- a private or public post-secondary institution in Quebec offering qualifying programs of 900 hours or longer leading to a diploma of vocational studies (DVS) or an attestation of vocational specialization (AVS)
- a Canadian private institution authorized by provincial statute to confer degrees under provincial law but only if the program of study completed was a degree as authorized by the province, which may not include all programs of study offered by the private institution.

b. Have been granted one of the following credentials, following the completion of a program study from an eligible institution as defined in a):

- a degree (Associate, Bachelor's, Master's, or Doctorate) which must be a degree issued on completion of a program of at least 8 months in duration;
- a degree, diploma, certificate, or attestation issued on completion of a program of any duration leading to an occupation in a skilled trade (listed in Annex A); or
- one or more diploma/certificate/attestation where the following conditions are met:
  - For diplomas/certificates/attestations, each program of study must be at least 8 months in duration and the combined length of the credential(s) must be equivalent to a two-year credential (at least 16 months in duration).
  - For the DVS and AVS, each program of study must be at least 900 hours in duration and the combined program of study

must be at least 1,800 hours in duration.

- When combining one AVS with one DVS, the length of the AVS may be less than 900 hours if the combined length is at least 1,800 hours.

- For greater clarity, each combined credential must meet the eligible program requirements as defined in a), including the completion no earlier than January 2017.

c. Have been authorized pursuant to the *Act* and *Regulations* to study throughout their education in Canada;
d. Be employed in Canada with a valid permit or authorization to work pursuant to the *Act* and *Regulations* at the time the application for permanent residence is received and must not be self-employed, unless working as a medical doctor in a fee-for-service arrangement with a health authority. The employment must meet the definition of work under subsection 73(2) of the *Regulations*;
e. Have attained a level of proficiency of at least benchmark 5 in either official language for each of the four language skill areas, as set out in the *Canadian Language Benchmarks* or the *Niveaux de compétence linguistique canadiens*. This must be demonstrated by the results of an evaluation by an organization or institution designated by the Minister for the purpose of evaluating language proficiency under subsection 74(3) of the Regulations; and the evaluation must be less than two (2) years old when the permanent residence application is received;
f. Reside in Canada with valid temporary resident status (or be eligible to restore their status) and be physically present in Canada at the time the application for permanent residence is received and when the application is approved;
g. Intend to reside in a province or territory other than Quebec;
h. Have submitted an application for permanent residence using the forms provided by the Department for this public policy and which

must include at the time of application all proof necessary to satisfy an officer that the applicant meets the conditions (eligibility requirements) of this public policy, except for evidence required to demonstrate physical presence in Canada at the time of application approval;

i. Have submitted their application for permanent residence under this public policy using electronic means (apply online). Foreign nationals who, because of a disability are unable to meet the requirement to make an application, submit any document or provide a signature or information using electronic means may submit this application by any other means that is made available or specified by the Minister for that purpose; and
j. The foreign national is not inadmissible under the *Act* and *Regulations*

While all supporting documentation necessary to assess whether a foreign national meets the conditions of this public policy must be included at the time of application, officers retain discretion to request additional supporting documentation to confirm admissibility and eligibility throughout the processing of the application.

Conditions (eligibility requirements) applicable to family members in Canada:

In-Canada family members of a principal applicant who applies for permanent residence under this public policy are eligible to be granted permanent residence pursuant to this public policy if they meet the following conditions:

1. the foreign national is in Canada;
2. the foreign national has been included as an accompanying family member in an application for permanent residence by a principal applicant under this public policy;

3. the foreign national meets the definition of a “family member” in subsection 1(3) of the *Regulations*;
4. the foreign national is not inadmissible pursuant to the *Act* and *Regulations*; and
5. a delegated officer has determined that the principal applicant meets all conditions (eligibility requirements) to receive permanent residence pursuant to this public policy.

Conditions (eligibility requirements) applicable to family members abroad:

Based on public policy considerations, when processing an application for a permanent resident visa, delegated officers may grant an exemption from the requirements of the *Regulations* identified below when a foreign national meets the following conditions:

1. the foreign national residing overseas has been included as an accompanying family member in an application for permanent residence by a principal applicant under this public policy;
2. the foreign national meets the definition of family member in subsection 1(3) of the *Regulations*;
3. the foreign national is not inadmissible pursuant to the *Act* and *Regulations*; and
4. a delegated officer has determined that the principal applicant meets all conditions (eligibility requirements) to receive permanent residence pursuant to this public policy.

Provisions of the *Regulations* for which an exemption may be granted to the family member abroad:

1. paragraph 10(2)(c) of the *Regulations* – the requirement to indicate the class prescribed by these *Regulations* for which the application is made;
2. paragraph 70(1)(a) of the *Regulations* – the requirement to apply for a permanent resident visa as a member of a class referred to in subsection 70(2) of the *Regulations*;
3. paragraph 70(1)(c) of the *Regulations* – the requirement to be a member of an immigration class; and
4. paragraph 70(1)(d) of the *Regulations* – the requirement to meet the selection criteria and other requirements applicable to that class.

Intake Cap

A maximum of 40,000 applications will be accepted for processing.

Fees

Any applicable fees, including fees for processing an application for permanent residence or for a permanent resident visa under subsection 25.2(1) of the *Act*, and the Right of Permanent Residence Fee, must be paid at the time of application.

Start and end dates

This public policy comes into effect on May 6, 2021 and will end on November 5, 2021 or once 40,000 applications have been received, whichever comes first. As with all public policies, this public policy may be revoked by the Minister, without prior notice.

Applications received pursuant to this public policy on or after May 6, 2021 up until November 5, 2021, or the date of revocation, if applicable, will be processed under this temporary public policy, subject to the intake cap. Any applications received after the intake cap of 40,000 has been reached, will not be processed.

Marco Mendicino
Minister of Citizenship and Immigration
Dated at Ottawa, April 12, 2021

ANNEX A – Eligible Skilled Trades

Major Group 72, industrial, electrical and construction trades

7201 Contractors and supervisors, machining, metal forming, shaping and erecting trades and related occupations

7202 Contractors and supervisors, electrical trades and telecommunications occupations

7203 Contractors and supervisors, pipefitting trades

7204 Contractors and supervisors, carpentry trades

7205 Contractors and supervisors, other construction trades, installers, repairers and servicers

7231 Machinists and machining and tooling inspectors

7232 Tool and die makers

7233 Sheet metal workers

7234 Boilermakers

7235 Structural metal and platework fabricators and fitters

7236 Ironworkers

7237 Welders and related machine operators

7241 Electricians (except industrial and power system)

7242 Industrial electricians

7243 Power system electricians

7244 Electrical power line and cable workers

7245 Telecommunications line and cable workers

7246 Telecommunications installation and repair workers

7247 Cable television service and maintenance technicians

7251 Plumbers

7252 Steamfitters, pipefitters and sprinkler system installers

7253 Gas fitters

7271 Carpenters

7272 Cabinetmakers

7281 Bricklayers

7282 Concrete finishers

7283 Tilesetters

7284 Plasterers, drywall installers and finishers and lathers

7291 Roofers and shinglers

7292 Glaziers

7293 Insulators

7294 Painters and decorators (except interior decorators)

7295 Floor covering installers

Major Group 73, maintenance and equipment operation trades;

7301 Contractors and supervisors, mechanic trades

7302 Contractors and supervisors, heavy equipment operator crews

7303 Supervisors, printing and related occupations

7304 Supervisors, railway transport operations

7305 Supervisors, motor transport and other ground transit operators

7311 Construction millwrights and industrial mechanics

7312 Heavy-duty equipment mechanics

7313 Heating, refrigeration and air conditioning mechanics

7314 Railway carmen/women

7315 Aircraft mechanics and aircraft inspectors

7316 Machine fitters

7318 Elevator constructors and mechanics

7321 Automotive service technicians, truck and bus mechanics and mechanical repairers

7322 Motor vehicle body repairers

7331 Oil and solid fuel heating mechanics

7332 Appliance servicers and repairers

7333 Electrical mechanics

7334 Motorcycle, all-terrain vehicle and other related mechanics

7335 Other small engine and small equipment repairers

7361 Railway and yard locomotive engineers

7362 Railway conductors and brakemen/women

7371 Crane operators

7372 Drillers and blasters - surface mining, quarrying and construction

7373 Water well drillers

7381 Printing press operators

7384 Other trades and related occupations, n.e.c.

Major Group 82, supervisors and technical occupations in natural resources, agriculture and related production

8211 Supervisors, logging and forestry

8221 Supervisors, mining and quarrying

8222 Contractors and supervisors, oil and gas drilling and services

8231 Underground production and development miners

8232 Oil and gas well drillers, servicers, testers and related workers

8241 Logging machinery operators

8252 Agricultural service contractors, farm supervisors and specialized livestock workers

8255 Contractors and supervisors, landscaping, grounds maintenance and horticulture services

8261 Fishing masters and officers

8262 Fishermen/women

Major Group 92, processing, manufacturing and utilities supervisors and central control operators;

9211 Supervisors, mineral and metal processing

9212 Supervisors, petroleum, gas and chemical processing and utilities

9213 Supervisors, food and beverage processing

9214 Supervisors, plastic and rubber products manufacturing

9215 Supervisors, forest products processing

9217 Supervisors, textile, fabric, fur and leather products processing and manufacturing

9221 Supervisors, motor vehicle assembling

9222 Supervisors, electronics manufacturing

9223 Supervisors, electrical products manufacturing

9224 Supervisors, furniture and fixtures manufacturing

9226 Supervisors, other mechanical and metal products manufacturing

9227 Supervisors, other products manufacturing and assembly

9231 Central control and process operators, mineral and metal processing

9232 Central control and process operators, petroleum, gas and chemical processing

9235 Pulping, papermaking and coating control operators

9241 Power engineers and power systems operators

9243 Water and waste treatment plant operators

Minor Group 632, chefs and cooks

6321 Chefs

6322 Cooks

Minor Group 633, butchers and bakers

6331 Butchers, meat cutters and fishmongers - retail and wholesale

6332 Bakers

Date modified:

2021-04-14

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

AFFIDAVIT OF LORNE WALDMAN

I, LORNE WALDMAN, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer in the Province of Ontario. I make this affidavit based on my professional expertise and experience, except where otherwise stated.

Qualifications and Expertise

2. I hold a common law degree from the Osgoode Hall Law School. I was called to the bar in 1979. My Law Society of Ontario (**"LSO")** licence number is 18639E.

3. My memberships include the Canadian Bar Association, the American College of Trial Lawyers, and the Canadian Association of Refugee Lawyers.

4. Since 1979, I have practiced exclusively in Canadian immigration, refugee and citizenship law as a member of the private bar. My practice also extends to administrative law and the *Canadian Charter of Rights and Freedoms* (**"*Charter*"**) in relation to those areas. A significant portion of my practice encompasses all aspects of immigration and refugee law, but in recent years does not include economic immigration.

5. I am the founder of Waldman and Associates, a law firm with a high volume immigration law practice, which includes representing clients who attend Canadian Border Services Agency (**"CBSA"**)/Immigration, Refugees, and Citizenship Canada (**"IRCC"**) examinations/interviews. My law firm has represented thousands of clients in these situations.

6. I have appeared in several thousand matters in courts across Canada, including the Federal Court, Federal Court of Appeal, the Ontario Superior Court of Justice and the Ontario Court of Appeal and the Supreme Court of Canada. I also represent individuals before international supervisory bodies for the *International Covenant on Civil and Political Rights* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

7. I am the author of *Immigration Law and Practice* 2nd ed. (LexisNexis Canada), which is a leading text on immigration and refugee law in Canada and has been cited by all levels of court. In addition, I am the author of *Canadian Immigration Law and Refugee Law Practice*, an annual publication, *The Definition of Convention Refugee* 2nd ed and *Inadmissible to Canada - the Legal Barriers to Canadian Immigration* 2nd ed., all published by LexisNexis Canada.

8. In 2017, I was named to the Order of Canada. In 2007, I was awarded the Louis St-Laurent Award by the Canadian Bar Association for my contribution to the legal profession. In 2015, I was given a Lifetime Achievement Award by the Canadian Bar Association. In 2010, 2015 and 2016, I was named one of the 25 most influential lawyers in Canada by *Canadian Lawyer Magazine*. In 2019, I was awarded the Diane Martin Medal for Social Justice Through Law by Osgoode Hall Law School.

9. I attach my bio as **Exhibit "A"** to my affidavit.

Mandate

10. I have been asked to offer expert evidence on the importance of counsel to individuals who are interviewed by IRCC and CBSA when exercising powers under the *Immigration and Refugee Protection Act* (**"*IRPA*"**). I am qualified to do so, as this topic falls within my area of expertise.

11. I am aware of my obligations as an expert and have read the *Code of Conduct for Expert Witnesses* set out in the schedule to the *Federal Courts Rules* and agree to be bound by it. A signed copy of the *Code of Conduct for Expert Witnesses* is attached as **Exhibit "B"** to my affidavit.

Categories of immigration examinations/interviews

12. CBSA and IRCC examinations/interviews take place at a port of entry (**"POE"**), inland, and/or overseas. They take the form of examinations at a POE and interviews inland and overseas. I have experience in examinations/interviews. The following represent some specific contexts of these examinations/interviews:

a. spousal sponsorship interviews;

b. refugee eligibility examinations;

c. cessation and vacation interviews;

d. admissibility interviews; and

e. removal interviews.

The high stakes involved in examinations/interviews

13. Immigration processing in the above-mentioned categories can involve high stakes.

14. Examinations/interviews are integral elements of legal processes where an unsuccessful outcome can have serious implications for an individual. A couple involved in a spousal sponsorship may be forever separated from each other. A person seeking refugee protection may be barred access to Canada's refugee protection system. A person subject to admissibility concerns may be prevented from obtaining status or lose the status they have acquired. A person facing an examination/interview where cessation or vacation issues arise may end up losing their refugee status, their permanent resident (**"PR"**) status, and in vacation matters, their citizenship as well, if they face a cessation or vacation application before the Refugee Protection Division (**"RPD"**). A person subject to a removal interview may be deported from Canada, sometimes in a matter of weeks.

15. Conversely, successful outcomes are often positive, life-changing events. A couple can start a life together in Canada. A person seeking refugee protection can access the refugee determination system and avoid *refoulement*. A person may overcome an admissibility concern and be granted

status in Canada or preserve their current immigration status. A refugee may resolve a cessation or vacation concern and continue with their life in Canada without attending an RPD hearing. A person who attends a removal interview may have their deportation deferred for health reasons or to await the outcome of an immigration application.

16. Counsel can play a vital role in immigration examinations/interviews. In my experience, representation by counsel can significantly increase the chances of a successful outcome, and lack of representation by counsel can lower the chances of success. The difference that counsel can make to the likelihood of success increases with the complexity of the legal issues, the type of process including the lack of appellate rights, and the limitations or personal circumstances of the individual.

17. Counsel's role in examinations/interviews should include:

a. ensuring that a client understands why they are attending an examination/interview, the possible outcomes, and the remedies if necessary, which a client may be ill-equipped to navigate because they are unfamiliar with Canada's official languages, culture, and expectations when interacting with government officials, may have disabilities, may be experiencing trauma (especially refugees) that impede their ability to participate, and/or may distrust government officials if they are from oppressive regimes;

b. obtaining disclosure from CBSA or IRCC of the legal issues at stake and the evidence in support of these issues, including past immigration applications;

c. advising the client about the evidence required in light of the legal issues involved, which individuals may not fully not understand without counsel;

d. preparing the client for the examination/interview, including discussing possible questions that may be asked and the need to provide clear and fulsome evidence, especially since this information can be used to make decisions and in future proceedings, and a significant number of clients are not sophisticated, have never provided evidence to a government official, and may have difficulties understanding questions asked;

e. attending the examination/interview with full participatory rights, which includes: raising procedural issues, ensuring the client understands the questions put to them and is able to articulate their responses to questions asked (in particular, when an interpreter is being used), taking notes, and making oral submissions when appropriate or preparing written submissions based on the interview.

Unfortunately, even when IRCC or CBSA permits counsel to attend an examination/interview, the role of counsel is either not defined or if defined, is qualified and falls short of full participatory rights. I address these points in detail at paras. 48 to 63 below.

18. In addition to the high stakes and the significance of successful and unsuccessful outcomes mentioned above, a successful outcome resolves the matter before the administrative decision-maker, reducing the need for an appeal to the Immigration Division (**"ID"**) and the Immigration Appeal Division (**"IAD"**) of the Immigration and Refugee Board (**"IRB"**), potentially followed by judicial review before the Federal Court, and/or judicial review brought directly before the Federal Court. However, judicial review by definition is constrained by the record that was before the decision-maker. It is a not a *de novo* hearing. The examination/interview is therefore crucial. In my experience, without legal advice, clients may not fully understand the importance of the examination/interview both beforehand and during it. Counsel can also ensure that the record provides a foundation for successful judicial review.

19. In carrying out the above tasks, counsel is bound by professional responsibilities and ethical obligations. They are also subject to oversight and accountability by provincial law societies, including a complaints process.

20. Below, I outline the right to counsel provisions under the *IRPA*, the IRCC Use of a Representative Form, and IRCC and CBSA right to counsel policies. I then draw on my experience to explain the importance of counsel in the contexts listed in para. 12 above.

Right to counsel: *IRPA*, IRCC Use of a Representative Form, IRCC and CBSA policies

Right to counsel under the IRPA

21. The right to counsel in the *IRPA* is limited to the context of proceedings before the IRB and does not extend to IRCC and CBSA examinations/interviews. Section 167(1) states:

> A person who is the subject of proceedings before any Division of the Board and the Minister may, at their own expense, be represented by legal or other counsel.

22. Under section 167(1), individuals have the right to counsel in proceedings before the following four divisions of the IRB, each with specific jurisdiction. Broadly speaking:

a. the ID decides detention reviews and removal cases;

b. the IAD decides certain removal appeals from the ID and specific sponsorship appeals;

c. the RPD decides claims to refugee protection; and

d. the Refugee Appeal Division (**"RAD"**) decides certain refugee claim appeals from the RPD.

23. The scope of section 167(1) also includes the right to counsel in a "pre-hearing interview" by CBSA to gather information from a person who has been referred to the RPD for a refugee hearing, as the Federal Court of Appeal found in *Canada (Citizenship and Immigration) v. Paramo de Gutierrez*, 2016 FCA 211. This situation does not encompass the examinations/interviews discussed in this affidavit.

The IRCC Use of a Representative Form

24. Even though the *IRPA* limits the right to counsel to proceedings before the IRB, IRCC and CBSA recognize counsel of record in immigration processing through the Use of a Representative Form (IMM 5476). This form permits counsel to become counsel of record in all IRCC interviews and does not bar counsel representation as such. I attach a copy as **Exhibit "C"** to my affidavit.

25. However, the wording of the Use of a Representative Form discourages hiring counsel. It states at the top of the first page: "You do not need to hire a representative, it is your choice. No one can guarantee the approval of your application, All the forms and information that you need to apply are available for free on the Immigration, Refugees and Citizenship Canada (IRCC) Website."

26. The Use of a Representative Form also indicates that a representative may be paid or unpaid, which further discourages the use of counsel. IRCC explains that paid representatives must be lawyers and paralegals who are members in good standing of a Canadian provincial or territorial law society, notaries who are members in good standing of the Chambre des notaires du Quebec,

or citizenship or immigration consultants who are members in good standing of the College of Immigration and Citizenship Consultants.[1] This list also includes students-at-law under the supervision of lawyers.[2] Applicants are also permitted to retain unpaid representatives including family members, friends or other third parties who do not charge a fee.[3] IRCC indicates that "You do not need to hire a representative! It's your choice. Using one will not draw special attention to your application and doesn't mean we'll approve it. You can get all the forms and instructions you need to apply for a visa, a permit or citizenship for free on this website. If you follow the instructions, you should be able to fill out the forms and submit them yourself."[4]

27. IRCC sees the Use of a Representative Form as fundamental to counsel representation. It must be included with an immigration application or filed post-submission after an application file number has been assigned. But the appointment of counsel is only valid for matters relating to the application for which the form was submitted. Any subsequent applications require submission of a new form. When adding, updating or cancelling appointment of counsel after the initial application, the form must be submitted via IRCC's webform.[5]

28. When my clients complete a Use of a Representative Form, my understanding is that I am counsel of record for their IRCC application and that IRCC has recognized the right to counsel in that matter. My reasonable expectation is that I will be able to accompany my clients to any CBSA and IRCC examinations/interviews as their counsel, with full rights of participation, including the right to communicate on their behalf, as appropriate.

---

[1] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.

[2] Immigration, Refugees and Citizenship Canada, "Use of a Representative Form (IMM5476)" (last modified 1 May 2025), posted at https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5476.html.

[3] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.

[4] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.

[5] https://secure.cic.gc.ca/ClientContact/en/Application/Form/71.

29. My expectation is based on IRCC's guidance (Use of a Representative Form (IMM5476)), which I attach as **Exhibit "D"** to my affidavit. This guidance states that:[6]

> A **representative** is someone who provides advice, consultation, or guidance to you at any stage of the application process, or in a proceeding and, if you appoint them as your representative by filling out this form, has your permission to conduct business on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA).

Based on this language, my clients have a corresponding expectation that I can accompany them to any examinations/interviews as their counsel, with full rights of participation, including the right to "conduct business" – i.e., communicate – on their behalf as appropriate. This expectation is reflected in the terms of my retainer agreements with my clients.

30. However, IRCC's and CBSA's policies and practices deviate from the right to counsel expected from the wording in the Use of a Representative Form, as I explain below. IRCC and CBSA either fail to recognize the right to counsel for examinations/interviews, or limit the right to counsel in these contexts.

31. I also expect that as counsel, IRCC will direct all communications about my client's applications to my attention. My expectation is based on the content of the form, which includes my full contact details (mailing address, telephone, fax and email), as well as IRCC's guidance indicating that "the representative will receive all correspondence from IRCC or the CBSA, not the applicant." However, is not unusual for CBSA and IRCC to contact my clients directly without contacting me. My clients may respond on their own with incorrect or incomplete information as they misunderstand that they do not need counsel for that particular matter. My clients may also fail to inform me about the communication as they assume that IRCC or CBSA have contacted me and miss deadlines. These situations can have a detrimental impact on my clients' interests.

IRCC and CBSA right to counsel policies

32. According to *Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 SCR 1053, the right to counsel under section 10(b) of the *Charter* is limited in the immigration

[6] Immigration, Refugees and Citizenship Canada, "Use of a Representative Form (IMM5476)" (last modified 1 May 2025), posted at https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5476.html.

and refugee context to situations where an individual is detained. The requirement for a detention excludes most examinations/interviews conducted under the *IRPA*.

33. IRCC and CBSA policies reflect *Dehghani* by not recognizing a right to counsel in POE examinations and inland interviews if the person has not been detained. For example, when a CBSA examination concerns routine information-gathering to establish admissibility to Canada, in my experience, CBSA does not permit counsel to attend or participate in the examination unless the person has been arrested or detained, or unless the matter has been referred to a Minister's Delegate (**"MD"**).

34. IRCC has general policies on the absence of a right to counsel in non-detention contexts at POE examinations and inland interviews. The policies offer specific guidance for certain contexts. I provide examples. The policies mentioned do not delineate all the specific contexts that arise, but the "Use of representatives: Counselling applicants during interview" page below is a general umbrella policy and applies to the scenario explained below paras. 65-90.

"Use of representatives: Counselling applicants during interview"

35. The IRCC website has a "Use of representatives: Counselling applicants during interview" page that "contains policy, procedures and guidance used by IRCC staff" on the presence and role of counsel during examinations, interviews and reviews.[7] I attach a PDF of this page as **Exhibit "E"** to my affidavit.

36. The page states that "[i]n all cases, however, persons must be given the opportunity to obtain counsel at their own cost".

37. However, reflecting *Dehghani*, the page draws a distinction between "detained cases" and "released cases" regarding the presence of counsel:

a. In detained cases, the page states that persons have the right to have counsel present during their interview and officers must inform them of this right before beginning

[7] IRCC website, "Use of representatives: Counselling applicants during interview" (last modified 16 October 2017), https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/use-representatives/counselling-applicants-interview.html.

the interview. The right to counsel for detained persons would be triggered during removal order determinations and eligibility determinations.

b. In released cases, the page states that officers "must inform persons of the possibility of retaining counsel prior to commencing the interview". The website notes that persons "do not have the right to have counsel present during the interview". It goes on to state that "in the spirit of procedural fairness, officers should permit counsel's presence". However, "officers may require counsel to leave if they are of the opinion that such an action is warranted".

38. The page defines the role of counsel when present: "Participation by counsel involves speaking on the client's behalf, presenting evidence and making submissions on the issues."

ENF 4: POE examinations

39. IRCC publishes an Enforcement (ENF) manual. Chapter ENF 4 addresses POE examinations. I attach a PDF of ENF 4 as **Exhibit "F"** to my affidavit.[8]

40. Section 8.3 of ENF 4 addresses the right to counsel at POE examinations. It states that when an individual has counsel with them at POE examinations, the officer "should allow the legal representative to remain present as long as they do not interfere with the examination process". In my experience, counsel may be asked to leave if they exercise full rights of participation, "as there is no legal obligation to allow them to be present". In other words, counsel may observe a POE examination, but not participate in it. However, I am not aware of any situation where counsel has been permitted to attend a POE examination.

41. ENF 4 also states that the right to counsel varies depending on whether a person is detained (reflecting *Dehghani*), and sets out the following scenarios:

- if a FN/PR is being examined, and the examination does not go beyond what is required to establish admissibility, the person is not entitled to legal counsel;

[8] ENF 4: Port of Entry Examinations (last modified 28 February 2024), posted at: https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf04-eng.pdf.

- if the examination becomes very lengthy and exhaustive but not beyond what is required to establish admissibility, the FN/PR is not entitled to legal counsel, but he BSO may consider allowing the person to acquire legal counsel;
- if the FN is not restrained in any way but advised to come back the next day for further examination as outlined in section 23 of the *IRPA*, then they are not considered detained, and there is no right to counsel;
- if a person is being held for a lengthy period and is subject to questioning by other agencies, such as the RCMP or CSIS, then this may constitute detention, and the FN should be notified of their right to counsel;
- if restraining devices are used, or the person is placed in a holding cell, even temporarily, then an officer must inform the person of the reason for the detention and of their right to counsel; and
- if the person is arrested for a criminal offence, they must be informed of the reason for the arrest and of their right to counsel.

42. ENF 4 is silent on whether IRCC/CBSA officers should give persons the opportunity to retain counsel if they do not already have counsel with them.

ENF 5: CBSA/IRCC policies for section 44(1) reports

43. Chapter ENF 5 governs officers charged with preparing reports regarding admissibility pursuant to section 44(1) of the *IRPA*. Officers may come from either CBSA or IRCC, depending on the Minister responsible for the *IRPA* provision in question. I attach a PDF of ENF 5 as **Exhibit "G"** to my affidavit.[9]

44. Section 6.5 addresses the right to counsel. It also draws a distinction between "detained cases" and "non-detained inland cases":

a. In detained cases – both POE and inland – the officer must inform the individual of their right to counsel prior to commencing the interview. This "includes situations

[9] ENF 5: Writing Section 44(1) Reports (last modified 20 February 2025), posted at: https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf05-eng.pdf.

where the person is detained by the criminal courts while facing charges or serving a sentence and subject to *IRPA* proceedings."

b. In non-detained cases, the right to counsel varies by whether the interview is at the POE or inland.

i. At POE interviews, "[g]enerally, CBSA's policy is not to permit counsel at a port of entry examinations unless arrest/detention has occurred" but "if an officer is dealing with an individual who does have counsel present, the officer should allow the counsel to remain present as long as counsel does not interfere with the examination process."

ii. For inland interviews, the person "does not have the right to have counsel present during A44(1), however, in the spirit of procedural fairness, the officer shall inform the person of the possibility of obtaining counsel prior to commencing the interview" and "[o]fficers should permit counsel's participation should the individual subject to the A44(1) process have a counsel" and "[c]all-in notices for interviews should advise the person that they may have counsel present". This is reiterated in section 11.8 which indicates that for in-person interviews, "the person concerned must also be given the opportunity to have counsel present at the interview" but cautions that "[t]his is not to be confused with an unqualified right to have counsel present" unless the person is detained. The sample call-in letters attached to ENF as Appendices A and D to ENF 5 inform individuals that they may have counsel present during the interview, but warns that "CBSA reserves the right to exclude your counsel from the interview if they are found to be disruptive or disrespectful."

45. Section 6.5 provides further guidance on counsel's participation: "Participation by counsel involves speaking on the client's behalf, presenting evidence and making submission on the issues. Allowing counsel to participate, if ready to do so, does not mean that the officer is required to tolerate disruptive or discourteous behaviour by counsel."

46. Section 11.6 explains that "[a] refugee claimant does not have the right to counsel relating to their eligibility to claim refugee status." This is different from a refugee claimant who is re-

examined when their claim is pending before the RPD and who has counsel of record at the RPD, as explained above at para 22.

ENF 6: MD's review of reports under section 44(2)

47. Chapter ENF 6 governs MDs charged with reviewing reports under section 44(2). The purpose of the review is to determine the accuracy and validity of the report and decide whether to issue a removal order where the MD has the jurisdiction to do so or refer the matter to the ID for an admissibility hearing. MD officers may come from either CBSA or IRCC. I attach a PDF of ENF 6 as **Exhibit "H"** to my affidavit.[10] The relevant language is identical to ENF 5 and is found in section 6.5. In addition, ENF 6 specifies in section 6.5 that "MDs are not obliged to postpone MD review proceedings in non-detained cases due to counsel unavailability, however, may consider such requests on a case-by-case basis." Section 16 notes that a proceeding under section 44(2) may warrant an adjournment "to ensure that a person has a reasonable opportunity to provide more evidence or to obtain counsel", but does not require an adjournment.

The importance of counsel in IRCC and CBSA examinations/interviews

48. For applicants who do retain counsel, the above-mentioned policies create impediments to representation by counsel of record in examinations/interviews.

49. These policies, along with CBSA's and IRCC's practice, do not recognize a right to counsel outside of the detention context, and are based on *Dehghani*. At most, the policies recognize a qualified right to counsel, confined to attending examinations/interviews. Specifically, for MD reviews, ENF 6.5 does not require the postponement of an interview if counsel is unavailable. Neither ENF 4 nor ENF 5 refer to the potential need for adjournment to enable the exercise of the right to counsel.

50. In addition, in my experience, notwithstanding what the ENFs state, when CBSA and IRCC do permit counsel to attend an examination/interview, counsel's rights of participation are very limited.

[10] ENF 6: Review of reports under subsection A44(2) (last modified 20 February 2025), posted at: www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf06-eng.pdf.

51. Based on my experience, I will explain the importance of the right to counsel in examinations/interviews generally, and then highlight right to counsel issues in the examinations/interviews contexts that I listed earlier.

The importance of the right to counsel

52. Based on my experience, the right to counsel is important in IRCC and CBSA examinations/interviews for several reasons.

53. *First*, examinations/interviews can be difficult for clients to navigate without counsel. Individuals may be ill-equipped to navigate the legal system and arrive at a successful outcome because they are unfamiliar with Canada's official languages, culture, and expectations when interacting with government officials. They may also have lower levels of literacy, or disabilities that impede their ability to participate in these processes.

54. Refugee claimants and individuals with refugee status may face additional barriers to navigating the legal system if they have been tortured or faced other forms of ill-treatment and remain traumatized.

55. Individuals may be further disadvantaged when interacting with both CBSA officers who operate as law enforcement officers at POE and IRCC officers who perform investigative work in their interviews. This is particularly significant for individuals who face linguistic, cultural and educational barriers, may be mistrustful of government officials, including individuals who are racialized, have faced gender-based violence, or LGBTQ-based harm, and/or are from countries ruled by oppressive regimes where human rights and the rule of law are not respected. Such individuals may not disclose relevant information in an examination/interview.

56. Counsel can significantly mitigate these barriers by preparing for and attending examinations/interviews. Although CBSA and IRCC interviewing officers are presumably trained in interviewing techniques, including cultural sensitivity and trauma-informed questioning, their role is inherently different from that of counsel. Counsel can prepare clients by explaining the process, legal issues, and expectations including establishing trust in government officials and the importance of being forthcoming in answering questions, and provide guardrails for clients during the interview by advising them to only answer relevant questions with relevant information. Counsel can also ensure that any disability is medically documented and before the interviewer. In

addition, counsel can ask for questions to be clarified, preventing needless confusion, prolonged questioning, and misunderstandings. In this way, counsel serves to promote equal participation in examinations/interviews, and equal outcomes of the legal processes under which they are conducted.

57. *Second*, there are significant legal consequences that flow from a lack of counsel in examinations/interviews. Without counsel, individuals may not be able to fully understand the legal issues involved in examinations/interviews and how facts relate to those issues. For example, the Federal Court specifies legal tests for spousal sponsorships and in admissibility matters. Knowledge of the law is necessary to meet the evidentiary requirements of these tests – i.e., to meaningfully participate in a fact-finding process and offer responses and documentation that are relevant to these tests.

58. Moreover, individuals may not understand certain questions or appreciate the importance of providing clear and fulsome evidence. Answers may appear ambiguous or evasive, or may even be incorrect. The use of an interpreter may add to a misunderstanding. In such situations, counsel can clarify the question. For example, if each spouse is asked during separate spousal interviews to indicate what they ate yesterday, they may refer to different meals, which presents an apparent contradiction. They may also be unaware that the information they provide, and any decision made, can be used in future proceedings against them.

59. Finally, it is not possible for counsel of record to offer a proper legal submission after an examination/interview is completed without having also attended the proceeding. Yet a proper legal submission helps reduce the chances of a negative outcome.

60. *Third*, note-taking by counsel during examinations/interviews can play a crucial role because no recording is available and an officer's notes are subject to the officer's interpretation of what was said both in terms of questions and responses. At times, an officer conducting a POE examination will produce a statutory declaration in a "Q & A" format. But because that record reflects the officer's note-taking and is not read back to the individual to verify its accuracy, it may contain inaccuracies. In addition, the statutory declaration is not created for all examinations. Counsel's notes are crucial to establish an evidentiary record for the purpose of making submissions before an officer in rendering a decision, and if the matter is referred to the ID or RPD or an application is filed to seek leave for judicial review of a decision. The lack of counsel's notes

limits the ability to challenge any decision made in the Federal Court because there may be no evidentiary record of the questions and answers from the examination/interview.

61. In addition, even when the Federal Court sets aside a determination by an officer, the notes from the original examination/interview conducted without counsel remain in CBSA's or IRCC's file for a redetermination of the application by an officer and can have lasting negative effects on the determination of the application. Counsel's notes are essential to provide a full record of the examination/interview.

62. The limitation of a lack of recording is exacerbated when an interpreter is required, especially when an interpreter provides services over the phone which can increase the likelihood of a misunderstanding.

63. *Fourth*, even when IRCC or CBSA permits counsel to attend an examination/interview, the role of counsel is not defined. The rules remain unclear to all involved. It is understood, however, that counsel's role is limited to being an observer. In my experience, immigration officers often interpret participation by counsel as interference, even though acting as counsel and interfering are clearly distinct. For example, if counsel interjects to say that their client does not understand a question, counsel may be told not to interrupt, and possibly to leave the interview. This deprives the client of full representation and serves to frustrate the process by prolonging a misunderstanding.

Immigration and refugee examinations/interviews and contexts

64. I illustrate these points by reference to some specific contexts, listed at para. 12 above.

Inland and overseas spousal interviews

65. When a person applies to sponsor a spouse, IRCC must be satisfied that the marriage or common law partnership is genuine and that the couple is cohabitating. IRCC conducts an interview when it has concerns about the relationship. As the officer has already flagged concerns about the application, this means that the stakes at the interview are high. Typically, spouses are interviewed separately and are asked identical questions to determine if the answers match. These interviews are crucial in determining the outcome of the sponsorship application.

66. IRCC officials may conduct spousal interviews and make decisions based on Western concepts of a genuine marriage that lack cultural sensitivity. For example, false assumptions about

the genuineness of the marriage can arise in the case of an arranged marriage. They may also be present when there is a time difference between a religious and civil ceremony, with cohabitation delayed until the latter. The lack of understanding of relevant evidence during an interview provided by applicants can lead to a finding of a non-genuine marriage and the separation of spouses. Counsel can mitigate these risks.

67. A refusal of spousal sponsorship can have severe negative consequences. A refusal can separate couples. A spouse in Canada may be subject to removal or be unable to enter Canada if they are outside Canada. While in an overseas application, a sponsoring spouse may appeal to the IAD, no such appeal exists for an inland application. For the latter, the only remedy is judicial review, which requires leave, and is subject to reasonableness, not correctness, and is based on what transpired at the interview. The lack of a recording of the interview can make counsel's notes crucial in these proceedings If an appeal or judicial review is successful, the sponsorship application would be remitted to the visa office for redetermination. These remedies – even if obtained – take considerable time and involve delays in redetermination of a sponsorship application.

POE and inland refugee eligibility examinations/interviews

68. CBSA and IRCC conduct refugee examinations/interviews to assess an individual's eligibility to access Canada's refugee determination system. Refugee eligibility under the *IRPA* is more complex than it was when the Supreme Court decided *Dehghani*.

69. The current provision, section 101 of the *IRPA*, involves numerous and complex legal issues that were not present under the version of the *Immigration Act* in force during *Dehghani*. Successfully navigating section 101 is greatly enhanced by counsel, who can advise clients on the requirements of the legal tests the provision establishes, and the requisite evidence required to meet those legal tests.

70. For example, section 101(e) of the *IRPA* gives effect to the *Canada-U.S. Safe Third Country Agreement* by rendering a person ineligible to institute a refugee claim if they come from a "country designated by the regulations". But a person arriving at a POE may be exempt from this bar if they, for example, have an "anchor relative" in Canada. Effectively asserting this exemption involves presenting evidence – for example, arranging for the anchor relative to be present at the POE upon their arrival. I am aware of situations where a person could not satisfy CBSA that they

had an anchor relative, due to a lack of evidence. Having counsel present can resolve these situations, which avoids a person being returned to the U.S., removes the need for reconsideration applications to CBSA, and obviates an application to seek leave to commence judicial review in the Federal Court.

71. In addition, the Supreme Court in Canada *Council for Refugees v. MCI*, 2023 SCC 17 ruled that individuals arriving at the Canada-U.S. port of entry can avail themselves of "safety valves" under the *IRPA* at their refugee eligibility interviews to circumvent the bar under the *Canada-U.S. Safe Third Country Agreement*. Asserting the safety valves requires that a person present evidence and legal arguments at the POE, which is simply not possible without counsel.

72. Another example is section 101(1)(d), that renders a person ineligible to institute a refugee claim if they have been "recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country". In such a case, the person must present evidence that they cannot be sent or returned to the country to be eligible to institute a refugee claim in Canada. Ineligibility can mean that the person is turned away at a POE, which can trigger their *refoulement*, even if that *refoulement* happens indirectly by being turned back at the Canada-U.S. border.

73. It is important to underline that the *IRPA* does not provide appeal rights for an eligibility determinations, which heightens the stakes for individuals to successfully navigate the eligibility provisions, and hence, only reinforces the importance of counsel.

74. The only remedy is to seek leave to commence judicial review, and in any event, commencing that process does not stop removal from Canada, unless the claimant obtains a stay of removal in the Federal Court to avoid *refoulement*.

POE and inland cessation and vacation interviews

75. The *IRPA* permits the Minister to make an application to the RPD to revoke refugee status. Section 108 allows the RPD to determine that the need for refugee protection has ceased, for example, if a person returns to their country of origin for a period of time. Cessation not only vitiates refugee status, but PR status as well. Section 109 allows the RPD to determine that refugee status should be vacated for misrepresentation or the withholding of material facts relating to a relevant matter – for example, if a person withheld that they have a second country of nationality.

Vacation vitiates refugee status, PR status, and citizenship. The consequences of both cessation and vacation could not be more serious.

76. A CBSA or IRCC examination/interview may trigger a cessation or vacation application by the Minister, from which there is no ability to review as it involves a discretionary decision. Counsel plays an important role in making submissions to the immigration officer, to resolve the matter at the interview so that it does not proceed any further. Counsel also play a vital role in creating a record of the examination/interview through note-taking.

77. The stakes of the examination/interview are therefore very high, as a vacation or cessation decision will result in an individual losing their citizenship, permanent residence, and/or refugee status. Individuals are better able to navigate these interviews with the assistance of counsel.

POE and inland admissibility interviews

78. Sections 34 to 42 of the *IRPA* set out inadmissibility grounds. These include security issues, violations of human rights, various forms of criminality, health, financial, misrepresentation, cessation of refugee status, non-compliance, and having an inadmissible family member. Each admissibility ground is distinct and raises complex legal and factual issues.

79. CBSA or IRCC conduct examinations/interviews to assess admissibility when a person seeks to enter Canada at a POE, applies for status in Canada, or is simply brought to an interview when CBSA or IRCC wishes to explore an admissibility issue.

80. An individual may be unaware of the specific subsection of the *IRPA* that is at issue. Even if they are aware of this information, they are very unlikely to be familiar with the judicial interpretation of the provision, which has generated a large jurisprudence.

81. In addition, an individual may not receive disclosure of any evidence before the interview.

82. Depending on the ground of admissibility, the immigration officer is vested with the power to write a referral, which will either go to the MD for a decision, or the ID for an admissibility hearing. For the latter, the evidence collected at the interview follows the individual to the ID hearing, with potentially severe consequences for the individual, as it can serve as the basis for the ID's removal order.

83. Counsel may play an important role in making submissions to the immigration officer regarding admissibility to resolve the matter at the interview so that it does not proceed any further.

Since the *IRPA* provides no right of appeal from an admissibility finding of an officer to the ID, the stakes are high.

84. When the ID renders a decision, depending on the inadmissibility section at issue, an individual may have no right of appeal to the IAD and may seek leave to commence judicial review. The interview is part of the record, which reinforces the role of counsel.

Removal interviews

85. Sections 48 to 52 of the *IRPA* govern removal from Canada. CBSA issues an individual who is subject to an enforceable removal order a notice termed a "direction to report". This notice instructs an individual to attend an interview, or a series of interviews, to arrange for their removal from Canada. During these interviews, CBSA deals with removal arrangements, such as obtaining a passport and airline ticket.

86. Attending a removal interview can be stressful and intimidating. The interview can be particularly difficult to navigate for a person experiencing mental health issues. Below are three examples of the high stakes involved in removal interviews and the importance of counsel.

87. *First*, counsel can ensure that an individual clearly articulates their intention to comply with their legal obligations, preventing them from being detained. If the CBSA officer believes that the person would not show up for removal, they can arrest and detain them as a flight risk. A person who is fearful of returning to their country of origin but wants to comply with the law faces a dilemma. If the CBSA officer asks them whether they will return to their country, and they respond that they fear returning, they can be misunderstood as a flight risk and detained pending removal. But if they deny fearing return, they are not being truthful. Counsel can advise that the appropriate answer is that they fear returning but will report as directed for their removal.

88. *Second*, counsel can ensure that an individual makes a proper request for a "deferral" of their removal. However, the concept of deferrals is not located in the *IRPA*. Rather, it is a practice that is highly discretionary. It is based on a number of factors, including health concerns, the imminent completion of school, or a decision about an immigration application that would give the individual status to remain in Canada (such as a spousal sponsorship or humanitarian and compassionate application). A successful deferral request usually depends on the presentation of evidence including medical or psychiatric reports, country condition reports, and/or affidavits, and

detailed legal submissions. While CBSA would typically consider such a request once a removal date has been set, an individual may plead with an officer to let them remain during any of the removal interviews with CBSA. But in the course of doing so, an individual may make statements and provide documents that CBSA can rely on to deny the request, even if counsel subsequently makes a proper deferral request. Counsel can help individuals avoid these mistakes.

89. *Third,* counsel can ensure that an individual understands that statements made during a removal interview can be put into evidence before the Court. Effecting removal typically involves a series of interviews. As the setting of a removal date becomes more imminent, the stakes at interviews become higher, since statements made during interviews can be put before the Court in a stay motion challenging the removal (as explained in the paragraph below). This issue is most important for individuals in the refugee system who may be mistrustful of government officials, or those who face barriers arising from gender-based violence, as they may fail to provide accurate information.

90. The stakes of making a proper deferral request are high, which underlines the importance of counsel's involvement in the interview process leading up to it. If CBSA does not grant a deferral, the only remedy once CBSA has determined a removal date is a stay of removal. A motion for a stay must be anchored to an underlying Federal Court application, which in turn requires that an individual file an application for leave and judicial review against a deferral decision (or a *mandamus* application and a stay if a decision has not been reached close to the removal date). Success in the leave process, and if leave is granted, the judicial review, turns on a properly prepared deferral request – which individuals are much more likely to have prepared with the assistance of counsel.

91. I make this affidavit for no improper purpose.

DECLARED REMOTELY at the City of Toronto in the Province of Ontario before me at the City of Toronto in the Province of Ontario, on August 19, 2025 in accordance with O. Reg. 431.20, Administering Oath or Declaration Remotely.)

Lorne Waldman

_____

Lorne Waldman

_____

Maureen Silcoff
a Commissioner for Taking Affidavits

"A"

Maher Arar

Pushpanathan
Refugee Convention
J.P.

Burns and Rafay

Gavrila,

Charkaoui

"B"

FORM 52.2 **Court File: IMM-12116-25**

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

Certificate Concerning Code of Conduct for Expert Witnesses

I, Lorne Waldman, having been named as an expert witness by the Applicant, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the *Federal Courts Rules* and agree to be bound by it.

Dated: August 19, 2025

Lorne Waldman
Lorne Waldman (Aug 19, 2025 07:46:53 EDT)

Lorne Waldman
Waldman & Associates
281 Eglinton Avenue East
Toronto, ON M4P 1L3
Tel 416-482-6501

SOR/2010-176, s. 12.

"C"

USE OF A REPRESENTATIVE

You do not need to hire a representative, it is your choice. No one can guarantee the approval of your application. All the forms and information that you need to apply are available for free on the Immigration, Refugees and Citizenship Canada (IRCC) Website.

By filling out this form, you are appointing a representative to conduct business on your behalf throughout the application process. Your representative will be able to complete or update your application and act on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA). You may only have **one** representative at a time per application. If you appoint a new representative, the previous representative will no longer be authorized to conduct business on your behalf and receive information on your application.

Note: You must use this form to appoint a paid or unpaid representative to conduct business with IRCC or the CBSA on your behalf. You must also use this form: 1. to notify IRCC if your representative's contact information changes, 2. if you wish to cancel the appointment of your current representative and represent yourself, 3. if you wish to cancel the appointment of your current representative and appoint a new representative or, 4. to withdraw yourself as the representative on the application

I am:

- ◯ appointing a representative. **Complete Sections A, B and E.**
- ◯ updating contact information of an appointed representative. **Complete Sections A, B and E.**
- ◯ cancelling the appointment of a representative. **Complete Section A, C and E.**
- ◯ cancelling the appointment of a representative and appointing a new representative. **Complete Section A, B, C and E.**
- ◯ withdrawing role as a representative. **Complete Section A, D and E.**

SECTION A: APPLICANT INFORMATION

1. Your full name

Family name (Surname) (as shown on your passport or travel document)

Given name(s) (as shown on your passport or travel document)

2. Your date of birth (YYYY-MM-DD)

3. Your email address

If you do not have an email address, provide either your telephone number or your address

4. Application Information

Type of application (permanent residence, extension of study permit, etc.)

Application number *(if known)*

5. Unique Client Identifier (UCI) number *(if known)*

SECTION B: APPOINTMENT OF REPRESENTATIVE

- I authorize the following individual to serve as my representative, as the primary point of contact on my application, and to conduct business on my behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency. **Note**: Even if a representative is being paid or compensated by someone other than you (the applicant), the representative is still considered to be a paid representative.
- I authorize Immigration, Refugees and Citizenship Canada and Canada Border Services Agency to release information from my application and that of my dependent children under 18 years of age to my representative. This authorization is in accordance with the *Privacy Act*.
- I am aware that any information which would be subject to exemption, if I had the right of access under the *Privacy Act* or the *Access to Information Act*, will likely not be released.

6. Your representative's full name

Family name (Surname)

Given name(s)

7. Your representative (Select one option)**:**

(i) is UNPAID and is a

- ◯ Friend or family member
- ◯ Member in good standing of the College of Immigration and Citizenship Consultants (CICC)

  Membership ID number
- ◯ Member in good standing of a Canadian Provincial or Territorial law society or student-at-law

  Which Province/Territory? | Membership ID number (if applicable)
- ◯ Member in good standing of the Chambre des notaires du Québec

  Membership ID number
- ◯ Other (please specify)

OR

(ii) is, or will be, PAID and is a member in good standing of

- ◯ The College of Immigration and Citizenship Consultants (CICC)

  Membership ID number
- ◯ A Canadian Provincial or Territorial law society or student-at-law

  Which Province/Territory? | Membership ID number (if applicable)
- ◯ The Chambre des notaires du Québec

  Membership ID number

8. Your representative's contact information

Name of firm or organization (if applicable)

If student-at-law, write the name of the supervising lawyer | Supervising lawyer membership ID

Mailing address

Apt/Unit | Street no. | Street name

City/Town | Province/State/Territory | Country or territory | Postal code/ZIP

Telephone number

Country Code | Area Code and Telephone number

Fax number (if applicable)

Country Code | Area Code and Telephone number

E-mail address (if applicable)

By indicating your representative's e-mail address, you are hereby authorizing Immigration, Refugees and Citizenship Canada to send your personal information to this specific email address.

9. Your representative's declaration:

- I declare that the information in Section B is truthful, complete and correct.
- I understand and accept that I am the person appointed by the applicant to conduct business on the applicant or sponsor's behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

Signature of representative | Date (YYYY-MM-DD)

(if applicable) Signature of supervising lawyer | Date (YYYY-MM-DD)

SECTION C: CANCEL THE APPOINTMENT OF A REPRESENTATIVE

I, the applicant, withdraw my authorization for this person to serve as my representative, to receive information on my application and to conduct business on my behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

10. Representative's full name

Family name (Surname) | Given name(s)

Name of firm or organization (if applicable)

The applicant's email provided in section A will be used for further communication from Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

SECTION D: WITHDRAWING ROLE AS A REPRESENTATIVE

I, the representative, withdraw myself as the applicant's representative.

11. Representative's full name

Family name (Surname) | Given name(s)

Name of firm or organization (if applicable)

The applicant's email provided in section A will be used for further communication from Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

(if applicable)I have been unsuccessful in obtaining the applicant's agreement and/or signature on this form (Section E), and attest to having taken reasonable steps to do so.

Signature of representative | Date (YYYY-MM-DD)

SECTION E: YOUR DECLARATION

12. Your declaration

- I declare that I have fully and truthfully answered all questions on this form and any attached application (if applicable).
- I also declare that I have read and understood all the statements on this form, having asked and obtained an explanation for every point that was not clear to me.

Signature of applicant or Parent/Legal Guardian for a person under 18 years of age	Date (YYYY-MM-DD)
If a sponsorship application: Signature of spouse or common-law partner	Date (YYYY-MM-DD)

Warning! It is a serious offence to give false or misleading information on this form.

Personal information provided on this form is collected by Immigration, Refugees and Citizenship Canada (IRCC) under the authority of the *Immigration and Refugee Protection Act* (IRPA) and of the Citizenship Act. The personal information of the applicant is used for identification and authorization purposes. The personal information of the immigration representative is used to verify that the representative is authorized to offer representation services according to the provisions of IRPA and of the Citizenship Act.

The personal information of both the applicant and the representative may be disclosed to other federal government institutions, non-governmental and inter-governmental organizations, regulatory bodies, investigative bodies, and provincial/territorial governments for the purposes of validating identity, information, and supporting an investigation.

Personal information of both the applicant and the representative may be used for other purposes including research, statistics, program and policy evaluation, internal audit, compliance, risk management, strategy development and reporting.

Failure to complete the form in full will result in a delay to processing. The *Privacy Act* gives individuals the right of access to, protection, and correction of their personal information. If you are not satisfied with the manner in which IRCC handles your personal information, you may exercise your right to file a complaint to the Office of the Privacy Commissioner of Canada. The collection, use, disclosure and retention of your personal information is further described in IRCC's Personal Information Bank - IRCC PPU 013, 042, 054, 068.

"D"

Use of a Representative Form (IMM 5476)

⚠ A new version of this form is available (05-2025). Make sure you are using the most recent version. We will continue to accept the previous versions of the form until August 1st, 2025.

Download the form

Use of a Representative Form [IMM 5476] (PDF, 1.9 MB)

Last updated: May 2025

▼ How to download, save and open this form

1. Use your computer. **The form may not open on tablets or mobile phones**.
2. **Save the form on your computer** in a place you can remember.
   - For most Internet browsers, clicking on the link above will automatically download the form.

- If the form **doesn't** automatically download, right-click on the link and select "Save as."

3. **After you download the form, open** it using Adobe Acrobat Reader.

Open this form in Acrobat Reader

1. Open Acrobat Reader.
   - You need **Acrobat Reader version 10 or higher** to open our forms.
   - Get the latest version of Acrobat Reader.
2. Select "**File**" from the top menu.
3. Click "**Open.**"
4. Find the location where you saved the form, click on the file, and click "**Open.**"

Complete the form

Read the step by step instructions on how to complete the form.

When to use this form

Complete this form **only** if you are:

- appointing a representative;
- updating contact information for your previously appointed representative;
- cancelling a representative's appointment;
- cancelling the appointment of a representative and appointing a new representative; **or**
- withdrawing your role as a representative

If you have dependent children aged 18 years or older, they are required to complete their own copy of this form if a representative is also conducting business on their behalf.

▼ Who is a representative?

A **representative** is someone who provides advice, consultation, or guidance to you at any stage of the application process, or in a proceeding and, if you appoint them as your representative by filling out this form, has your permission to conduct business on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA).

You are not obliged to hire a representative. We treat everyone equally, whether they use the service of a representative or not.

When you appoint a representative:

- you also authorize IRCC and CBSA to share information from your application with this person in place of you. **Please note the representative will receive all correspondence from IRCC or the CBSA, not the applicant;**
- your application will not be given special attention nor can you expect faster processing or a more favourable outcome;
- the representative is authorized to represent you only on citizenship or immigration matters related to the application you submit with this form; and
- you can appoint only **one (1)** representative at a time for each application you submit.

Important information: Notify IRCC about any changes.

You must notify IRCC if your representative's contact information changes, or if you change your representative, or cancel the appointment of your representative. For more information on updating IRCC with your representative's information, please see the section "How to submit this form" below.

▼ Types of representatives

There are two (2) types of representatives.

Unpaid representatives

Unpaid representatives **do not** charge fees or receive any other form of consideration or compensation for providing advice or services to represent you before IRCC or the CBSA.

Unpaid representatives include:

- Friends, family members or other third parties who do not, and will not, charge a fee or receive any other consideration for their advice and services;
- consultants, lawyers and Quebec notaries, and students-at-law under their supervision, who do not, and will not, charge a fee or receive any other consideration to represent you.

Note: You do not have to pay someone for them to be your representative. IRCC will conduct business with an unpaid representative if an applicant appoints them on their behalf.

Paid representatives

Paid representatives charge a fee or receive some other form of consideration or compensation in exchange for the representation that they provide.

It is important to know that anyone who represents or advises you for payment - or offers to do so - in connection with IRCC proceedings or applications is breaking the law **unless** they are an authorized representative or they have a specific agreement or arrangement with the Government of Canada that allows them to represent or advise you. This applies to advice or consultation which happens before or after a citizenship or an immigration application is made or a proceeding begins.

IRCC will only conduct business with paid representatives who are in good standing with their designated regulatory body. Find out if your representative is authorized.

Note: If a representative is being paid or compensated by someone other than you, the representative is still considered to be a paid representative.

Paid representatives are:

- consultants who are members in good standing of the College of Immigration and Citizenship Consultants (CICC);
- lawyers and paralegals who are members in good standing of a Canadian provincial or territorial law society, and students-at-law under their supervision;
- notaries who are members in good standing of the Chambre des notaires du Québec and students-at-law under their supervision.

If you appoint a paid representative who is not a member in good standing of one of these designated bodies, your application will be returned. Learn about using a representative.

Release of information to other individuals

To authorize IRCC to release information from your application to someone other than a representative, you will need to complete the form Authority to Release Personal Information to a Designated Individual (IMM 5475).

The person you designate under that form (IMM 5475) will be able to obtain information on your application, such as the status. However, they will **not** be able to conduct business on your behalf with IRCC.

Hide instructions

Expand all | Collapse all

General application information

Appoint a representative

- Check box to indicate if you are appointing a representative to represent you with your application process. Complete sections A, B and E.

Update contact information of an appointed representative

- Check box to indicate if you are updating the contact information of a previously appointed representative. Complete sections A, B and E.

Cancel a representative

- Check box to indicate if you are cancelling a representative. Complete sections A, C and E.

Cancel a representative and appoint a new representative

- Check box to indicate if you are cancelling a representative and appointing a new representative. Complete sections A, B, C and E.

Withdrawing role as a representative

- Check box to indicate if you are the representative and withdrawing yourself. Complete sections A, D and E; and
- Sign the declaration in section D if you are unable to obtain applicant signature in section E.

Note: if you are both cancelling a representative and appointing a new one please check the appropriate box. Complete sections A, B, C and E.

▾ Section A – Applicant Information

Question 1

Write your last name (surname or family name) and given name(s).

Question 2

Write your date of birth.

Question 3

Write your email address. If you have no email address, provide other contact information, such as a phone number.

Question 4

If you have already submitted your application, write:

- The type of application you have submitted;

- The Application number (if known)

Question 5

Write your IRCC's Identification (ID) or Unique Client Identifier (UCI) number (if known). If you have not dealt with IRCC since 1973, you will not have a UCI or a Client ID.

▼ Section B – Appointment of Representative

Question 6

Write your representative's full name.

If your representative is a member of the College of Immigration and Citizenship Consultants (CICC), a law society in Canada or the Chambre des notaires du Québec, write their name as it appears on the organization's membership list.

Question 7

Check one box to indicate if your representative is unpaid or paid.

If your representative is authorized, write the membership ID number of:

- the College of Immigration and Citizenship Consultants (CICC); or
- a Canadian provincial or territorial law society; or
- the Chambre des notaires du Québec.

Question 8

Write your representative's contact information.

If you are appointing a student-at-law to represent you, include their supervising lawyer's information including their membership ID.

Question 9

To accept responsibility for conducting business on your behalf, your representative must:

- Sign the declaration; and
- Date the declaration.

If you are appointing a student-at-law to represent you, their supervising lawyer must also sign and date the declaration.

▾ Section C – Cancel the Appointment of a Representative

Question 10

Fill in this sections if you wish to cancel the appointment of a representative. Write the representative's full name.

Complete sections A, B, C, and E of the form if you wish to both cancel a representative **and appoint a new one.**

▾ Section D – Withdrawing Role as a Representative

Question 11

The representative will fill in this section if they want to withdraw themselves as your representative.

To withdraw representation without applicant signature, your representative must:

- Sign the declaration; and
- Date the declaration.

▾ Section E – Your Declaration

Question 12

By signing, you authorize IRCC to complete your request for yourself and your dependent children under 18 years of age.

For sponsorship application, your spouse or common-law partner does not have to complete a separate request. If your spouse or common-law partner is included in this request, they must sign in the box provided.

For any other application, the representative is considered to be acting on behalf of the applicant identified in section A and (if applicable), their dependents. Separate authorization forms are required for a spouse or common-law partner even if they are included in the same application.

The form is **signed** by the applicant and representative **submitted through a portal or secure account**
Hand signature (also called a wet signature): Print and sign the form by hand.

E-Signature: Any type of insert on PDF forms:

- Typed name
- Adobe's Fill & Sign or DocuSign (or other 3rd party app/software)
- Scan or an image of a signature
- Check box as indicated

Thumbprint: acceptable if a person is illiterate or cannot make a mark (e.g., an X) for a physical reason.

The form is **signed** by the applicant and representative **submitted outside a portal or secure account**
Hand signature (also called a wet signature): Print and sign the form by hand.

- Note: This can be submitted via a scanned document.

Thumbprint: acceptable if a person is illiterate or cannot make a mark (e.g., an X) for a physical reason.

Release of information to other individuals

To authorize IRCC to release information from your application to someone other than a representative, you will need to complete the form Authority to Release Personal Information to a Designated Individual (IMM 5475).

The person you designate under that form (IMM 5475) will be able to obtain information on your application, such as the status of your application. However, they will **not** be able to conduct business on your behalf with IRCC.

How to submit this form

Online applications

If you have not yet submitted your immigration or citizenship application:

Upload this form along with your online application

If you have already submitted your immigration or citizenship application:

You may use this Web form to submit the IMM 5476 form.

Paper applications

If you have not yet submitted your immigration or citizenship application:

Send this form along with your application to the office listed in the guide of your application.

If you have already submitted your immigration or citizenship application:

You may use this Web form to submit the IMM 5476 form.

or;

If you know which IRCC office is processing your immigration or citizenship application, send the completed form to the office mailing address. Consult IRCC office mailing addresses.

You must notify IRCC about any changes in the information of the person you authorized to represent you on your application.

Date modified:
2025-05-01

"E"

Use of representatives: Counselling applicants during interview

This section contains policy, procedures and guidance used by IRCC staff. It is posted on the department's website as a courtesy to stakeholders.

Once applicants have designated a representative, IRCC staff should not

- appear to suggest or solicit applicants to change or abandon their representative by asking them to sign another designation
- solicit information from applicants concerning the fees paid to representatives, or how and why the applicant has retained a representative.

If an applicant is represented, the representation remains valid and should not be the subject of any counselling between the IRCC officer and an applicant unless the applicant revokes the representation in writing. If an applicant advises that the previous designated counsel no longer represents them, the proper course is to have the applicant complete the IMM 5476 form to revoke the previous representative and/or designate a new one.

Presence of counsel

Officers will usually conduct examinations, interviews and/or reviews in the presence of the person concerned (and counsel, where applicable).

Persons do not have a right to counsel at removal order determinations and eligibility determinations, unless they are detained. In all cases, however, persons must be given the opportunity to obtain counsel at their own cost.

In detained cases: Persons have the right to have a counsel of their choosing present during the interview. Officers must inform persons of their right to counsel prior to commencing the interview.

In released cases: Officers must inform persons of the possibility of retaining counsel prior to commencing the interview. They do not have the right to have counsel present during the interview. However, in the spirit of procedural fairness, officers should permit counsel's presence. At any time during the interview, however, officers may require counsel to leave if they are of the opinion that such an action is warranted.

Note: Participation by counsel involves speaking on the client's behalf, presenting evidence and making submissions on the issues. Allowing counsel to participate does not mean that the Minister's delegate is required to tolerate disruptive or discourteous behaviour by counsel. Where such conduct is encountered, the proceeding may be terminated.

For citizenship cases, the officer or citizenship judge should generally permit a representative or counsel to be present in the room during an interview or hearing, but may ask that person to leave in appropriate circumstances, such as where they are being disruptive, or their presence is

unduly impeding the hearing or interview process. The representative would generally not be allowed to assist or speak on behalf of the client during a citizenship knowledge test or language assessment, but generally representation is permitted when fairness dictates and the integrity of the process is not compromised.

Cases involving victims of abuse or neglect

When individuals report abuse, neglect or child abuse to IRCC, officers should advise them that this information may be disclosed to authorized representatives (for example, sponsors, other family members or friends, lawyers or consultants), unless this authorization is otherwise revoked. If an individual advises an officer they would like to revoke the authorized representative, the officer should ensure that the Global Case Management System (GCMS) is updated immediately.

Disclosure of personal information

The Use of a Representative (IMM 5476) form has two purposes:

1. it designates a representative, and
2. it gives authority to disclose an applicant’s personal information to that representative.

However, since the IMM 5476 gives authority to represent and disclose personal information concerning a specific application only, the form must be linked to a specific application.

If the applicant wants to disclose their personal information to an individual other than their representative, they should complete an Authority to Release Personal Information to a Designated Individual (IMM 5475) form.

Private versus group information sessions

Many representatives request private sessions in order to obtain information on "local office procedures." This is discouraged as it diverts resources from case processing.

Authorized representatives are members of professional organizations. These organizations provide updates on changes as well as information and training services to their members. Representatives should be advised to access the resources available to them (including the IRCC website).

Date modified:
2017-10-16

"F"

Immigration, Refugees and Citizenship Canada
Immigration, Réfugiés et Citoyenneté Canada

ENF 4

Port of Entry Examinations

Canada

Updates to the manual

Listing by date

2024-02-28

- 4 Instruments and delegations − included wording about training.
- Appendix D Temporary resident permit (TRP) annual compliance review and checklist − included annual TRP compliance review.

2023-07-05

- Section 15.5 − made the items mandatory to be included in GCMS remarks.
- Section 15.5 − inserted plain language descriptions of mandatory elements.
- Section 15.5 − added guidance on equating foreign criminal charges.
- Section 15.5 − added the requirement for the name of any approving authority or the name of any officer entering remarks on behalf of another officer to be documented in the remarks.
- Section 15.5 − TRP narrative example added

2022-05-18

- Entire document reviewed to: fix grammatical errors, fix broken links, add acronyms and links, update form numbers and replace some terminology.
- Updated all sections according to the more recent policies and guidelines such as PDI, OB and SBB.
- Section 5 - added information on the PIK.
- Section 7 - merged sections 7.9 & 7.10 and sections 7.2 & 7.7
- Section 8 − removed former 8.2 and created section 8.9 on electronic devices and 8.10 travel documents issued to non-citizens.
- Section 9 - removed previous section 9.6.
- Section 12 - removed previous section 12.5, 12.11 et 12.12, and added section 12.10 on medical surveillance.
- Section 13 - added information on NDC and Edison, section 13.9 on PG visa, 13.37 on collection of biometrics, removed previous sections 13.28 to 13.32 and updated 13.12 to include eTA-X.
- Section 17 − 17.2 was removed and added to 7.8.
- Section 21 - created a new section on Media cases.
- Section 25 - removed previous sections 25.1 to 25.3.
- Section 27 - remove previous sections 27.4 and 27.5.

2020-09-23

- Section 3 − Clarified wording around obligations
- Section 3 − Added Section R41(d)
- Section 3 − Updated Section R183 to include R183(1)(d)
- Section 3.1 − Changed IMM1262 to BSF821

- Section 4.1 – Clarified Section A55(3) to include inadmissibilities under sections A34, 35, 36, and 37
- Section 8.7 – Added Certificate of Indian Status and Secure Certificate of Indian Status as examples of identity documents
- Section 10 – Clarified wording around "right to enter and remain in Canada"
- Section 10.1 – Added wording around the Temporary Confirmation of Registration Document, and updated address
- Section 11.10 – Clarified wording around GCMS
- Section 13 – Clarified wording around foreign nationals
- Section 13.14 – Clarified wording around BSO MD
- Section 13.20 – Added new COVID-19 conditions under R183(1)(d)
- Section 13.24 – Added use of Visitor Records in cases of work permit exemption for clergy under R186(l)
- Section 13.25 – Clarified BSO cancellation authorities concerning temporary residents
- Section 13.27 – Clarified to whom people should be addressing their cheques when paying deposits or posting guarantees
- Section 15.3 – Clarified wording and added missing links
- Section 15.4 – Added Indigenous cultural considerations as factor to consider
- Section 15.6 – Emphasized wording for clarity
- Section 15.9 – Designated authority to issue a TRP expanded for clarification
- Section 16.2- Updated the text to refer to the right manual
- Section 22.10 – Added further example of training for DART officers
- Section 25.1- Updated the text to refer to the right manual
- Section 25.2- Updated the text to refer to the right manual
- Appendix D: Updated the TRP checklist
- Entire document reviewed to replace "registered Indian" with "people registered under the *Indian Act*"
- Entire document reviewed to fix grammatical errors
- Entire document reviewed to fix broken links

2019-08-15

- Section 8.8 – Additional information has been added on how to conduct GCMS checks

2019-02-01

- Section 10 – Updates to port of entry processing of people who are registered under the *Indian Act*
- Section 10.1 – Change made to federal contact information from INAC to Indigenous Services Canada (ISC); clarification of determination of registered Indian status
- Section 10.2 – Clarification of the procedure for establishing registered Indian status without documents
- Section 10.3 – Clarification of port of entry processing of American Indians

2016-12-23

- Section 4 on Instruments of Delegation expanded for clarification
- Section 4.2 on Delegation of Officers amended persons to officers
- Section 10.1 on Determining Registered Indian status updated for clarification
- Section 11.4 on investigating permanent residents for inadmissibility amended

- Section 12.1 on Permanent resident visas wording updated for clarification
- Section 12.6 on Confirmation of Permanent Residence form [IMM 5292B]updates and procedures Section of completing the Confirmation of Permanent Residence document
- Section 13.14 on eTA validity and cancellation amended
- Sections 13.3 and 13.4 on re-entry into Canada on original visa amended
- Section 28 on Open Skies Treaty deleted
- Entire document updated CIC to IRCC
- Entire document updated to reflect changes for FOSS to GCMS where appropriate
- A number of l links updated to become functional throughout document
- Request to make hyperlinks in the table of contents visible (blue)

2016-03-18

- Sections 12.12 and 12.13 on entrepreneurs have been deleted, as conditions are no longer imposed at ports of entry.

2016-02-10

- Sections 3 and 4.1 – added subsections 16(1.1) and 16(2.1) of IRPA on the requirement of the person concerned to appear before an officer for an examination and for an interview, respectively.
- Section 9.3 – updated to include document validity dates.
- Section 9.7 – formerly *Emergency passports*, updated for clarity.
- Section 12.3 – updated to include new information on merging client identification numbers.
- Section 13.2 – updated to include Puerto Rico as part of the United States and a link to the *TWOV/CTP Standard Operating Procedures* found on Atlas.
- Section 13.3 – updated to include Puerto Rico as part of the United States.
- Section 13.11 – updated to include TRPs.
- Section 13.18 – updated for clarity.
- Section 13.19 – updated to include the U.S. SENTRI card.
- Section 13.24 – updated for clarity.
- Section 13.32 – updated for clarity.
- Section 13.37 – updated for clarity.
- Section 15.3 – new procedures.
- Section 15.7 – new procedures.
- Section 25.4 – information on recovering removal costs.
- Appendix B – updated addresses.
- Appendix D – deleted and replaced with link to *TWOV/CTP Standard Operating Procedures* in section 13.2.
- Appendix E – renamed Appendix D and updated with new procedures for reporting and consulting.

2015-08-01

- Section 7.5 – addition of Electronic Travel Authorization (eTA) to part of the basic questioning during primary examination.
- Section 8.9 – addition of eTA to part of the basic questioning during secondary examination.

- Section 11.5 – update concerning the documents with which Canadian permanent residents must travel in order to return to Canada by air mode.
- Section 13.12, section 13.13 and section 13.14 – added to reference the eTA regulations, exemptions, and validity.
- Appendix D – updated to include reference to the eTA requirement.

Updates to the manual prior to 2015

Acronyms used throughout this manual

Acronyms	Definitions
AME	Alternate means of examination
API	Advanced Passenger Information
ARC	Authorization to Return to Canada
BOC	Border Operations Centre
BSO	Border Services Officer
BSOMD	BSO Minister's Delegate
CAQ	Québec Acceptance Certificate
CBSA	Canada Border Services Agency
CCA	Customs Controlled Areas
CDRP	Commercial Drivers Registration Program
CDT	Control and Defensive Tactics
CIC	Citizenship and Immigration Canada
CID	Criminal Investigations Division
CIS	Certificate of Indian Status
CoPR	Confirmation of Permanent Residence
CPC-S	Citizenship Case Processing Centre in Sydney
CPIC	Canadian Police Information Centre
CPR	Cardiopulmonary resuscitation
CSIS	Canadian Security Intelligence Service
CSQ	Québec Selection Certificate
CTP	China Transit Program
D&D	Designation and Delegation
DART	Disembarkation and Roving Team
DHS	Department of Homeland Security
DLI	Designated Learning Institution
DOB	Date of birth
DOS	U.S. State Department
EDISON TD	Electronic Documentation and Information System on Investigation Networks with information on Travel Documents
EDL	Enhanced Driver's License
EIC	Enhanced Identification Card
EMT	Emergency Medical Technician
ESDC	Employment and Social Development Canada
ESS	Employee Self-Service
eTA	Electronic Travel Authorization
eTA-X	Electronic Travel Authorization Expansion
ETC	Enhanced Tribal Card
FAST	Free and Secure Trade
FMIOA	Foreign Missions and International Organizations Act
FN	Foreign National
FOSS	Field Operations Support System
FRT	Flexible Response Team
GAC	Global Affairs Canada
GBV	Gender-Based Violence
GCMS	Global Case Management System
IAD	Immigration Appeal Division
IATA	International Air Transport Association

ICAO	International Civil Aviation Organization
ICES	Integrated Customs Enforcement System
ICET	Immigration and Customs Enforcement Team
ICS	Integrated Customs System
ID	Immigration Division or Identifier
IDA	Improperly Documented Arrival
IFHP	Interim Federal Health Program
IME	Immigration Medical Examination
INAC	Indigenous and Northern Affairs Canada
IPIL	Integrated Primary Inspection Line
IRB	Immigration and Refugee Board
IRCA	Initial Refugee Claimant Assessment
IRCC	Immigration, Refugee and Citizenship Canada
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
ISC	Indigenous Services Canada
LMIA	Labor Market Impact Assessment
LO	Liaison Officer
MD	Minister's Delegate
MHB	Migration Health Branch
MLACMA	Mutual Legal Assistance in Criminal Matters Act
MOU	Memorandum of Understanding
MRZ	Machine Readable Zone
NCB	Non-Computer Based Entry
NCIC	National Crime Information Centre
NDC	National Document Centre
NGO	Non-governmental organization
NHQ	National Headquarters
NI-TRP	National Interest TRP
NIV	Non-immigrant visa
OB	Operational Bulletin
OIC	Order in Council
OSC	Operations Support Centre
PAXIS	Passenger Information System
PDI	Program Delivery Instructions
PDP	Previously Deported Person
PHAC	Public Health Agency of Canada
PHLU	Public Health Liaison Unit
PIK	Primary Inspection Kiosk
PIL	Primary Inspection Line
PNR	Passenger Name Record
POB	Place of birth
POE	Port of Entry
PP	Protected Person
PR	Permanent Resident
RCMP	Royal Canadian Mounted Police
RPD	Refugee Protection Division
SARS	Severe Acute Respiratory Syndrome
SAWP	Seasonal Agricultural Worker Program
SBB	Shift Briefing Bulletin
SCIS	Secure Certificate of Indian Status

SENTRI	Secure Electronic Network for Travellers Rapid Inspection
SFV	Systematic Fingerprint Verification
SIN	Social Insurance Number
SMU	Statement of Mutual Understanding
SP	Study Permit
SRT	Single Reporting Tool
SSI	Support System for Intelligence
TCRD	Temporary Confirmation of Registration Document
TELO	Time, Employment, Lookout, Other
TEPS	Travellers Entry Processing System
TRP	Temporary Resident Permit
TRV	Temporary Resident Visa
TT	Targeting Travellers
TTP	Trusted Traveller Program
TWOV	Transit Without Visa Program
U.S.	United States
UCI	Unique Client Identifier
UNHCR	United Nations High Commissioner for Refugees
USINS	United States Immigration and Naturalization Service
USLPR	United States Lawful Permanent Resident
VR	Visitor record
VTIP	Victims of Trafficking in Persons
WP	Work Permit
WRC	Warrant Response Centre
XDC	Office of Protocol

1 What this manual is about

This manual describes how a Border Services Officer (BSO) conducts primary and secondary immigration examinations of:

- Canadian citizens;
- persons registered under the *Indian Act*;
- permanent residents (PR);
- foreign nationals (FNs) (including permanent residence applicants, temporary resident permit (TRP) holders and protected persons).

2 Program objectives

The objectives of the Act for conducting primary and secondary immigration examinations are the following:

- facilitate the entry of persons who have the right to enter Canada;
- facilitate the entry of FNs into Canada for purposes such as trade and commerce, tourism, international understanding, and cultural, educational, and scientific activities;
- protect the health and safety of Canadians and maintain the security of Canadian society;
- promote international justice and security by denying access to Canadian territory to those who are criminals or security risks; and
- offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, as well as those at risk of torture or cruel and unusual punishment.

3 The Act and its Regulations

The authority for a BSO to conduct an examination comes from a variety of sources, including the *Immigration and Refugee Protection Act* (IRPA), the *Immigration and Refugee Protection Regulations* (IRPR) and the *Designation of Officers and Delegation of Authority* documents.

Statutory requirements relating to persons seeking entry into Canada

The IRPA and IRPR provide for a number of different provisions that impose certain obligations on prescribed classes of persons seeking entry and provide BSOs with a number of different authorities and options when conducting examinations.

Relevant provisions	Requirement	Explanation
A10.01	Provide biometrics	A person who makes a claim, application or request must follow the procedures set out in the regulations for the collection and verification of biometric information

A11(1)	Apply for visa	A foreign national (FN) must, before entering Canada, apply to an officer for a visa or for any other document required by the Regulations.
A11(1.01)	Apply for eTA	A FN must, before entering Canada, apply by means of an electronic system for an electronic travel authorization.
A15(1)	Submit to an examination	An officer is authorized to proceed with an examination if a person makes an application to enter Canada.
A16(1)	Tell the truth and produce required documentation	A person who makes an application to enter Canada must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents reasonably required by an officer.
A16(1.1)	Appear for an examination	A person who makes an application must, on request of an officer, appear for an examination.
A16(2)	Fingerprints, photographs and a medical examination	A FN must produce photographic and fingerprint evidence if required to establish identity or compliance with the Act and, on request, must submit to a medical examination.
A16(2.1)	Appear for an interview conducted by the Canadian Security Intelligence Service (CSIS) and answer all questions truthfully	A FN who makes an application must, on request by an officer, appear for an interview for the purpose of an investigation conducted by CSIS under section 15 of the *Canadian Security Intelligence Service Act* for the purpose of providing advice or information to the Minister under section 14 of that Act. They must answer truthfully all questions put to them during the interview.
A16(3)	Evidence relating to identity	An officer may require or obtain from a PR or a FN who is arrested, detained, subject to an examination or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.
A18(1)	Appear for an examination	A person who seeks to enter Canada must appear for an examination to determine whether they have a right to enter Canada or may be authorized to enter and remain in Canada.
A18(2)	Transit passengers	A person who seeks to leave an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada must appear for an examination. Other examples could include when a flight is cancelled due to the weather or persons denied at US pre-clearance.
A20(1)(*a*)	To become a permanent resident	A FN who seeks to become a PR must establish that they hold the visa or other document required under the Regulations and have come to Canada to establish permanent residence.

A20(1)(*b*)	Entry of temporary residents	A FN who seeks to become a temporary resident must establish that they hold the visa or other document required under the Regulations and will leave Canada by the end of the period authorized for their stay.
A20(2)	Provincial selection criteria	A FN who seeks to become a PR and intends to reside in a province that has sole responsibility for the selection of FNs under a federal-provincial agreement pursuant to A9(1) must also establish that they hold a document issued by the province, indicating that the competent authority of the province is of the opinion that the FN complies with the province's selection criteria.
A28(1)	Residency obligation	A PR must comply with the residency obligation in A28 with respect to every five-year period.
A29(2)	Obligations of temporary residents	A temporary resident must comply with any conditions imposed under the Regulations and with any requirements under the Act and must leave Canada by the end of the period authorized for their stay.
A30(1)	Work and study	A FN may not work or study in Canada unless authorized to do so under the Act.
R6, R7, R8 and R9	Permanent and temporary resident visas, work and study permits	A FN must obtain these documents prior to entering Canada.
R12.001	Request or application at port of entry	A person may only make a request or application at a port of entry that provides collection services for biometric information.
R12.1	Collection of biometric information	Claims, applications and requests requiring the collection of biometric information.
R12.5	Verification of biometric information	When seeking to enter Canada and when directed, the person shall provide their biometric information for verification.
R27(1) and R27(2)	Appear for examination	A FN must appear without delay before an officer at a POE for an examination or, if entering at a place other than a POE, must appear without delay for examination at the nearest POE.
R28	Making an application	A person who seeks to enter Canada is deemed to be making an application pursuant to A15(1) and must therefore submit to an examination.
R30	Submit to medical examination	A FN who seeks to enter Canada for more than six months and who has resided or stayed in certain countries in excess of six months is required to submit to a medical examination and must hold a medical certificate stating that they are not inadmissible on health grounds.
R37	End of examination	See section 5.6 of this manual for details.

R40	Direction to leave	Except in the case of protected persons within the meaning of A95(2) and in the case of refugee protection claimants, an officer who is unable to examine a person who is seeking to enter Canada at a POE will, in writing, direct the person to leave Canada.
R41	Direct back	An officer may temporarily direct back a FN who is seeking to enter Canada from the United States if: • the examination cannot be completed; • the Minister's delegate (MD) is not available to review the report; • the admissibility hearing cannot be held by the Immigration Division (ID); • the FN is prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act*.
R42	Withdrawing an application	An officer who examines a FN who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada will allow the FN to withdraw their application and leave Canada, unless a report is being or has been prepared under 44(1) of the Act.
R43	Mandatory conditions in cases requiring further examination	A FN who has been authorized to enter Canada under A23 must comply with the following conditions: • report in person for the completion of the examination or the admissibility hearing; • not engage in any work in Canada; • not study in Canada; and • report in person at a POE if they withdraw their application to enter Canada. • comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.
R45	Deposits or guarantees	An officer can require of a person or a group of persons seeking to enter Canada the payment of a deposit or the posting of guarantee, or both, to guarantee compliance with any conditions imposed.
R50	Documents: applicants for permanent residence	A FN seeking to become a PR requires a PR visa as well as a passport, travel document or other document prescribed by the *Regulations*. For detailed requirements, see R50(1), (2) and (3).
R51	Obligations of applicants for permanent residence	A FN in possession of a PR visa who seeks at a POE to become a PR must inform the officer if: • they have become or ceased to be a spouse, common-law partner or conjugal partner after the visa was issued; or

		• material facts relevant to the issuance of the visa have changed or were not divulged when the visa was issued. The FN must also establish that they and their family members, whether accompanying or not, meet the requirements of the Act and Regulations.
R52	Documents: temporary residents	A FN who seeks to become a temporary resident must hold one of the following documents, which must be valid for the period authorized for their stay: a passport, a travel document or another document prescribed by the Regulations. For detailed requirements and exceptions, see R52(1) and R52(2).
R183 and R185	General and specific conditions on temporary residents	A temporary resident must comply with conditions of their entry, including the requirement to leave by the end of the period authorized for their stay and not to work or study unless authorized by the Act or Regulations and comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.
R184	Conditions on crew members	A FN who enters Canada as a crew member or in order to become a crew member is required to join the means of transportation within the period imposed or, if no period is imposed, within 48 hours after they enter Canada. A crew member must leave Canada within 72 hours after ceasing to be a crew member.
R196	Authorization to work	A FN must not work in Canada unless authorized by a work permit (WP) or the Regulations.
R212	Authorization to study	A FN may not study in Canada unless authorized by a study permit (SP) or the Regulations.
R243	Requirement to pay removal costs	A FN is not allowed to return to Canada if they were removed from Canada at the expense of Her Majesty and the debt incurred from removal is outstanding.

3.1 Forms

These are some of the forms used during a POE examination

Form title	Form number
Medical Surveillance Undertaking	IMM 0535B
Visitor Record	IMM 1097B
Authorization to Return to Canada Pursuant to Section 52(1) of the *Immigration and Refugee Protection Act*	IMM 1203B
Direction to Leave Canada	BSF503
Direction to Return to the United States	BSF505
Notice of Seizure of Travel and/or Identity Document(s)	BSF698
Notice to appear for a proceeding under subsection 44(2)	BSF504
Referral Under Subsection 44(2) of the *Immigration and Refugee Protection Act* for an Admissibility Hearing	BSF506

Acknowledgement of Conditions – *The Immigration and Refugee Protection Act*	BSF821
Allowed to Leave Canada	IMM 1282B
Declaration	IMM 1392B
Confirmation by Transporter Regarding Passenger(s) Carried	BSF453
Notice to Transporter	BSF502
Voluntary Departure - Confirmation	IMM 5021E
Temporary Resident Permit	IMM 1263B
Subsection A44(1) Highlights Port of Entry Cases	BSF516
Port of Entry (POE)/Secondary Examination Record	IMM 5059B
Entry For Further Examination or Admissibility Hearing	BSF536
Supplementary Identification Form	IMM 5455B
Authority to Release Personal Information to a Designated Individual	IMM 5475E
Use of a Representative	IMM 5476E
Record of Direct Backs for Refugee Claimants at the Land Border	Appendix C
Customs Referral Form (Airport)	E311
In-Person Processing – Air Mode	BSF423
Secondary Referral - Border	BSF235
Report to Warehouse (Border: Commercial Drivers)	Y28

4 Instruments and delegations

The instruments explain who has been designated to act as an officer and who has been delegated the authority to do anything that may be done by the Minister, under the Act or Regulations, depending on their position/level. There are two IRPA Designation and Delegation Instruments. One is made by Immigration, Refugees and Citizenship Canada (IRCC) and the other by the Canada Border Services Agency (CBSA). In each instrument, IRCC and the CBSA designate and delegate authorities to their own officers, as well as to officers in other departments. Therefore, it is important to read both documents to know all authorities linked to a position under IRPA.

Any person in a prescribed position and making decisions under a designated or delegated authority must successfully complete all official prerequisite CBSA training required for those positions before exercising their designated or delegated authority.

These instruments can be found in manual *IL 3*, *Designation of Officers and Delegation of Authority*.

4.1 Powers and authorities of an officer

The following sections provide authority for an officer relating to the examination of persons seeking to enter Canada:

Powers of an officer under IRPA and IRPR	Relevant provisions
Authority to conduct an examination where a person makes an application. R28 specifies that every person who seeks to enter Canada is making an application and is, therefore, subject to an examination.	A15(1)

Authority to: • board and inspect any means of transportation bringing persons to Canada; • examine any person carried by that means of transportation and any record or document respecting that person; • seize and remove any record or document to obtain copies or extracts; and • hold the means of transportation until the inspection and examination are completed. This section provides authority for officers to commence an examination prior to the passenger's arrival at the Primary Inspection Line (PIL).	A15(3)
Authority to require a person being examined to produce a visa and all relevant evidence that the officer reasonably requires, including, in the case of FNs, photographic and fingerprint evidence. Authority to request that the FN undergo a medical examination.	A16(1) and (2)
Authority to require that a person who makes an application appear for an examination.	A16(1.1)
Authority to require that a FN who makes an application appear for an interview conducted by CSIS.	A16(2.1)
Authority to require or obtain from a PR or FN who is arrested, detained, subject to an examination or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.	A16(3)
Authority to authorize a person to enter Canada for the purpose of further examination or an admissibility hearing at a later time or date.	A23
Authority to issue a TRP, if justified by the circumstances, to a foreign national who is inadmissible or who does not meet the requirements of the Act, and to cancel the TRP at any time.	A24
Authority to prepare a report on PRs and FNs who are believed to be inadmissible.	A44(1)
Authority to impose conditions, including the payment of a deposit or the posting of a guarantee for compliance with any conditions considered necessary, on a PR or FN who is the subject of a report.	A44(3)
Authority to authorize a FN against whom a removal order has been enforced to return to Canada.	A52(1)

Authority to issue a warrant for the arrest and detention of a PR or FN who the officer has reasonable grounds to believe is inadmissible and:
 	
• is a danger to the public or
• is unlikely to appear for
  ▪ examination,
  ▪ an admissibility hearing or
  ▪ removal from Canada or
  ▪ a proceeding that could lead to the making of a removal order by the Minister under A44(2)
	A55(1)

Authority to arrest and detain, without a warrant, a foreign national, other than a protected person: • who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under A44(2); or • if the officer is not satisfied with the identity of the FN in the course of any procedure under the Act.	A55(2)
Authority to detain a PR or FN on entry to Canada if the officer considers it necessary to do so in order to: ▪ complete an examination or ▪ has reasonable grounds to suspect that the person is inadmissible under A34, 35, 36, or 37.	A55(3)
Authority to order the release from detention of a PR or a FN before the first detention review by the ID if the officer is of the opinion that the reasons for the detention no longer exist. This section also allows the officer to impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary.	A56
Authority to conduct eligibility determinations for refugee claimants and to refer eligible claims to the Refugee Protection Division (RPD).	A100(1)
Authority of officers to have the authority and powers of peace officers for the purpose of enforcing the provisions of the Act, including provisions with respect to the arrest, detention and removal of a person from Canada.	A138(1)
Authority to search any person seeking to come into Canada, including their luggage, personal effects, and means of transportation, if the officer believes on reasonable grounds that the person has not revealed their identity or has hidden documents relevant to their admissibility or has committed, or possesses documents that may be used in the commission of an offence referred to in A117, A118 or A122.	A139
Authority to seize and hold any means of transportation, document, or other thing that the officer believes on reasonable grounds was fraudulently or improperly obtained or used or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of the Act.	A140
Authority to impose, vary or cancel conditions on any person who is obliged to submit to a medical examination.	R32
Authority to conduct alternate means of examination.	R38
Authority to direct a person who cannot be examined to leave Canada, in writing, unless this person is a protected person or a refugee claimant.	R40
Authority to direct a FN to return to the United States temporarily.	R41
Authority to allow or to refuse to allow a FN to withdraw their application to enter Canada and leave Canada.	R42
Authority to impose conditions on persons authorized to enter Canada for further examination under A23.	R43

Authority to require the payment of a deposit or the posting of a guarantee.	R45
Authority to impose conditions, including the period of time that a temporary resident may remain in Canada.	R183
Authority to impose, vary or cancel specific conditions on a temporary resident.	R185
Authority to issue a work permit if eligibility is met.	R200
Authority to issue a work permit on the basis of Canadian interests.	R205
Authority to issue a work permit on the basis the FN can not support themselves without working.	R206
Authority to issue a study permit if eligibility is met.	R216
Authority to require a transporter to provide a written report with respect to a stowaway.	R262
Authority to require a transporter to provide copies of a passenger's ticket, itinerary and information about travel and identity documents.	R264
Authority to require a transporter to assemble all members of the crew aboard a vessel.	R266
Authority to require a transporter to provide a written report respecting a FN who has ceased to be a member of the crew.	R268

Powers of officer under the *Criminal Code*	Relevant provisions
Authority within the meaning of the *Customs Act*, the *Excise Act* or the *Excise Act, 2001* or a person having the powers of such an officer to perform any duty in the administration of any of those Acts.	Section CC2
Authority and powers of a peace officer, including those set out in sections 487 to 492.2 of the *Criminal Code* to enforce IRPA.	Section CC2
Justification, when acting on reasonable grounds, in doing what is authorized or required in the administration or enforcement of Program Legislation, and in using as much force as necessary for that purpose.	Section CC25
Justification to use as much force as is reasonably necessary to prevent the commission of an offence (or to prevent anything being done that on reasonable grounds to believe were it done would be an offence) for which, if it were committed, the person who committed it might be arrested without warrant, and would be likely to cause immediate and serious injury to the person or property of anyone.	Section CC27
Authority to arrest without warrant a person who has committed, is committing or is about to commit a criminal offence.	Subsection CC495(1)
Limitations on when an officer will arrest a person without warrant who has committed, is committing or is about to commit a criminal offence.	Subsection CC495(2)
Authority to issue an appearance notice in lieu of arrest if the offence is listed in section CC553.	Section CC497
Authority to release from custody a person arrested, without warrant, for an offence other than one described in section CC496.	Subsection CC498(1)

Powers of officer under the *Customs Act*	Relevant provisions
In conjunction with section 2 of the *Criminal Code*, where the definition of "peace officer" includes the term officer described at CA2. The term "Officer" is defined for the purposes of the *Customs Act* as a person employed in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Import Measures Act* and includes any member of the Royal Canadian Mounted Police (RCMP).	Section CA2
Lists the particular sections of the *Customs Act* that, if violated, are punishable by either indictment or summary conviction; officers, therefore, may arrest for contraventions of those sections listed.	Section CA160
Authorizes designated officers, when at a customs office and performing their normal duties, to make an arrest for a criminal offence under any other Act of Parliament.	Subsection CA163.5(1)

4.2 Designation of officers

A6(1) authorizes the Minister of Immigration, Refugees and Citizenship Canada (IRCC) and the Minister of Public Safety and Emergency Preparedness to designate officers or classes of officers to carry out any purpose or provision of the Act. A designation is made, in most cases, where the word "officer" is referred to in the Act or Regulations with respect to a power, duty, requirement, or authority.

4.3 Ministerial delegations

A6(2) authorizes the Minister of IRCC and the Minister of Public Safety and Emergency Preparedness to delegate powers to other persons. A delegation is made, in most cases, where the word "minister" is referred to in the Act or Regulations with respect to a power, duty, requirement, or authority. Certain ministerial powers, referred to in A6(3), may not be delegated.

4.4 Designations of Ports of Entry (POE)s

The Minister has authority under R26 to designate a place as a POE. The purpose in designating a POE is to ensure that persons seeking to enter Canada are aware of where they are required to report for examination.

See a list of POEs with detailed information, including the types of services and hours of operation.

5 Departmental policy

5.1 Examinations

A15(1) authorizes an officer to examine any person making an application in accordance with the Act. This manual deals only with the examination of persons seeking to enter Canada.

R28 stipulates that a person makes an application by:

- submitting an application in writing;
- seeking to enter Canada;
- seeking to transit through Canada in airports as provided for by R35; or
- making a claim for refugee protection.

5.2 Persons to be examined

A18(1) provides that every person who seeks to enter Canada, whether they intend to or not, must appear for an examination.

A18(2) provides that this also applies to persons who, without leaving Canada, seek to leave an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada.

5.3 Primary and secondary examinations

Every person seeking to enter Canada must appear for an examination to determine whether they have a right to enter Canada or may become authorized to enter and remain in Canada. The examination process at a POE may include a primary and a secondary examination. Primary examinations are completed by a BSO at the PIL. In some airports, travellers will use a Primary Inspection Kiosk (PIK) to verify their travel documents, confirm their identity and complete an on-screen declaration. In some remote ports, an RCMP officer may complete the primary examination. Immigration Secondary examinations are conducted by a BSO at Immigration Secondary following a referral from a BSO at the PIL or from the PIK. This manual refers to both primary and secondary examinations at a POE.

5.4 Ministerial Instructions

A15(4) provides that an officer will conduct an examination in accordance with any instructions that the Minister of IRCC or the Minister of Public Safety and Emergency Preparedness may give. The authority for the Ministers to give instructions to officers can be used to ensure consistency in the application of the Act with respect to examinations. Ministerial instructions are not regulations (see A93) but are nevertheless binding on officers.

5.5 Duties and conduct of the Border Services Officer (BSO)

A BSO must deal with each person being examined in a courteous, professional and efficient manner. If it is determined that the person has a right of entry under A19, the BSO must not delay their entry into Canada.

A FN who is determined:

- to be admissible, should be authorized into Canada as a temporary resident with minimal delay; and
- to be inadmissible, should be counselled accordingly and the BSO should consider all options afforded by the IRPA and IRPR prior to making a decision.

A BSO should carefully examine all the facts before making a decision and, where appropriate, explain the reasons for that decision to the traveller.

5.6 End of examination

R37 provides that the examination of a person seeking to enter or transit through Canada is not final until one of the following outcomes takes place:

Outcome	Explanation
A final determination is made that the person has a right to enter Canada or is authorized to enter Canada and the person leaves the port of entry.	The Regulations provide that an examination is not final until the person has left the controlled area of the POE or, if no controlled area exists, has left the POE. For example, an examination may be continued if, during a Customs Secondary examination, evidence arises that indicates the person may be inadmissible to Canada. If the person's passport has been stamped or even if the person has been granted PR status, these decisions are not final and may be revisited as long as the person has not left the controlled area of the POE.
A person in transit departs from Canada.	Certain passengers in transit through Canada are not required to appear for examination if they remain in a controlled area pending their onward flight out of Canada. They are, nevertheless, subject to examination. If they seek to leave, for any reason, the area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada, they must report for examination [A18(2)].
The person is allowed to leave Canada, and their departure is confirmed.	A BSO may determine a person to be inadmissible and allow them to leave Canada pursuant to R42 if no report referred to in A44(1) is prepared or transmitted. The examination concludes once their departure is verified. If, for any reason, the person does not depart, the examination resumes.

Entry is authorized by the Minister and the person leaves the port of entry.	The Minister's delegate, in reviewing a report pursuant to A44(1), continues the examination of the person seeking entry. If the Minister's delegate determines the report is not founded, the person will be allowed to enter Canada, and the examination will conclude when the person leaves the POE.
A removal order is issued by the Minister and the person leaves the port of entry.	The Minister's delegate, after reviewing a report pursuant to A44(2), may issue a removal order. The examination ends when the person leaves the POE.
The Minister refers the case to the ID for an admissibility hearing and the person leaves the port of entry.	The Minister's delegate, after reviewing a report pursuant to A44(2), may determine that the report is well founded and refer it to the ID of the Immigration and Refugee Board (IRB) for an admissibility hearing. The examination ends when the person leaves the POE.
For refugee claims made at a POE, the examination ends when the later of the following occurs: • the officer determines that their claim is ineligible under A101 or the Refugee Protection Division (RPD) accepts or rejects their claim under A107, or • a decision in respect of the person is made under A44(2) and the person leaves the POE.	The point at which examination ends is different where the person is a refugee claimant as the application exists up until the claim has been decided. R37(2) provides delegated officers the authority to examine a refugee claimant until a decision is made in regards to the claim. For more details, please consult section 11.6 of *ENF 5, Writing 44(1) Reports.*

A23 allows an officer to authorize a person to enter Canada for the purpose of further examination or an admissibility hearing.

For more information on pre-removal risk assessments, see IRCC's *Program Delivery Instructions*.

For more information on removals, see *ENF 10 Removals*.

6 Definitions

Border services officer (BSO)	A person designated as an officer by the Minister, employed by the CBSA [A6(1)] [R2]
Canadian citizen (CC)	A citizen referred to in subsection 3(1) of the *Citizenship Act*
Common-law partner	In relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year [R1(1)]

Convention refugee	A person who, by reason of a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion, (*a*) is outside of their country of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of that country; or (*b*) does not have a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country [A96]
Foreign national	A person who is not a Canadian citizen or a PR; includes a stateless person [A2(1)]
GCMS	Global Case Management System: IRCC/CBSA client immigration database
Officer	A person designated as an officer by the Minister under A6(1) [R2]
Permanent resident (PR)	A person who has acquired permanent residence status and has not subsequently lost that status under A46 [A2(1)]
Protected person (PP)	A person on whom refugee protection is conferred and whose claim or application has not subsequently been deemed to be rejected because of cessation or vacation proceedings [A95(2)]
Sterile transit area	An area in an airport where in-transit passengers, in-transit pre-clearance passengers or goods that are in transit or pre-controlled are physically separated from other passengers and goods [R2]

7 Primary Inspection Line (PIL) examinations

The examination process usually commences upon the arrival of a person at a POE. This may be a land border, an airport, a marine harbour or any other place designated as a POE. BSOs at the PIL are delegated the authority to conduct the initial immigration examination of persons seeking entry into Canada. BSOs at the PIL administer legislation and programs by providing a wide range of inspection, examination and enforcement activities on behalf of many government departments and agencies.

7.1 Memorandum of Understanding with Immigration, Refugees and Citizenship Canada (IRCC)

On December 12, 2003, the CBSA was created, and immigration enforcement and intelligence responsibilities under IRPA were transferred to this new agency from IRCC.

The purpose of the Memorandum of Understanding (MOU) is to define, in general terms, the basis for cooperation between IRCC and the CBSA regarding:

- the delivery of the immigration program;
- information sharing; and
- the provision of various services.

For more information on the roles and responsibilities of the CBSA and IRCC, see the full text of the MOU.

7.2 Immigration secondary referral list

Paragraph 59 of part 2, chapter 1 of *The People Processing Manual* provides the Immigration Secondary Referral List which contains the categories of persons who are mandatory referrals for an Immigration examination, such as:

- inadmissible persons under sections 34 to 42 of the IRPA;
- persons whose citizenship or status is doubtful;
- FNs refusing to answer questions;
- FNs refused entry into another country;
- persons whose documents, such as passport, seems doubtful;
- immigration Lookouts;
- Canadian citizens in possession of an emergency passport issued abroad;
- PRs of Canada who have had extended absences from Canada;
- FNs intending to stay longer than six (6) months;
- FNs seeking medical treatment or appear ill;
- Foreign workers and students on first entry.

BSOs at the PIL may also refer anyone else who they believe should be examined in more detail.

Examples of types of referrals that should be sent to Immigration Secondary include cases where the BSO at the PIL:

- has doubts about the person's identity;
- suspects the FN may have a criminal record;
- believes the FN may require documentation such as a WP or SP;
- has concerns about the length of time the FN is requesting to stay in Canada in light of their actual travel plans.

7.3 Liaison with officers at the PIL

BSOs at the PIL are encouraged to inquire about the results of their referrals to Immigration Secondary. BSOs at Immigration Secondary do not operate under the same time constraints as BSOs at the PIL and have more time to conduct immigration examinations effectively. BSOs at Immigration Secondary should, whenever possible, provide feedback on the results of referrals. Liaising between officers is a key element in developing and maintaining an effective and positive working relationship with officers who conduct the primary portion of the examination process. In addition, discussing cases allows BSOs at Immigration Secondary to give guidance to BSOs at the PIL regarding immigration requirements. This increases the quality of referrals from the PIL. BSOs working at the PIL are encouraged to write in referral notes in IPIL when referring someone to secondary. See OBO-2019-030 for more details.

7.4 Responsibilities of primary examining officers

BSOs conducting primary examinations are responsible for:

- confirming the identity of the person and verifying that the biometric photograph matches in PIL, when applicable;
- questioning persons and reviewing documentation to determine whether persons have a right to enter Canada (Canadians, PRs and persons registered under the *Indian Act*) or are FNs who may be authorized to enter Canada as temporary residents;
- determining whether or not persons seeking entry into Canada are doing so as new or returning PRs;
- authorizing persons to enter Canada and stamping passports when required. As per the CBSA Stamp Policy, which came into effect on April 2, 2012, BSOs are not expected to notate stamps in passports at the PIL except in the following circumstances:
    - Officers will notate the stamp at the PIL (as per the CBSA Operational Bulletin PRG-2018-40) when authorizing entry under the
        - Parents and Grandparents Extended Stay Temporary Resident Visa (Super Visa), and
        - Authorized Period of Extended Stay;
    - Officers may place a stamp in the holder's passport on subsequent entry of persons with a valid and subsisting status document.
        - If a stamp is placed in the passport, the officer will notate the initial expiry according to the status document.
        - If a stamp is not placed in the passport, the officer will remind the person of the initial expiry date;
- referring persons for a more detailed Immigration Secondary examination when appropriate, in accordance with the Immigration Secondary referral list; and
- authorizing FNs to leave Canada or directing them to return to the U.S. at ports where there are no BSOs present at the Immigration Secondary.

7.5 Primary examination questions

Primary examination questions are designed to elicit essential information about citizenship, residency, intention, employment, length of stay and identity as quickly as possible. Normally, the examining BSO at the PIL begins by asking one or more of the six primary questions below. Under most circumstances, a BSO at the PIL does not need to ask all questions of all travellers.

Issue	Question	Rationale
Identity	What is your name?	If the BSO has any reason to doubt the person's identity, they will ask for the person's name. A comparison can then be made with the person's documents to determine if the name given is the same as the name in the document.
Citizenship	What is your citizenship?	By asking this question, the BSO can identify a person who may enter Canada by right. It is rare that a person who has a right to enter Canada be referred to Immigration Secondary.

		If the person is not Canadian, this question enables the BSO to determine whether a passport, a visa or an electronic Travel Authorization (eTA) is required to enter Canada. If the person has a machine-readable passport, the BSO does not necessarily have to ask about citizenship. A passport reader, however, is no substitute for a good verbal examination.
Residency	Where do you reside?	This question helps the BSO to determine, should the person answer they have status in Canada, what their obligations and conditions are. If the person is a PR, the BSO may ask the supplementary question "How long have you been away?" The BSO at the PIL must refer for Immigration Secondary examination all PRs who may not comply with the residency obligation of A28, which requires PRs to reside in Canada for at least 730 days out of every five-year period to maintain their status. The possible loss of PR status under A46 can be further explored at a secondary examination.
Intention	What is the purpose of your trip to Canada?	Once the BSO determines that the traveller is a FN, they must establish why the FN is coming to Canada. By asking this question, they can identify the need for a referral to Immigration Secondary for control purposes (for example, to become a PR, to work, or to study).
Employment	Do you intend to take or seek employment while in Canada?	If the BSO has not yet determined whether the person is coming to Canada to work, this question ensures that employment opportunities for Canadians are protected and that the person will comply with relevant employment regulations.
Length of stay	How long do you intend to stay in Canada?	BSOs may allow a FN to enter Canada for a stay of up to six months and should stamp the passport of a person who is otherwise admissible. A FN who is intending to remain in Canada for longer than six months should be referred for a Immigration Secondary examination.

The BSO at the PIL may ask additional questions as warranted but usually does not conduct in-depth examinations. This would create line-ups and delays for the travelling public. A BSO at the PIL who doubts the *bona fides* of a person or believes that a detailed examination may be in order should refer the person to an Immigration Secondary examination.

Most travellers seeking entry at an international airport will use a Primary Inspection Kiosk (PIK) instead of being seen by a BSO at the PIL. Travellers in possession of an ePassport will have the photo stored in their passport's chip compared to their photo taken at the PIK to authenticate their identity. If the traveller does not have an ePassport or the system was unable to validate their identity, the podium officer will verify their identity by comparing the photograph in the passport with that of the traveller in front of them. Also, travellers who have previously had their biometrics enrolled will be asked to verify their identity via fingerprint verification at PIK.

7.6 Criminality

BSOs at the PIL shall not ask a FN about criminality during a PIL examination. Questions about criminality are better suited for Immigration Secondary, where BSOs have more time to conduct a full examination and to question a person in a more private setting. Consequently, when a BSO at the PIL suspects, through questioning, lookouts and IPIL, or other indicators, that a FN may have a criminal record, the FN should be referred to an Immigration Secondary examination. All BSOs at Immigration Secondary should take care to ensure privacy by not questioning a person about criminality in the presence of accompanying family members or other travellers.

National Crime Information Center (NCIC) queries cannot be conducted as a matter of course and should never be done as a matter of routine. However, travellers can be queried in NCIC if officers have reasonable suspicion indicating criminal activity. If the reasonable suspicion (or reasonable grounds to suspect) standard has been met, name-based checks in NCIC for an investigative purpose or for criminal history are authorized on persons originating from or associated with the United States of America or any of its territories.

BSOs must have completed the mandatory training, M1126-P in the ESS self-service portal prior to doing any NCIC query. Refer to OBO-2020-080 on authorized usage by CBSA of the NCIC.

BSOs may refer to the *NCIC Quick Reference Guide* on Atlas for instructions on how to query NCIC.

7.7 Referral of FNs with medical conditions

A38 states that FNs are inadmissible to Canada on health grounds if a medical officer has concluded that the applicant's health condition:

- is likely to be a danger to public health;
- is likely to be a danger to public safety; or
- might reasonably be expected to cause excessive demand on health or social services.

Referral for an Immigration Secondary examination is mandatory when a foreign national:

- is seeking to enter Canada in order to undergo medical treatment; or
- is obviously ill.

It is not possible, given the time constraints of the primary examination process, to assess the health status of every FN seeking authorization to enter Canada. BSOs at the PIL should adopt a practical approach based partly on visual risk assessment and partly on common sense and experience.

BSOs should not be consciously looking for medical problems as part of their examination but should refer for further examination those whom a reasonable person would judge to be ill. Examples could include FNs who:

- act abnormally;

- have incoherent speech;
- are on a stretcher or are accompanied by medical personnel (e.g., nurse, personal physician, etc.);
- exhibit obvious signs of illness.

Certain viruses can lead to widespread epidemics/outbreaks in a specific country and could even lead to a global pandemic such as COVID-19 did. In the past, Ebola, Severe Acute Respiratory Syndrome (SARS) and H1N1 swine flu have threatened the global populations. In response to these epidemics, CBSA and Public Health Agency of Canada (PHAC) work together to screen travellers who might be infected. BSOs at the PIL are to notify PHAC immediately if they believe a person is showing signs of infection. A PHAC quarantine officer will assess the person, either over the phone or in person depending on your work location, and render an opinion. Each POE should have protocols in place for these types of situation.

BSOs can access a health specialist through the new PHAC Notification Line: 1-833-615-2384 and email phac.cns-snc.aspc@canada.ca.

On occasion, a FN who is critically ill or injured will be transported to a hospital in Canada via an ambulance. Due to the seriousness of the foreign national's condition, the BSO may feel that conducting a full primary or secondary examination is not advisable at that time. The BSO should not unduly delay a person who needs urgent medical treatment. Information should be obtained from the emergency medical technician (EMT) as to which hospital the FN is being transported to and the FN's passport should be seized so that the BSO can conduct an examination when the FN is release from the hospital.

For more information on medical inadmissibility, see section 17 below or visit IRCC's PDI on the matter.

7.8 CBSA referral forms

There are various forms that a BSO at the PIL uses to refer a person to the Customs or Immigration Secondary examination areas.

CBSA referral forms		
Form	Use	Explanation
E311	Primarily airports	The E311 form is completed by passengers on airplanes destined to Canada and by some bus and train passengers. A passenger presents the E311 form to the BSO at the primary inspection booth, and the BSO verifies the information and codes the form. This form is being phased out and replaced with BSF423.
BSF423	Airports	The BSF423 is completed by a BSO when a passenger is unable to use the PIK.
PIK receipt	Airports with PIK	Primary Inspection Kiosks (PIK) allow travellers to verify their travel documents, confirm their identity and complete an on-screen declaration. Once completed, the PIK will print a receipt for the traveller to present to a BSO.

BSF235 (E67)	Land border crossings and ferry sites	The BSF235 form is completed by a BSO at the PIL at land borders.
Y28	Land border crossings and ferry sites	The Y28 form is completed by a BSO at the PIL for commercial drivers.

These forms facilitate the control and streaming of passengers, provide data for Statistics Canada and are used to refer passengers to Customs and/or Immigration Secondary.

Note: The PIK receipt, E311 and BSF423 forms are not only a referral form but also a declaration card. While travellers use PIK, complete an E311 or have a BSF423 completed by a BSO in air mode, the BSF235 (E67) at land and marine modes is only issued if the traveller or vehicle is referred to a secondary examination.

The forms carry a code by which the BSO at the PIL gives the reason for referral to a secondary examination.

The immigration portion of the BSF235 (E67) is coded with four letters: T, E, L, and O. When using the BSF235 (E67), the BSO at the PIL will circle the appropriate letter to indicate the reason for referral.

TELO coding on the BSF235 (E67)		
Letter	Meaning	Explanation
T	Time	The person intends to stay in Canada for an extended or unusual period of time.
E	Employment	The person has indicated an intention to seek employment in Canada.
L	Lookout	The person may be the subject of a "watch for" as being of interest to CBSA's BSOs in Immigration Secondary.
O	Other	This includes any other reason not covered above. In this case, the PIL officer will typically write a few words on the BSF235 (E67) to guide the secondary examination. Officers should be cautious when recording any information on the BSF235 (E67), as the person who is being referred may be able to read the form.

8 Secondary examinations

8.1 Immigration Secondary examinations

An Immigration Secondary examination is usually initiated by a referral from a BSO at the PIL. It can also result from a referral from a BSO, such as a Disembarkation and Roving Team (DART) member who has boarded and inspected an airplane, bus, train or ship before any of the passengers have presented themselves at the PIL. An Immigration Secondary examination is usually conducted by a BSO in the Immigration Secondary area but may be conducted by a BSO at Customs Secondary if no BSO at Immigration Secondary is available at the POE. An Immigration Secondary examination may also be conducted by telephone or other electronic means if the person is in a remote location, where no BSO is available.

8.2 Responsibilities of examining BSOs at Immigration Secondary

BSOs conducting Immigration Secondary examinations are responsible for facilitating the entry of Canadians, persons registered under the *Indian Act,* and PRs as well as *bona fide* FNs and identifying inadmissible persons.

Responsibilities of such officers include:

- examining persons seeking entry to Canada to determine admissibility;
- facilitating the entry of Canadians, PRs and persons registered under the *Indian Act*;
- confirming identity and biometrics verification;
- collecting biometrics when FNs makes a claim, application or request;
- authorizing FNs to enter Canada as temporary or PRs and issuing documents where appropriate;
- receiving refugee claims and determining eligibility to make such claims;
- reporting persons who are inadmissible;
- reviewing inadmissibility reports;
- issuing removal orders, where appropriate, to inadmissible persons;
- referring cases to the Immigration Division, where appropriate, for an admissibility hearing;
- authorizing inadmissible persons to enter Canada on a TRP;
- denying entry to inadmissible persons, arranging for their removal and confirming their departure;
- allowing persons who have indicated that they want to withdraw their application to enter Canada to do so and leave Canada; and
- arresting and/or detaining persons if applicable grounds exist.

All BSOs working at Immigration Secondary are responsible for "closing the loop" in IPIL as per OBO-2019-029.

8.3 Right to counsel at POE examinations

For the purpose of routine information-gathering to establish admissibility during an Immigration Secondary examination, a person is not entitled to counsel unless arrested or detained. A person who is arrested or detained must be informed without delay of their right to counsel and granted the opportunity to retain and instruct counsel.

The Supreme Court of Canada has held that an Immigration Secondary examination at a POE does not constitute a detention within the meaning of paragraph 10(*b*) of the *Canadian Charter of Rights and Freedoms* [Dehghani v. Canada (*Minister of Employment and Immigration*), [1993] 1 S.C.R. 1053]. The Court determined that the principles of fundamental justice do not include the right to counsel for routine information-gathering, such as is gathered at POE examination interviews.

This Court decision clarifies that the Charter only gives the right to counsel to those who are arrested or detained. Generally, CBSA's policy is not to permit counsel at an examination if detention has not occurred. However, if a BSO is dealing with a FN/PR who does have legal representation with them, even though the FN/PR is not entitled to have legal representation present, the BSO should allow the legal representative to remain present as long as they do not interfere with the examination process. If the legal representative does

interfere, the BSO or Minister's delegate (MD) can ask the legal representative to leave, as there is no legal obligation to allow them to be present.

The right to counsel depends on what transpires after the FN/PR is first subject to examination. For example,

- if a FN/PR is being examined, and the examination does not go beyond what is required to establish admissibility, the person is not entitled to legal counsel;
- if the examination becomes very lengthy and exhaustive but not beyond what is required to establish admissibility, the FN/PR is not entitled to legal counsel. The BSO may, however, consider allowing the person to acquire legal counsel;
- if the FN is not restrained in any way but advised to come back the next day for further examination as outlined in A23, then they are not considered detained, and there is no right to counsel;
- if a person is being held for a lengthy period of time and is subject to questioning by other agencies, such as the RCMP or CSIS, then this may constitute detention, and the FN should be notified of their right to counsel;
- if restraining devices are used, or the person is placed in a holding cell, even temporarily, then an officer must inform the person of the reason for the detention and of their right to counsel; and
- if the person is arrested for a criminal offence, they must be informed of the reason for the arrest and of their right to counsel.

At any time an officer arrests and/or detains a FN or PR they must advise them of their right to counsel. The right to counsel is triggered with a physical restriction, such as being placed in a restraint or a holding cell, or mentally, when informed of the arrest and or detention.

For more information on the right to counsel during POE examination, refer to *ENF 6*, *Review of reports under A44(2).*

For more information on IRPA arrest and detention, including right to counsel, refer to immigration manuals *ENF 7*, *Immigration Investigations and IRPA s. 55 Arrests/Detention* and *ENF 20*, *Detention*.

8.4 Use of interpreters

BSOs regularly encounter hundreds of different languages and dialects. Often the person seeking entry to Canada does not speak French, English or any other language familiar to the BSO. In such cases, the BSO may be able to authorize entry on the basis of documentation in the possession of the traveller. In appropriate circumstances, the BSO can ask accompanying friends or family members to assist in translation. At times, a BSO may also solicit help from staff or other persons who are familiar with the language. This is a pragmatic practice that allows a BSO to facilitate the entry of travellers in cases where an official interpreter is not readily available.

A BSO who is using a non-accredited interpreter to conduct a basic examination should suspend the examination if it becomes apparent that the person may be inadmissible or more intrusive questions need to be asked. The examination can be continued once an IRB's accredited and security-cleared interpreter is available. This is important for the following reasons:

- When making a decision on admissibility, the BSO needs a reliable and trustworthy interpreter in order to be sure that information provided by the client is accurately translated. Inaccurate translation could result in a decision based on misinformation, which is detrimental to the person. This would constitute a breach of natural justice.
- Information obtained at examination is often used as evidence in admissibility hearings and, less frequently, in criminal prosecutions. If a competent interpreter is not used, the evidence can be discredited or rendered inadmissible.
- All immigration decisions relating to admissibility are subject to judicial review by the Federal Court. The Federal Court reviews the fairness of the process leading to the decision and will strike down any decision based on evidence obtained through an interpreter whose competency is in doubt.
- It is to the benefit of both the person and the CBSA that a competent interpreter be used in examinations that may lead to a person being found to be inadmissible to Canada.

Further information on the use of interpreters can be found on IRCC Connexion, Interviews and interpreters page.

Guidelines for the use of telephone interpretation

Telephone interpretation is a viable alternative to in-person interpretation and should be considered in order to process refugee claimants, establish identity and purpose of travel, issue a removal order, deny entry and detain and/or arrest a FN. BSOs should allow for a degree of discretion when deciding to provide interpretation services in other situations not included in this list.

The following guidelines outline procedures for the use of telephone interpretation when the service is available and appropriate. The BSO should do the following:

- Determine if interpretation services are required. If the person speaks an official language of Canada, the BSO asks them if they would be comfortable conducting the interview in that language or if they would like an interpreter. The BSO records this in their officer notes. The BSO reiterates throughout the interview that if the person should require an interpreter at any point, the BSO will pursue this request.
- Secure an interpreter by accessing the IRB list of accredited interpreters.
- Follow port procedures in terms of completing interpreters' contracts, worksheets and obtaining required payment information.
- Ensure that the interpreter is alone.
- Ensure that the interpreter and the person concerned are not known to each other and that there is no conflict of interest.
- Whenever operationally feasible, provide refugee claimants the option of being interviewed by an officer of the same sex or gender identity with the assistance of interpreters of the same sex or gender identity when cultural sensitivities or signs of gender related persecution exist.
- Ask the question "Do you and the interpreter understand one another?" to begin the dialogue and to ensure that the person and interpreter understand each other.
- Use, when necessary, a series of introductory warm-up questions to observe the person's ability to respond quickly and easily to the questions and to satisfy the BSO that the interpreter is fluent in both languages.
- Ask the person directly whether they are able to clearly understand the interpreter and record this question and the person's response in their officer notes.

- Advise the person and the interpreter to let the BSO know if, at any point in the examination, either the person or the interpreter does not understand or is having difficulties.
- Remain vigilant throughout the examination to ascertain if the person is able to understand the interpretation and communicate effectively.
- Read back the information provided by the person through the interpreter in order to confirm that it accurately captures the person's responses.
- When processing a refugee claimant, record the name of the telephone interpreter on the *Generic Application Form for Canada* [IMM 0008E], the *Schedule A – Background/Declaration* form [IMM 5669E], and the *Interpreter Declaration* form [IMM 1265B] and note that the interpretation was provided over the phone along with the start and end time of the interview as well as any breaks in interpretation services.
- Make a note if more than one interpreter was used with the corresponding names and start and end times.
- In the case of unaccompanied minors, contact the relevant child protection office and make every attempt to obtain interpretation services in the interim.
- Make attempts to find another interpreter in cases where it is evident that the person is unable to communicate through the current interpreter.
- If no interpretation services are available, note on file all attempts that were made to secure these services. This is especially important in cases of detention.

Situations where it would be inappropriate to conduct a telephone interview include but are not limited to:

- Certain cases where travellers are physically and/or mentally challenged.
- When guidelines for the interpreters are not met, such as
    - when the interpreter does not have access to a landline or is unable to work in a private space; or
    - when telephone line quality or equipment quality makes hearing all parties very difficult.

8.5 Confidentiality

Fast-flow counters where BSOs conduct Immigration Secondary examinations are designed to deal with cases expeditiously but offer limited privacy. A BSO should take care to consider the sensitive nature of information that may arise during an examination and, where appropriate, should secure a private setting for the continuation of an examination. Such cases might involve personal medical information or issues of criminality.

Information obtained in the course of a secondary examination is confidential. The *Privacy Act* requires that personal information concerning clients be released only to the client or the client's designated representative.

Subsection 8(2) of the *Privacy Act* contains exceptions to this requirement. For example, pursuant to paragraph 8(2)(*f*) of the *Privacy Act*, IRCC has entered into a Statement of Mutual Understanding (SMU) with the United States Immigration and Naturalization Service (USINS), now the Department of Homeland Security (DHS), and the U.S. State Department (DOS), which permits the exchange of information on persons who are inadmissible or whom there are reasonable grounds to believe may be inadmissible or

subject to removal. This agreement also allows for the sharing of information between the CBSA and the DHS and DOS.

8.6 Pre-questioning procedures

Before questioning a traveller, a BSO at Customs or Immigration Secondary should:

- review the referral information from the PIL, such as that found on the BSF235 (E67), E311 or BSF423 forms or the PIK receipt, to identify the reason for the referral;
- obtain the person's relevant identity documents, such as a passport, travel document, citizenship card, Certificate of Indian Status/Secure Certificate of Indian Status card, Permanent Resident Card or birth certificate;
- view the airline ticket of anyone travelling by air;
- determine whether the person is in possession of any immigration documents that may assist in quickly establishing the reason the person is seeking entry into Canada; and
- open the PIL referral and verify if the person is flagged and what for.

See section 13.36 of this manual for information on processing biometrically enrolled FNs at Primary.

8.7 Global Case Management System (GCMS) checks

Using the information on the identity document presented by the person, a BSO at Immigration Secondary completes an integrated search in the GCMS. It is a departmental policy that a GCMS check be completed for every person referred for an Immigration Secondary examination. During secondary examination, it is mandatory that the BSO conduct system queries based on the traveller's name and date of birth, and not on a unique client or application/document number. This will ensure that potential derogatory information will be identified. Officers must also remain vigilant in identifying close name matches that may be related to the traveller.

Where small POEs do not have access to GCMS, they must call another POE in their district to get them to run the checks.

8.8 Basic questioning

Basic questioning by BSOs at immigration secondary should cover the following areas, as appropriate:

Issue	Question	Explanation
Identity	What is your name?	This will enable the BSO to identify the person. The name should be verified against the referral card, identity documents and airline ticket.
Citizenship	What is your country of citizenship?	The BSO should ask this of each person being examined to ensure that the person's stated citizenship matches the identity document they present.

		This response will help the BSO determine passport, visa or eTA requirements. If satisfied that the person is a Canadian citizen, the BSO will allow the person to enter Canada without further questioning. Officers should show sensitivity with this question as Indigenous Peoples, including persons registered under the *Indian Act* may not abide by colonial views of citizenship. If the BSO is presented with a Certificate of Indian Status (CIS), a Secure Certificate of Indian Status (SCIS) or an original Temporary Confirmation of Registration Document (TCRD) issued by Indigenous Services Canada (ISC), the officer shall allow the person entry by right under A19(1).
Residency	Where do you reside?	Establishing whether a person is a PR may enable the BSO to authorize entry into Canada with minimal further delay. This question will also help the BSO to determine visa, requirements and to verify whether the person can return to the country of residence if it is different from the country of citizenship. For example, if the person claims to be a resident of the United States but has a passport of another country, the BSO may want to see their US Permanent Resident Card before authorizing entry into Canada.
Intentions	What is the purpose of your trip? How long do you intend to stay in Canada? Where in Canada are you planning to go? Do you intend to look for work in Canada? Do you intend to study in Canada? Where will you be staying while in Canada (hotel or friend's place)?	If the person is not someone who may enter Canada by right, the BSO should establish the person's intention in seeking entry. Questions such as these may assist in this determination.
Funds available	Do you have a return ticket? Show it to me please. What sources of funds do you have access to while in Canada?	Questions such as these are appropriate for determining if a FN possesses the financial means to carry out their intended travel plan and to depart at the end of their authorized time. The BSO should be satisfied that the FN will not take unauthorized employment or have to rely on social assistance while in Canada. Additional

		questioning may be required if a FN cannot establish how they will support themselves while in Canada. If they indicate that a friend or relative will support them, it may be advisable to contact the support person to verify this information.
Personal history	What is your occupation? Are you currently employed in your country? Do you intend to visit anyone in Canada? Do you have any family or friends in Canada?	If the BSO is concerned that a FN may not leave Canada at the end of the authorized time, further questioning may be necessary to establish ties to the foreign national's homeland. In these cases, questions concerning the foreign national's family both abroad and in Canada may be appropriate, including questions concerning marital status.
Background	Do you or have you had any health problems? Have you ever been arrested, charged or convicted of a crime or an offence? Have you ever been refused entry to or removed from Canada?	The person's past may be relevant to admissibility. Questions such as these may be appropriate for determining whether the person is inadmissible due to ill health, criminality or previous non-compliance with immigration requirements.

See manual *ENF 2, Evaluating Inadmissibility*, for more information on determining admissibility.

8.9 Verifying electronic/digital devices

As per the policy guidance, BSOs are responsible for:

- completing the *Examination of Digital Device* online training course (S7188-P) in order to conduct digital device examinations;
- obtaining approval from their Superintendent/Chief prior to conducting a digital examination;
- taking steps to disable network connectivity;
- remaining sensitive to the potential private nature of data stored on digital devices; and
- making timely and comprehensive notes explaining their rationale whenever a traveller's digital device is examined, including what indicators are present and what contravention those indicators are pointing towards.

For more information on CBSA's *Policy on Port Of Entry Examinations Of Travellers' Digital Devices,* consult CBSA's *Enforcement Manual, part 4, chapter 16*. Also, OBO-2021-037, OBO-2021-023, OBO-2019-055 and 2020-HQ-AC-10-30 are good references.

8.10 Travel Documents Issued by Canada for Non-Citizens

There are two types of travel documents issued by the government of Canada to protected persons and PRs of Canada. These are:

- *Canada Travel Document* (pale blue passport type) – issued to refugees to whom Canada has conferred protected person status. Can be used to travel internationality except to the country against which they claimed protection from.
- *Certificate of Identity* (grey passport type)– issued to PRs of Canada who are not yet Canadian citizens and are either stateless or can't get a travel document for an unknown reason.

To see examples of these documents, refer to Part 10 of the Guide for Transporters on the CBSA's website.

9 Examining Canadian citizens at POEs

9.1 The right to enter Canada

A Canadian citizen within the meaning of the *Citizenship Act* has a right to enter and remain in Canada pursuant to A19(1).

9.2 Examination of Canadian citizens

A15(1) provides for an officer to proceed with an examination if a person makes an application to the officer in accordance with the Act.

R28(*b*) provides that a person seeking to enter Canada is making an application.

Additionally, A18(1) requires every person seeking to enter Canada to appear for an examination to determine whether they have the right to enter Canada or may be authorized to enter and remain in Canada. This includes Canadian citizens.

A BSO at Immigration Secondary will normally examine a Canadian citizen only when the BSO at the PIL doubts the person's citizenship. A BSO at Immigration Secondary should examine Canadian citizens as expeditiously as possible. Once the officer establishes that a person is a Canadian citizen, the examination should end, and the person should be allowed to enter Canada without further delay. It is not appropriate for BSOs at Immigration Secondary to elicit further personal information from a Canadian citizen.

However, Canadian citizens may be asked to willingly provide additional information if it will assist a BSO in determining the admissibility of an accompanying foreign national.

9.3 Determining Canadian citizenship

BSOs at POEs have the discretion to authorize the entry of Canadian citizens, even in the absence of documentation. For more details, see section 9.4 of this manual.

The following documents are acceptable proof of Canadian citizenship:

- Canadian passport (regular, diplomatic, special or temporary);
- Emergency Travel Document for a Single Journey Only document (a BSO at the PIL will automatically refer for an Immigration secondary examination a person in possession of a this document. Once the person's identity has been verified, the BSO at Immigration Secondary retains the document and forwards it to:

  Passport Program Integrity Branch
  Attention: Intelligence Division, Immigration, Refugees and Citizenship Canada
  70 Crémazie, 3rd floor
  Gatineau, Quebec, J8Y 3P2

- Enhanced Driver's License (EDL) and/or the Enhanced Identification Card (EIC).

The following documents are good indicators of Canadian citizenship however must be supported by other Canadian government issued photo-identification.

- Certificate of Canadian Citizenship (Issued on or after February 1, 2012: 8.5 x 11 paper format or the wallet-sized card issued before February 1, 2012);
- A Canadian provincial/territorial birth certificate;
- Certificate of Naturalization issued before January 1, 1947;
- Certificate of Registration of Birth Abroad issued between January 1, 1947, and February 14, 1977, inclusively; and
- Certificate of Retention of Canadian Citizenship issued between January 1, 1947 and February 14, 1977, inclusively.

See if you may be a citizen is a useful link in determining if someone may be a Canadian citizen.

To see examples of these documents, refer to Part 10 of the Guide for Transporters on the CBSA's website and the Government of Canada's public website concerning travel documents.

More information on documents can be found in *ENF 32, Passports and Travel Documents.*

9.4 Establishing citizenship without documents

Canadian citizens returning to Canada by air usually have to provide proof of identity and citizenship to get on the flight. Canadian citizens arriving at land borders, however, will frequently be without satisfactory documentary proof of Canadian citizenship. In these cases, the BSO should question the person until the BSO is satisfied with the person's claim of Canadian citizenship. Once the BSO is satisfied that the person is a Canadian citizen, the person must be allowed to enter Canada without further delay.

9.5 Citizenship record searches

BSOs at Immigration Secondary may request a search of citizenship records by emailing the Citizenship Case Processing Centre in Sydney (CPC-S), Nova Scotia, at CPC-SYDNEY-SEARCHENQ@cic.gc.ca.

The official response will be provided via email. Where a record letter is required, BSOs at Immigration Secondary must follow up the email request by submitting a completed *Application for a Search of Citizenship Records* form [CIT 0058E]. A written response will be forwarded by facsimile as well as by regular mail.

Note: Citizenship searches will only reveal if a person has obtained Canadian citizenship through naturalization. The Sydney CPC does not keep records of persons who are Canadian citizens by birth. Proof of citizenship by birth can be established by a search of provincial birth certificates or baptismal records.

After a person has received Canadian citizenship, the information is entered into GCMS.

9.6 Canadian Travel Documents

The Canadian passport comes in four categories: regular, special, diplomatic and temporary.

For Canadian citizens who are abroad and in need of a Canadian travel document to return to Canada, Consular Services can issue another type of travel document in urgent cases. This is:

- *The Emergency Travel Document for a Single Journey Only* - may be issued at a Canadian visa office abroad to facilitate the return of a Canadian citizen. It may also be issued as a one-trip document for travel from a Canadian visa office abroad without passport services to another office with full passport services in another country.

The *Emergency Travel Document for a Single Journey Only* is a single page document printed on 8.5 x 11 security paper serially numbered.

BSOs at the PIL are required to refer holders of this document for an Immigration Secondary examination. The Passport Office requires the surrender of an emergency passport immediately on the holder's arrival in Canada or at the destination for which the passport was issued. BSOs at Immigration Secondary recover the emergency passport and promptly forward it to:

Passport Program Integrity Branch
Attn: Intelligence Division
Immigration, Refugees and Citizenship Canada
70 Crémazie, 3rd Floor
Gatineau, Quebec J8Y 3P2

A space is provided on the back of the document for a signature indicating that the document has been received.

In circumstances where the traveller has not reached their final destination upon arrival at a POE and will be boarding a domestic flight, the BSO may use discretion to provide the traveller with a photocopy of the emergency travel document to present to the airline for identification validation when boarding. The BSO may also issue their contact information (e.g., a business card) for the traveller to provide to the airline should verification be required.

To see examples of these documents, refer to Part 10 of the Guide for Transporters on the CBSA's website.

10 Examining people who are registered under the *Indian Act* at POEs

A19(1) provides that every person registered under the *Indian Act* (Canadian legislation), whether or not that person is a Canadian citizen, has the right to enter and remain in Canada.

Section 6 of the *Indian Act* specifies (subject to provisions in section 7) persons entitled to be registered under the *Indian Act*. Under the terms of the *Indian Act*, Indian status in Canada—and inclusion in the Indian register maintained by Indigenous Services Canada (ISC)—is not determined on the basis of Canadian citizenship but rather on the degree of descent from ancestors who were registered or entitled to be registered as Indians. As a result, it is possible for a FN to be recognized as registered under the *Indian Act* and have the right to enter and remain in Canada under A19(1).

A15(1) provides the authority for an officer to proceed with an examination where a person makes an application to the officer. R28(*b*) provides that a person seeking to enter Canada is making an application. Additionally, A18(1) requires every person seeking to enter Canada to appear for an examination to determine if they have the right to enter Canada or is or may become authorized to enter and remain in Canada. This includes people who are registered under the *Indian Act*. If a BSO at PIL is not satisfied that the person is registered, the officer can make a referral to Immigration Secondary. Once the officer establishes that a person is registered under the *Indian Act*, the immigration examination should end, and the person must be allowed to enter Canada without further delay.

If a FN is a person registered under the *Indian Act*, they are authorized to work and study in Canada without a permit, per R186(*x*) and R188(*d*). See PRG-2018-72 for details.

Note: When examining people who are registered under the *Indian Act*, officers should be aware of *People Processing Manual*, part 1, chapter 4, paragraphs 21 to 28, Articles of Religious, Spiritual and Cultural Significance.

10.1 Determining status of registration under the *Indian Act*

BSOs at POEs have the discretion to authorize the entry of persons registered under the *Indian Act*, even in the absence of documentation. Acceptable documents establishing one's status as registered under the terms of the *Indian Act* include the Certificate of Indian Status (CIS) and the Secure Certificate of Indian Status cards (SCIS). Both are commonly referred to as the status card and are produced by ISC. The paper-laminate CIS card is issued in partnership with First Nations in 500 communities across Canada through ISC's

Indian Registration Administrator Program. An original Temporary Confirmation of Registration Document (TCRD) issued by ISC may also be used as proof of Indian status.The SCIS is an identity card with enhanced security features. Some but not all SCIS feature a machine readable zone (MRZ).

Subject to an application process, the CIS and SCIS cards are issued to adults, children and dependent adults listed in the Indian Register. The Indian Register, which is maintained by ISC, is the official record identifying people who are registered under the *Indian Act*. Bands also have the option of determining their own membership.

If BSOs require verification of a person being registered under the *Indian Act*, or if officers have reason to doubt the authenticity of a card being presented, they may contact the supervisor of Registration Services at:

> Secure Certificate of Indian Status Application Centre
> M006-15 Eddy Street
> Gatineau, QC K1A 0H4
> Fax: 1-819-994-2622
>
> Hours of operation: 8 a.m. to 4 p.m. (Eastern Time)
> Toll-free telephone: 1-800-567-9604
> Email: InfoPubs@aadnc-aandc.gc.ca

10.2 Establishing status of registration under the *Indian Act* without documents

People who are registered under the *Indian Act* and who are seeking entry to Canada may not be in possession of documentary proof of their status. In such cases, the BSO should question the person until they are satisfied with the person's status. The officer's decision on ascertaining identity and status is based on all the evidence presented at that time, including verbal statements and documentation. Once the BSO is satisfied that the person is registered under the *Indian Act*, the person must be allowed into Canada without further delay. Border processing of people who are not registered under the *Indian Act* is discussed in the following paragraph.

10.3 American Indians[1] who are not registered in Canada

The authorization of entry to Canada is governed solely by IRPA and IRPR. Travellers who do not meet criteria for a right of entry under A19 are treated as FNs and must meet admissibility and documentary requirements, such as visas and eTAs, to be allowed to enter Canada.

For example, Native Americans (also could be identified by the U.S. legal term "American Indians") who may have cultural or family connections to First Nations in Canada, but who

[1] American Indian is the legal term; Native American is the preferred term in the U.S.

are not Canadian citizens, PRs of Canada or registered under the *Indian Act*, do not have right of entry under A19.

Many First Nations people from Canada and the U.S. assert a right to mobility across the Canada–U.S. border, which in their view, is recognized in Article III of the Jay Treaty of 1794, an international agreement between the U.S. and Great Britain. The courts in Canada, however, have found that the Jay Treaty was abrogated by the War of 1812, and it is not a treaty conferring rights to Indigenous peoples under Canada's laws.

As a result, Native Americans coming to work or study in Canada who are not registered under the *Indian Act* require a WP or SP. Some travellers in these circumstances may object to being processed as FNs to enter Canada. BSOs should deal tactfully with cases of this nature while still upholding the requirements of the IRPA.

Canada's immigration laws regarding the entry of North American Indigenous peoples differ from those of the U.S. Under the U.S. *Immigration and Nationality Act*, a right of entry to the U.S. for the purposes of employment and residence is recognized for "American Indians born in Canada". This right is conditional, however, on a person being able to demonstrate that, under the terms of the law, they "possess at least 50 per centum of blood of the American Indian race".

In the case of First Nations people from Canada, the U.S. provides an indication that it accepts the CIS and SCIS card, issued to people who are registered under the *Indian Act* by ISC, as evidence of meeting the prescribed "blood quantum" criteria. In some cases, however, more evidence is required.

Indications from concerned U.S. government departments are that the proof of meeting the blood quantum requirement is sufficient to establish both a right of entry and a right to work and reside permanently in the U.S. without obtaining PR status, more commonly known in the U.S. as a "green card."

10.4 Haudenosaunee passport

For information on travellers seeking to enter Canada with the Haudenosaunee passport, please consult operational bulletin OPS-2011-03.

11 Examining Permanent Residents (PRs) at POEs

A2(1) defines a permanent resident as a person who:

- has acquired PR status; and
- has not subsequently lost that status under A46.

11.1 Rights of PRs

A27(1) provides that a permanent resident has the right to enter and remain in Canada subject to the provisions of the Act.

A19(2) requires a BSO to allow a permanent resident to enter Canada if satisfied following an examination on their entry that they have that status.

PRs who are under enforcement proceedings keep their PR status and retain the right to enter Canada until a final determination of their loss of status has been made.

11.2 Verifying PR status

The Permanent Resident Card is the best evidence of PR status in Canada.

The following documents may be satisfactory indicators of permanent residence:

- the original Record of Landing (such as IMM 1000);
- a certified true copy of a Record of Landing document issued by IRCC National Headquarters (NHQ);
- a letter issued by IRCC NHQ verifying permanent residence;
- a passport duly stamped showing the date on which permanent residence was granted if the person was granted PR status before 1973;
- a *Confirmation of Permanent Residence* form [IMM 5292B or IMM 5688]; and
- a permanent resident travel document (visa counterfoil).

CBSA's website lists acceptable travel and identity documents.

11.3 Establishing PR status without documents

BSOs at POEs have the discretion to authorize the entry of PRs, even in the absence of documentation. If documentary evidence is not available, the BSO at Immigration Secondary must establish the person's PR status by questioning the person and checking the person's status in GCMS. The status of persons who became PRs before 1973 has to be verified by contacting the Operations Support Centre at IRCC's National Headquarters at OSC-CSO@cic.gc.ca. However, the burden of proof lies on the person who is claiming to be a PR at a POE. An adjournment for further examination can be done under A23 to allow the person to get their documents and return to the POE to show the BSO.

11.4 Investigating PRs for inadmissibility

When a PR appears at a POE for examination, the BSO must determine whether the person is a PR. The person is considered a FN until the BSO is satisfied that the person is a PR. The burden of proof lies on the person at a POE examination.

BSOs must remain cognizant of the fact that A19(2) gives permanent residents of Canada the right to enter Canada at a POE once it is established that a person is a PR, regardless of non-compliance with the residency obligation in A28 or the presence of other inadmissibility grounds. Meaning, should a BSO write up an A44(1) report for non-compliance and the superintendent issue a departure order that is not in force, the person still has the right to enter Canada until a final determination has been made regarding their loss of PR status and the removal order becomes in force.

BSOs can not refuse entry to a PR. However, once a person has lost their PR status under A46, they are considered a FN and may be inadmissible if they do not meet the requirements of the Act. For example, when a final determination has been made outside of Canada that the PR has failed to comply with the residency obligations, or when a removal order comes into force and all their rights to appeal have passed.

However, as per A27(1), this right to enter and remain in Canada is subject to the provisions of the Act, and does not preclude the CBSA from ensuring that PRs are in compliance with IRPA and thus admissible to Canada. During the process of determining that a person is a PR, BSOs will sometimes become aware of evidence of inadmissibility. The BSO should explain to the person that while it has been established that they have a right to enter Canada, there is some reason to believe they could be the subject of a report under IRPA which could lead to the issuance of a removal order.

Officers should always remain aware of the principles of procedural fairness in these proceedings. The PR must be given a fair opportunity to know the case to be met; to provide evidence in order to correct or contradict any concerns related to admissibility; and to have the evidence fully and fairly considered by the decision-maker.

In cases where:

- PR status is established; and
- the BSO believes on a balance of probabilities that the person is in non-compliance with IRPA for failure to comply with residency obligation (A41(*b*), A28) or for misrepresentation (A40); or
- the BSO has reasonable ground to believe that the person is inadmissible to Canada for any other reasons outlined at A34, A35, A36(1) or A37,

the BSO at Immigration Secondary may report the person (pursuant to A44(1)) if there is sufficient evidence to support an inadmissibility allegation. In the absence of sufficient evidence to support the writing of an inadmissibility report, the BSO may enter any available information into an Info Alert in GCMS without delay (date of entry, last country of embarkation, current address in Canada, etc.) and forward notification of the same to a CBSA inland office in Canada to determine whether an investigation is warranted.

For more information on assessing inadmissibility, refer to *ENF 1, Inadmissibility* and *ENF 2*, *Evaluating inadmissibility*.

For more information on procedures for dealing with clients who fail to meet the residency obligation, refer to *ENF 23*, *Loss of Permanent Resident Status*.

Questioning Permanent Residents Regarding Cessation (A108) and Vacation (A109):

In cases where the PR was granted Convention Refugee or Protected Person status prior to becoming a PR, and the BSO has suspicions that the individual has:

- voluntarily reavailed themself of the protection of their country of nationality;
- voluntarily reacquired their nationality;

- acquired a new nationality and enjoys the protection of the country of that new nationality;
- has voluntarily become re-established in the country that they left or remained outside of and in respect of which they claimed refugee protection in Canada; or
- has obtained protected status directly or indirectly via misrepresentation or withholding of material facts relating to a relevant matter;

the BSO may ask questions of a PR where the officer suspects, on a balance of probabilities, the existence of a potential inadmissibility under A40(1)(*c*) or A40.1(1) or A40.1(2) in relation to the cessation (A108) and/or vacation (A109) of refugee protection.

The BSO, for example, may ask questions about:

- whether the person has travelled to the country of persecution;
- why they returned;
- for what length of time they were there.

The BSO may also make photocopies of documentation presented at the time of examination. The BSO must have reasonable grounds to believe that the documents that are photocopied are relevant to a potential inadmissibility under A40(1)(*c*) or A40.1(1) or A40.1(2) and that the photocopies would be reasonably required should the CBSA file an application under A108 or A109 with the IRB.

Any information gathered should be forwarded to the appropriate Hearings Office via the BSF729E form. For more information, see IRCC's Program Delivery Instructions (PDI) on the subject.

11.5 Permanent Resident Card

The PR card is the status document referred to in A31(1) that indicates that the holder is a PR of Canada. A person who holds a PR card is presumed to have PR status unless a BSO at Immigration Secondary determines otherwise. The PR card, or, alternatively, the A31(3) travel document issued by one of Canada's visa offices, is the prescribed document for PRs when boarding a commercial transporter bound for Canada.

Canadian PRs need to show their card when travelling to Canada in order to prove their PR status. PRs who do not have a PR card or who are not carrying their PR card when travelling outside the country will need to obtain a PR travel document (counterfoil) before returning to Canada by air mode in order to comply with eTA requirements.

For more information on the PR card, refer to *ENF 27*, *Permanent Resident Card*.

11.6 Prescribed document

A148(1)(*a*) prohibits commercial transporters from carrying to Canada a person who does not hold a prescribed document. R259 makes the PR card a prescribed document for the purpose of A148. Valid PR cards and A31(3) travel documents are prescribed documents for establishing PR status. Consequently, the PR card or the A31(3) travel document is the prescribed document for PRs for the purposes of boarding a commercial transporter (e.g., aircraft, train or ship) bound for Canada.

11.7 Permanent resident cards with one-year validity date

R54(2) provides that a PR card will be issued with a validity of one year instead of five years as per R54(1) if the PR:

- is subject to a process set out in A46(1)(*b*) until there has been a final determination;
- is the subject of a report prepared under A44(1) that is being considered by the Minister;
- is the subject of a removal order made by the Minister pursuant to A44(2) and the period for filing an appeal from the decision has not expired or, if an appeal is filed, there has been no final determination of the appeal; or
- is the subject of a report under A44(1) that has been referred by the Minister to the Immigration Division (ID) under A44(2) and the period for filing an appeal from the decision of the ID has not expired or, if an appeal is filed, there has been no final determination of the appeal.

11.8 Travel document

A31(3) states the following:

A PR outside Canada who is not in possession of a status document indicating PR status shall, following an examination, be issued a travel document if a visa officer at a visa office is satisfied that:

> (*a*) they comply with the residency obligation under A28;
>
> (*b*) an officer has made the determination referred to in A28(2)(*c*); or
>
> (*c*) they were physically present in Canada at least once within the 365 days before the examination and they have made an appeal under A63(4) that has not been finally determined or the period of making such an appeal has not yet expired.

The purpose of the travel document is to facilitate the return of all PRs to Canada. This includes those who may have lost their PR card while outside of Canada as well as those who are appealing a decision made outside Canada that they failed to meet the residency obligation under A28.

The travel document will take the same form as a temporary resident visa counterfoil that is placed in a passport or travel document. It is usually valid for one entry to Canada simply to facilitate the PR's return, but it may be issued for multiple entries.

If the travel document was issued for a single entry, the BSO is to strikethrough the counterfoil upon entry to Canada by drawing a line from the top left of the counterfoil to the bottom right. The BSO at Immigration Secondary would counsel the PR that they may apply for a PR card from within Canada. If the travel document was issued for multiple entries, it should be treated like a multiple-entry temporary resident visa.

11.9 Coding on the travel document

PRs who have demonstrated that they have complied with the residency obligation listed in A28 will be issued counterfoils bearing the coding "R".

- In cases where PRs have not met the residency requirement, but humanitarian and compassionate considerations grounds exist to support the retention of their status pursuant to A28(2)(*c*), a counterfoil bearing the coding "RC" will be issued.
- In cases where the document has been issued pursuant to A31(3)(*c*) where an appeal of a loss of status determination is filed or the time period for filing an appeal has not expired, and the person has been physically present in Canada at least once in the past 365 days, the counterfoil will bear the coding "RX".
- In cases where the PR does not meet the residency obligation and no humanitarian and compassionate grounds exist, but the Immigration Appeal Division has ordered the PR to appear in person at the hearing, a counterfoil bearing the coding "RA" will be issued.

Counterfoils bearing the "RX" code or the "RA" code will be mandatory referrals to Immigration Secondary for BSOs at the PIL.

If a person with a counterfoil bearing the "RX" or "RA" coding is returning to Canada to attend an appeal of a decision made outside of Canada regarding loss of status or an appeal has yet to be filed and the period for filing has not expired, the BSO at Immigration Secondary should authorize entry without delay if satisfied that no final determination has been made with respect to the person's loss of PR status. The BSO at Immigration Secondary should update GCMS with the person's date of entry into Canada and current address.

The principal difference between a travel document and a one-year PR card is the period of validity. The travel document is used to return to Canada, while the PR card remains valid until the outcome of an appeal is decided or until the period for making an appeal expires. Since the PR is already pending a determination by the Immigration Appeal Division, the BSO should not prepare an A44(1) report for the same inadmissible grounds at the POE.

11.10 Persons appealing the loss of PR status

BSOs at Immigration Secondary who encounter a person in possession of a PR card issued with a one-year validity should check GCMS to determine whether there is a final determination that the person has lost their status under A46. If the person is returning to Canada to attend the appeal of a decision made outside Canada regarding the loss of status or an appeal has yet to be filed, and if the period for filing has not expired and that person is in possession of a travel document, the BSO must acknowledge their right of entry without delay if satisfied that no final determination has been made with respect to the person's loss of status.

The BSO should update GCMS with the person's date of entry into Canada, current address in Canada and contact information.

Upon a final determination of loss of PR status, a person becomes a foreign national. Should they return to Canada, they must be assessed to determine if they meet the requirements

of the Act and Regulations for entry as a temporary resident, even if they still possess a PR card . For more information, refer to *ENF 23*, *Loss of Permanent Resident Status*.

11.11 PRs holding other travel documents

PRs may also travel to Canada with a Canadian Travel Document (pale blue passport-type), a Canadian Certificate of Identity or a Single Journey Travel Document. Where a PR travels on one of these documents in air mode, the PR must be in possession of a PR card or PR travel document (counterfoil).

11.12 Residency obligation for PRs

A28(1) states that a PR must comply with the residency obligation with respect to every five-year period. A28(2) stipulates that a PR complies with this obligation if, on each of a total of at least 730 days in that five-year period, they are:

- physically present in Canada;
- outside Canada accompanying a Canadian citizen spouse or common-law partner or, in the case of a child, their parent;
- outside Canada employed on a full-time basis by a Canadian business or by the public service of Canada or of a province;
- outside Canada accompanying a PR spouse or common-law partner or, in the case of a child, their parent, who is employed on a full-time basis by a Canadian business or by the public service of Canada or of a province; or
- able to meet other conditions for compliance that are set out in the Regulations.

When BSOs are assessing the residency obligation, the period considered is limited to the five years immediately preceding the examination. If a person has been a PR for less than five years, they must be able to comply with the residency obligation for the five-year period immediately after becoming a PR.

For more specifications on how to apply A28(2), refer to R61.

For more information on loss of PR status, see *ENF 23*, *Loss of Permanent Resident Status*.

Since November 2014, regulatory amendments came into force giving the decision to voluntarily renounce PR status the force of law. For more information, refer to *IRCC's Program Delivery Instructions* and *Operational Bulletin PRG-2014-066*.

11.13 Issuing removal orders for failure to comply with PR obligations

The decision that a PR has lost their status may be made outside Canada by a visa officer, whereas, at a POE, if following an examination of a PR, an officer concludes that a PR has failed to comply with the residency obligation under A28, the officer may prepare a report for inadmissibility under A41(*b*), taking into account prescribed considerations set in the IRPA. A28(2)(*c*) specifically requires officers and the MD to take into account humanitarian and compassionate considerations, including the best interests of a child directly affected by the determination, when assessing whether such considerations overcome any breach of the residency obligation prior to the determination. Officers must articulate consideration of these prescribed factors in the decision to write a report under A44(1) and/or their

recommendation to the MD. These considerations must be written in the *Examination's Notes* tab without delay by both the BSO and the MD. If the report is well founded, and insufficient humanitarian grounds exist, the MD will issue a departure order pursuant to R228(2).

The PR has the right to appeal the decision made outside Canada or at the POE to the Immigration Appeal Division, pursuant to A63. PRs who have been issued a removal order maintain their right of entry until the appeal period has elapsed; therefore, BSOs should allow entry into Canada until a final determination of status is made.

For more information, see the following manuals:

- *ENF 2, Evaluating Inadmissibility*
- *ENF 5, Writing 44(1) Reports*
- *ENF 23, Loss of permanent resident status*
- *ENF 6, Review of reports under A44(1)*
- *ENF 19, Appeals before the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB)*

11.14 Other inadmissibility allegations

If a BSO believes a PR is inadmissible for reasons other than failure to comply with the residency obligation (A28), they are still required to allow the person to come into Canada. If the PR does not wish to answer any further questions, the BSO at Immigration Secondary should attempt to obtain sufficient information (including current address, phone number, and employment location) to enable follow-up action from an inland office.

See *ENF 2*, *Evaluating Inadmissibility*, for more information on determining inadmissibility.

11.15 Arrest and detention of PRs

If an immigration arrest warrant was issued against a PR pursuant to A55(1), the BSO must execute the warrant and arrest the PR. The BSO may then release the PR from detention if reasons for detention no longer exist as per A56.

In certain circumstances, PRs may also be detained under A55(3), if a BSO believes it necessary to complete the examination or they have reasonable grounds to suspect is inadmissible on grounds of security (A34), violating human or international rights (A35), serious criminality (A36(1)), criminality (A36(2)) or organized criminality (A37).

For more information on arrest and detention procedures, refer *to ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention* and *ENF 20, Detention*.

11.16 Seizing PR visas and permanent resident cards

A140(1) authorizes an officer to seize and hold a document or other thing if the officer believes on reasonable grounds that:

- it was fraudulently or improperly obtained or used;

- the seizure is necessary to prevent its fraudulent use or improper use; or
- the seizure is necessary to carry out the purposes of the Act.

Even if the BSO prepares an A44(1) report against the PR, unless provisions of A140(1) are met, the PR card should be kept by the holder, who will retain their PR status until a final decision is made respecting their loss of status. Pending this decision, A31 requires that a PR be provided with a status document. R53(1) provides that the status document is the PR card.

BSOs may seize these documents if they have reason to believe that the documents were fraudulently issued or obtained or if they are trying to prevent improper or fraudulent use of these documents. For example, if there is a final determination that the person has lost their PR status or renounced their status, the BSO may seize and retain the documents in order to prevent their improper use, such as using it to travel to Canada instead of obtaining a TRV or eTA.

12 Examining FNs seeking to become PRs at POEs

12.1 Permanent resident visas and *Confirmation of Permanent Residence* (CoPR) documents

Under R70(1), permanent residence applicants are issued a PR visa when a visa officer was satisfied that, at the time of issuance, the FN named in the document was not inadmissible and met the selection criteria and requirements of the Act and Regulations. This visa and CoPR document [IMM 5688] are to be presented at the POE for processing in order to become a PR.

In December 2011, the use of a counterfoil was eliminated for countries that are visa-exempt. The CoPR is now evidence that a visa officer was satisfied.

12.2 Examination of FNs with PR visas/CoPR

When an applicant in possession of a CoPR/PR visa applies to become a PR at a POE, the role of the BSO at Immigration Secondary is to:

- verify the applicant's identity;
- confirm that the information on the CoPR/PR visa is correct;
- establish that the applicant complies with all requirements of the Act and Regulations and is not inadmissible;
- confirm that the applicant's marital, common-law, or family status has not changed since the issuance of the CoPR/PR visa;
- confirm that the applicant and their family members (whether accompanying or not) still meet the requirements of the class of PRs under which the CoPR/PR visa was issued;
- impose and explain any appropriate conditions; and
- welcome the new PR to Canada and provide information about programs and services available to facilitate integration into Canadian society.

The Regulations require that a FN in possession of a CoPR/PR visa and who is seeking to become a PR:

- Inform the officer at examination if their marital status has changed since the CoPR/PR visa was issued, as required by R51(*a*)(i); and
- of any other facts relevant to the issuance of the CoPR/PR visa that have changed since the visa was issued, or that the FN failed to disclose at the time the CoPR/PR visa was issued, as required by R51(*a*)(ii).
- Establish that they and their family members, accompanying or not, meet the requirements of the Act and Regulations, as required at R51(*b*).

The applicant must be able to show upon landing that their dependents meet the medical and criminal criteria. The BSO should check GCMS for any notes added by the visa office to ensure they were not aware of any changes in the application. Applicants are asked to inform the visa office immediately of any change in the composition of their family. If they have not done so, prior to their CoPR/PR visa issuance, a new application will be required for all family members.

If the BSO at Immigration Secondary establishes that the FN failed to notify of the changes to their marital status or did not declare a dependent before or after the issuance of the CoPR/PR visa, the BSO may prepare a report under A44(1) with the specific regulation stated above that they did non comply with. The MD, if they find the report well founded, will defer the case for inquiry at the ID under R229(1)(*n*).

For more information on report writing, refer to *ENF 5*, *Writing 44(1) Reports*.

12.3 GCMS check

BSOs at Immigration Secondary conduct an integrated name search in GCMS for every FN in possession of a CoPR who is seeking to establish permanent residence in Canada. A name search may reveal that the person has multiple FOSS client identification numbers (IDs) or GCMS Unique Client Identifiers (UCIs), in which case the BSO should create a household to associate the UCIs/IDs together by following the step-by-step on Wiki.

FOSS ID or GCMS UCI numbers under which warrants were issued or sponsorship files must be maintained as the primary identification.

BSOs ensure that there is no information recorded in GCMS that would alter the decision to grant permanent residence.

For example, there may be an outstanding warrant for the applicant's arrest, or the applicant may have been previously deported from Canada. BSOs at Immigration Secondary should carefully review any adverse information to determine whether the applicant satisfies all the requirements of the Act and Regulations. In some cases, it may be useful for the examining BSO to contact the officer who issued the CoPR/PR visa to confirm whether this information would have altered the favorable decision. In some cases, the BSO may need to defer the examination, pursuant to A23, in order to obtain more information before deciding whether to grant PR status.

12.4 Documents required by FNs seeking PR status

- R50(1) specifies the type of passport, travel or identity document that an applicant must have in their possession to be given PR status. This document is necessary to verify the identity of the person seeking permanent residence.
- R50(2) provides that a protected person who has been issued a PR visa may become a PR when it is not possible for them to obtain a passport, identity document, or travel document.
- R6 specifies that applicants who are citizens of certain countries must have a PR visa (coded IM).
- *Confirmation of Permanent Residence* document (IMM 5688);
- Proof of settlement funds for those in the Federal Skilled Worker Program and the Federal Skilled Trades Program; and
- A *Certificat de Sélection du Québec/ Quebec Selection Certificate* (CSQ) for those wanting to reside in the province of Québec.

12.5 *Confirmation of Permanent Residence* document [IMM 5688]

Successful permanent residence applicants are issued the *Confirmation of Permanent Residence* document [IMM 5688] from a Canadian consulate or visa office. The *Confirmation of Permanent Residence* (CoPR) is evidence that an officer was satisfied at the time of issuance, that the FN named in the document was not inadmissible and otherwise met the requirements of the Act and its associated regulations.

The CoPR is printed in two copies on regular 8 1/2 x 14 white paper and one copy contains a photo of the holder.

The CoPR by itself is not a prescribed document as per R259 to board a means of transportation to Canada. CoPR holders will be issued a visa counterfoil [IMM 1346] bearing the coding "IM" in order to facilitate their boarding for those needing a TRV to travel to Canada. For visa-exempt FNs, an IMM 5785 e-Foil (electronic facilitation counterfoil) coded IM will be issued.

When a FN arrives at a POE to become a PR and is in possession of a CoPR, the BSO at Immigration Secondary should adhere to the following procedures :

- examine the passport and any other identity documents provided;
- use the applicant's passport and other identity documents to confirm that each name is correctly spelled and that the family and first names are clearly identified;
- verify the date of birth with the identity documents provided by the applicant (the day and month are sometimes transposed due to different international systems for displaying the date);
- for CoPRs where a clerical error has been identified, BSOs must correct the IMM 5688E form to ensure it is consistent with the biographical data in the passport or travel document. The corrections must be made on both copies of the CoPR by placing an asterisk beside the data error and noting the correction in the remarks section of the form. Any corrections made must also be reflected in GCMS.

- check the information on sex and marital status, particularly when dealing with common-law relationships and accompanying family members;
- verify their biometrics for those not verified at PIK;
- confirm that the applicant intends to establish permanent residence in Canada;
- confirm that the applicant is not inadmissible under A39;
    - Persons who do not need to provide proof of funds are those who:
        - have been sponsored;
        - have been issued visas as government-assisted refugees;
        - applied under the Canadian Experience Class; or
        - are authorized to work in Canada and have a valid job offer, even if they applied under the Federal Skilled Worker Program or the Federal Skilled Trades Program.
    - Those who need to provide proof of funds to meet the minimum requirements are those who:
        - applied under the Federal Skilled Worker Program and
        - applied under the Federal Skilled Trades Program
    - For those immigrating to the province of Quebec, the capacity for financial self-sufficiency is lower.
- assess that the applicant and family members are not inadmissible for any other IRPA inadmissibility; and
- collect biometrics only from select resettled refugees when BIO-CDA is printed in the remarks section
    - Refer to Shift briefing bulletins 2019-HQ-AC-06-04 and 2021-HQ-AC-03-31 for more information.

The examining BSO should then:

- Complete the following fields on both copies of the CoPR using a black pen:
    - Became PR at: The officer must write the location of where PR status is granted (either a POE or an inland IRCC office).
    - Became PR on: The officer must write the date that PR status is granted.
    - Flight no.: BSO must write which flight the client arrived on or if it was at a land border.
    - Conditions: Have the client write their initials beside any imposed conditions.
    - Have you ever been charged/convicted of a crime or offence; refused admission to Canada or required to leave Canada?: The client must write "yes" or "no" as well as their initials. If the client is a minor, the answer should be "N/A".
    - Dependent(s) information: The client must write "yes" or "no" as well as their initials. If the answer is yes, the dependent's information must be added only if they have been included in the application and they have been examined.
    - Signature: Have the client sign and date.
    - Officer signature: BSO must sign with a complete signature, not just initials or badge number. Add the date.

- Complete and confirm the CoPR in GCMS following one of the instructions on the CBSA Wiki:
    - Become PR with Conditions
    - Become PR without Conditions
- Update the client's complete address in Canada in GCMS, including the postal code.

- If an address is already indicated on the CoPR, the officer must check with the client to ensure that it is still accurate and that the client will be able to receive correspondence at that address.
- If they have no address, advise the client that they have 180 days to provide IRCC with their address as per R58(1). BSOs should provide them the IMM 5456B *Address Notification – Permanent Resident Card* form and inform the client to send it to IRCC via one of the methods mentioned on the form or the client may update their address in Canada by accessing the online Change my Address tool.
- Stamp the travel or identity document as per the stamping policy.
- Counsel the client that they will receive their PR card in approximately two – three months and that if they have not received it within four months they should contact the IRCC Call Centre at 1-888-242-2100.
- Give the new PR the second copy and keep the copy with the photograph.
- Once the CoPR has been completed and confirmed in GCMS, the BSO will counsel the PR as to their rights and obligations under IRPA and IRPR. See section 12.14 of this manual for more information.

Persons who wish to have their PR card issued in a name that is different from what appears on the CoPR or passport must submit a formal request to the OSC, using the Guide for this purpose [IMM 5218E] and the IMM 1436 form *Request to Amend Valid Temporary Resident Documents or Information Contained in the Confirmation of Permanent Residence*.

Applicants should not apply for an amendment to reflect the new name of an adopted child. When an application for Canadian citizenship is submitted, IRCC will be able to issue the citizenship certificate with the new name, provided they have appropriate supporting documents.

Photographs

There are specific requirements for the PR photograph:

- The background must be white (use screens provided with camera to take photographs).
- There must not be any objects in the background.
- The photograph should show the full front view of the person with the head and shoulders centred in the photograph.
- There must be no staples, stamps, pen marks, holes or tape on the photograph.
- Eyeglasses in photos are acceptable if they are a normal feature of a person's appearance, as long as the glasses do not hide the eyes.
- Head coverings on photographs, other than those worn for religious reasons, are not acceptable.
- Torn photos are not acceptable.

Signatures

- Children 14 years of age and over must sign their own form.
- A parent or legal guardian must sign for children under the age of 14, using their own name and not the child's name.
- The signature must match the name on the form except in the case of a child under the age of 14 whose parent or legal guardian has signed on their behalf.

- If the person is illiterate or cannot make a mark (e.g. an X) for a physical reason, a thumbprint should be placed on the form.

For further details on how to properly process a CoPR, see IRCC's Operational Bulletin 545.

12.6 Changes in marital and family status

R51 requires a FN who has been issued a PR visa/CoPR to advise an officer if their marital status has changed since the visa/CoPR was issued.

A report under A44(1) for A41(a) for R51 is not necessary, if the non-declaration of a marriage or common-law relationship to the visa officer does not affect the grant of permanent residence to the person in the following cases:

- In the case of refugees and protected persons, a BSO should grant PR status to these classes of persons and provide counselling regarding the sponsorship of a spouse or common-law partner.
- A FN who marries their sponsor after the visa/CoPR is issued but before the grant of permanent residence. This change in circumstance is not material to admissibility.

The BSO should assume the truthfulness of voluntary statements relating to marital status and proceed as though the person seeking to become a PR were married, whether or not there is documentary proof of the marital status. The BSO should usually defer the examination pursuant to A23 in order to consult the visa office and obtain more information and evidence about the person's marital status. In some cases, the BSO may ask the visa officer to interview a non-accompanying spouse or common-law partner outside Canada to determine if they meet the requirements of the Act and Regulations and can be issued a PR visa/CoPR.

The procedure for authorizing PR status to the person seeking to become a PR and the spouse will vary from case to case, depending on the applicant's and the spouse's particular circumstances. The BSO should provide a full case summary to accompany the file, so that the receiving inland IRCC office can follow up appropriately.

The BSO should bear in mind that the applicants' and their family members' medical examination, security check and travel document may need to be updated while the spouse or common-law partner is being examined and before permanent residence can be granted.

If, after the investigation, there is sufficient evidence to proceed with enforcement action, a BSO may write the appropriate A44(1) report against the person seeking to become a PR as well as an accompanying spouse or common-law partner.

12.7 Common-law partners

R1(1) states the following:

> *common-law partner* means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.

R1(2) states the following:

> "…, an individual who has been in a conjugal relationship with a person for at least one year but is unable to cohabit with the person, due to persecution or any form of penal control, shall be considered a common-law partner of the person."

Tact and diplomacy should be exercised when conducting an interview about personal relationships as questions could be embarrassing to both BSO and client.

Every person seeking to become a PR should be asked if their marital or common-law status has changed to include either a spouse or common-law partner.

12.8 Dependent children with common-law partners

When verifying the marital status or common-law partnership status of dependent children during an examination, the situation may arise whereby a dependent child is unmarried, but may have a common-law partner. If so, as in the case of a married dependent child, the child is no longer a dependent according to the established definition (R2). Children under 22 years of age in married and common-law relationships are no longer dependent children.

A dependent who is single, divorced or widowed, whose marriage has been annulled or who is no longer in a common-law relationship at the time of the initial receipt of the application is considered to meet the definition of a dependent child and must continue to meet the definition of a dependent child for the duration of processing.

12.9 Procedure for dealing with children whose marital or family status has changed

A BSO at Immigration Secondary who determines that the marital status of a dependent child has changed should do the following:

- Determine whether, despite the change in marital or common-law status, the person is still considered a dependant:
  - 22 years of age or older;
  - have depended substantially on the financial support of the parent since before the age of 22; and
  - be unable to support themselves financially due to a physical or mental condition. It is the financial dependency that must have been ongoing since before the age of 22. It is not necessary for the physical or mental condition to have existed before the age of 22.
- If so, the BSO should grant PR status.
- If not, and the consequence of a change in marital status or common-law partnership status cannot be readily determined, the BSO should defer the examination pursuant to A23.
- Create an Examination in GCMS and add corresponding details in it's *Notes* tab without delay and update the person's complete address and telephone number on their GCMS Client record.
- Send an email to the visa office that issued the PR visa/CoPR explaining the case details, including the visa office B file number, GCMS identification number and case information.

12.10 Medical surveillance

Inactive pulmonary tuberculosis is the only medical condition for which medical surveillance is currently required. Code S2.02 refers to inactive pulmonary tuberculosis and code S2.02U refers to complex inactive pulmonary tuberculosis and/or other complex, non-infectious tuberculosis.

Applicants who have been issued a *Confirmation of Permanent Residence* (CoPR) [IMM 5688] have already had their immigration medical examination (IME) abroad. If follow-up medical surveillance is required, this condition will appear on the CoPR and is imposed by the visa officer who completes a *Medical Surveillance Undertaking* form [IMM 0535B] in GCMS.

It is no longer required for the BSO to complete and fax this form to the Public Health Liaison Unit at IRCC. Once the BSO changes the CoPR status in GCMS to "confirmed", the information is automatically sent to the Public Health Liaison Unit. It is important that the PR's Canadian residential address and phone number or at minimum, their email address, be in GCMS so that Public Health can contact them. The officer shall counsel the applicant concerning the conditions imposed and the need to contact the Public Health Liaison Unit by email (IRCC.MHBSurveillance-SurveillanceDGMS.IRCC@cic.gc.ca) with an address as soon as one has been established, if applicable. It is no longer necessary for the applicant to contact Public Health as indicated on older versions of the IMM 0535B. If the applicant has any questions, they can contact IRCC's Public Health Liaison Unit directly at the aforementioned email address. Also, there is a new public webpage on medical surveillance for applicants which they can go to.

For more information on medical surveillance see *OP 15 Medical Surveillance and Notifications*, the Wiki for GCMS step-by-step or contact the Public Health Liaison Unit directly.

12.11 Family members arriving before the principal applicant

Occasionally, a BSO at Immigration Secondary will encounter a family member (coded DEP on the CoPR) that arrives to be granted PR status before the principal applicant (coded PA on the CoPR). R51(*b*) requires a PR visa/CoPR holder to establish that they and their family members, whether accompanying or not, meet the requirements of the Act and Regulations. For a family member to meet these requirements, it is usually incumbent on the principal applicant being admissible at the POE.

A BSO encountering this situation should obtain the following information from the dependent:

- why the dependent is preceding the principal applicant (e.g., to seek accommodation or employment, lack of a seat on the aircraft carrying the principal applicant);
- when the principal applicant is due to arrive; and
- the person's means of support.

The BSO should complete the verification process but should not grant PR status to the dependent. If the person has a valid PR visa/CoPR and the BSO is satisfied that the principal

applicant intends to come to Canada, the BSO may wish to defer the examination pursuant to A23 in order to wait until the principal applicant arrives so they may be examined.

The BSO should enter the information into the *Notes* tab of the application in GCMS without delay, which indicates that the granting of permanent residence has been deferred pending the arrival of the principal applicant.

12.12 Arrival of the principal applicant prior to family members

A principal applicant may have decided to proceed to Canada in order to commence employment or to confirm that adequate settlement arrangements, such as accommodation and educational facilities exist prior to the arrival of their dependents. A BSO at Immigration Secondary must confirm that the dependents meet the requirements of the Act and its Regulations before granting PR status to the principal applicant. In most instances, the BSO can assume that persons listed as dependents on the principal applicant's CoPR meet the requirements of the Act and Regulations and can grant PR status to the principal applicant.

12.13 Expired or cancelled PR visa / CoPR

A person who presents an expired or cancelled PR visa and/or CoPR cannot be authorized to enter Canada as a PR. The person may be reportable under A41 and R6 for non-compliance with the Regulations because a FN may not enter Canada to remain on a permanent basis without first obtaining a PR visa/CoPR.

If the examination of a holder of a valid PR visa/CoPR is deferred pursuant to A23, the person may be granted permanent residence at a later date after the expiration of their visa/CoPR provided they initially appeared for examination and presented their PR visa/CoPR within its period of validity.

12.14 Counselling new PRs

The BSO at Immigration Secondary should counsel each new PR on the following matters:

- the conditions of PR status that have been imposed and how to comply with the conditions;
- the residency obligation;
- the procedure for obtaining a PR card;
- the procedure for obtaining a social insurance number via Service Canada; and
- the procedure for applying for provincial health coverage.

13 Examination of FNs at POEs

FNs may be authorized to enter Canada. A22(1) provides that:

> A FN becomes a temporary resident if an officer is satisfied that the FN has applied for that status, has met the obligations set out in A20(1)(*b*), is not inadmissible and is not the subject of a declaration made under 22.1(1).

Temporary residents include: visitors, students, workers, and temporary resident permit holders.

13.1 Visa requirements for temporary residents

A Temporary Resident Visa (TRV) is a counterfoil document issued by a visa officer that is placed in a person's passport. Every citizen from a TRV required country who is approved for travel to Canada will be issued a TRV (IMM1346B). See section 13.2 below for exemptions to this requirement.

A TRV indicates that the FN has been pre-screened by a visa officer and that this officer was satisfied that the visa holder met the requirements for entry into Canada at the time of the issuance of the visa. Holding a TRV does not guarantee that the FN will be authorized entry into Canada.

A11(1) requires FNs to apply for a visa before entering Canada. R7 also provides that a FN may not enter Canada to remain on a temporary basis without first obtaining a TRV.

13.2 Exemptions from a visa requirement

R7(2) exempts certain FNs from the requirement to obtain a visa. These include:

- FNs who hold a TRP issued under A24(1);
- FNs who are authorized under the Act or its Regulations to re-enter Canada to remain in Canada;
- a citizen of Romania who is seeking to enter Canada by air and who obtained an eTA before December 1, 2017; and
- FNs exempt under R190.

See R190 for a complete list of temporary resident visa exemptions for FNs. This section includes:

- visa-exemptions by nationality [R190(1)];
- other document holders who are exempt from the temporary resident visa requirement [R190(2)];
- special categories of persons who are temporary resident visa exempt [R190(3)];
- persons entering Canada who are or to become crew members of a means of transportation other than a vessel [R190(3)(*a*)(i)];
- FNs in transit for refuelling destined to or originating from the US [R190(3)(*b*)];
- FN on a flight that makes an unscheduled stop in Canada due to an emergency or other unforeseen circumstances [R190(3)(*b*.1)];
- members of the Transit Without Visa Program (TWOV) and the China Transit Program (CTP) [R190(3)(*c*)] (for more information, refer to the Transit Without Visa/China Transit Program Standard Operating Procedures on Atlas);
- members of armed forces coming to carry out official duties under of the *Visiting Forces Act* [R190(3)(*d*)] and in possession of travel or military orders;
- persons seeking re-entry into Canada, after visiting only the U.S. or St. Pierre and Miquelon, within the authorized period of stay granted upon initial entry into Canada or extension to this period [R190(3)(*f*)] (see section 13.3 below);
- temporary residents seeking re-entry to Canada from the U.S. or St. Pierre and Miquelon, after applying to renew their status, remain under their original status

until a decision is made and they are notified [R183(5)]. These people are considered to have maintained status;
- persons conducting inspections on flight operation procedures or cabin safety on commercial air carriers [R190(3)(*g*)]. Note : This visa exemption does not apply to In Flight Security Officers (IFSO), also known as air marshals. They are not to be considered as members of a crew; or
- Persons participating as an accredited representative or adviser to an aviation accident or incident investigation conducted under the *Canadian Transportation Accident Investigation and Safety Board Act*, and have valid documentation to that effect [R190(3)(*h*)].

Note: Under the Regulations, the definition of the United States includes Puerto Rico.

13.3 Re-entry into Canada without a visa

FNs who require a temporary resident visa and who seek to re-enter Canada must be in possession of a multiple-entry TRV unless:

- since leaving Canada after being authorized to enter as a temporary resident, they have only visited the U.S. or St. Pierre and Miquelon, and are returning to Canada before the end of the period initially authorized by a BSO for their stay or any extension to it.[R190(3)(*f*)];
- they have only visited the U.S. or St. Pierre and Miquelon and they are in possession of a valid visitor record (VR), WP, SP, or a TRP (authorizing re-entry) and are returning within the initial period authorized by a BSO, [R190(3)(*f*)];
- they are seeking entry on maintained status. A temporary resident with maintained status that leaves Canada is exempt from obtaining a temporary resident visa pursuant to R190(3)(*f*) if they are returning from a visit solely to the United States or St. Pierre and Miquelon. Their status as a temporary resident is extended until a decision is made and they are notified in accordance with R183(5). They are not authorized to work or study in Canada as they did not remain in Canada as per R186(*u*) and R189 until their application for a renewal on their WP or SP has been approved. To emphasize these conditions, BSOs may consider documenting these FNs on a VR. For guidelines on when to issue a VR see section 13.24 below.

Note: Under the Regulations, the definition of the United States includes Puerto Rico.

These FNs must comply with all other entry requirements. If they visit any country other than those stated above, they are not visa-exempt under R190(3)(*f*).

Furthermore, visa-required FNs may attempt to use the provision in 190(3)(*f*) to bypass the appropriate procedures for extending their TR status in Canada (e.g. to avoid obtaining a new visa). Officers are reminded that if they do not place a new stamp with a specified validity date the FN automatically receives a 6 months authorized period of stay as per R183(2) on every entry. Therefore, officers should consider limiting the authorization to the initial entry validity date by writing that date under a new stamp. However, an officer can authorize the FN into Canada for a 6 month period if they believe the FN is admissible and will comply with the conditions of their entry.

Regarding work, study, visitor and TRP applications, it should be noted that the CBSA does not have the authority to renew or extend these permits at the POE, but will assess such

requests as a completely new application, as well as the individual's admissibility to Canada. Individuals seeking entry to Canada at a POE who currently have a valid TR status may be admitted to Canada on the basis of their existing permit and instructed to apply to IRCC in Canada for an extension or renewal.

13.4 Examples of situations applying R190(3)(*f*)

- A FN in possession of a TRV valid for one year, who is subsequently issued a four-year SP at a POE, may leave and return to Canada after the expiry of the visa as long as they have only visited the U.S. or St. Pierre and Miquelon and the SP is still valid.
- A FN in possession of a single-entry TRV may leave and return to Canada without the issuance of a new or multiple-entry visa as long as they return to Canada within the initial period (or any extensions) authorized and have only visited the U.S. or St. Pierre and Miquelon.
- Pursuant to R190(3)(*f*) a FN who is from a Temporary Resident Visa (TRV) required country, who has been admitted to Canada as a temporary resident and is re-entering Canada from the U.S. or St. Pierre and Miquelon, before the expiry of the period initially authorized for their stay, is exempt from the requirement to obtain a TRV. R198(1) allows a person who is exempt from the requirement to obtain a TRV to apply for a WP at the POE. Taken together R190(3)(*f*) and R198(1) allow for a FN to apply for the first or subsequent WP at a POE as long as the FN has been initially authorized to enter Canada as a temporary resident and returns to Canada from the U.S. or St. Pierre and Miquelon by the end of the period initially authorized for their stay and any extension to it.

13.5 Foreign representatives posted to Canada

Whether from a visa-exempt country or visa-required one, foreign representatives and their family members seeking entry into Canada to be accredited (i.e., to take up posting) are required to apply for a TRV based on instructions devised by IRCC in consultation with Global Affairs Canada's Office of Protocol (XDC); related applications are processed based on operational guidance, in consultation with XDC.

Foreign representatives and their family members who subsequently enter Canada and receive/maintain a valid diplomatic acceptance, a consular acceptance, or an official acceptance issued by the Chief of Protocol of Canada are regarded as properly accredited and exempt from obtaining a TRV or an eTA as per R190(2)(*a*) and R7.1(3)(*c*).

If a BSO has concerns regarding incoming and properly accredited foreign representatives and family members they should contact IRCC's Case Management Branch at: IRCC.CMBImmigrationCaseAdvice-ConseilCasImmigrationDGRC.IRCC@cic.gc.ca and in cc add xdc-ircc@international.gc.ca.

For urgent cases, the BSO may contact the IRCC Liaison Unit at the Office of Protocol at 613-992-0889. The IRCC Liaison Unit is available for urgent cases during regular business hours, Monday to Friday. For after-hours service, contact the Operations Officer at 613-944-1294.On the first arrival in Canada of a foreign representative or family member whose passport bears a D-1 or O-1 visa counterfoil or a single entry counterfoil-less visa, the BSO at the PIL should stamp the passport giving them status in Canada for six months. During the six-month period, the official's embassy or consulate will forward their passport to the

Diplomatic Corps Services Division, Office of Protocol, Global Affairs Canada. The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance, which indicates that the person is accredited to Canada and entitled to remain in Canada for the duration of their official status.

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age and considered to be "members of the family forming part of the household" will be issued acceptances. Children over 19 years of age will be issued acceptances only if they are registered as full-time students at a Canadian Designated Learning Institution (DLI). After 25 years of age, family members are no longer eligible to receive official acceptances, and must change their official status under *Foreign Missions and International Organizations Act (FMIOA)* to a non-official temporary resident status under IRPA.

For more information, see procedures related to diplomatic and official visas.

13.6 Affirmations for visas

An *Affirmation for Visa* form [IMM 1281B] is to be used as a document in lieu of a passport involving nationals of countries not recognized by Canada. When a person presents an IMM 1281B form, a BSO at Immigration Secondary must apply the port stamp in the lower right corner of the visa (partly on the visa, partly on the page).

13.7 U.S. government officials

The following official U.S. government personnel assigned to temporary postings in Canada are not issued diplomatic or official acceptances in Canada:

- Department of Homeland Security officers;
- U.S. Customs officers;
- International Joint Commission employees; and
- Inspectors with the Federal Grain Inspection Service of the United States Department of Agriculture and other U.S. government officials in possession of official U.S. government passports and assigned to temporary postings in Canada.

U.S. government personnel arriving in Canada for the first time will be issued a fee exempt WP, on presentation of a "letter of introduction" from the appropriate agency, identifying the assignment, its location and the number of years the employee will be assigned in Canada. For more information on the documentation of U.S. government employees, refer to *United States government personnel* on IRCC's Connexion page, which deals with temporary foreign workers applications at POEs.

13.8 Courtesy visas

Visa officers may issue courtesy visas to persons who, although not entitled to diplomatic privileges and immunities, warrant a visa to facilitate their entry because of their position or because their reason for coming to Canada is considered sufficiently important.

Courtesy visas may be issued to:

- persons of diplomatic rank coming to Canada for tourism purposes;
- members of the International Air Transport Association (IATA);
- members of a trade mission visiting Canada; and
- well-known visiting professors coming to Canada to attend conferences.

Courtesy visas may be issued in any type of passport to FNs who require visas or who are normally visa-exempt. The visa should draw a BSO's attention to the fact that the individual is considered by the IRCC visa office to warrant particularly expeditious and courteous treatment at the POE. Such FNs are subject to normal documentation requirements and are not exempt from regular examination procedures.

13.9 Parents and Grandparents Extended Stay Temporary Resident Visa (Super Visa)

Eligible parents and grandparents of Canadian citizens and PRs may be issued a multiple-entry TRV coded PG-1 for up to 10 years or for visa-exempt FNs, a letter of introduction will be issued for five (5) years or until passport expiry. The status period of such eligible persons will be for two (2) years on each entry to Canada. These travellers can be admitted at the PIL however, should they be referred to Immigration Secondary, BSOs should verify that the super visa holder or the holder of a super visa letter of introduction has valid medical insurance, continues to meet the requirements of the super visa and is not inadmissible.

The BSO will then stamp the super visa holder's passport, but no handwritten date is required. Should the BSO authorize a period of stay of *less than* 2 years, a VR should be issued to the client with clear notes indicating the reason why the period of stay was shortened.

Some travellers with a PG-1 TRV may also be subject to medical surveillance.

BSOs should follow the same procedure for TRs as for PRs. Refer to section 12.10 of this manual for detailed procedures.

13.10 Expired temporary resident visas

A person seeking to enter Canada with an expired temporary resident visa is inadmissible and should be reported pursuant to A41(*a*) for A20(1)(*b*).

13.11 Notification to visa office if a visa holder is refused entry

A BSO at Immigration Secondary who is of the opinion a FN who holds a TRV or a TRP is inadmissible should send full details of the refusal by email to the issuing visa office. This allows the visa office to review the decision to issue the visa and to deal with future representations that the person may make to the visa office.

The BSO must put the phrase: "As requested: ENF 4" in the subject line and include the following information in the following order:

(a) the name and nationality of the subject of the A44(1) report; or a person allowed to withdraw their application;

(b) the person's date and place of birth;

(c) the visa or permit number, date and office of issue;

(d) the date and POE where the person sought to enter Canada;

(e) the reason for refusal, using the code letter for the reason for refusal:

A: seeking permanent residence,
B: claims Convention refugee status,
C: intends to seek or take employment,
D: intends to follow a course of study,
E: has insufficient funds to maintain themselves and their family members,
F: medical inadmissibility,
G: criminal inadmissibility,
H: expired temporary resident's visa, or
I: other;

(f) the name and file number of the office responsible for follow-up enforcement action, if the office differs from the POE; and

(g) the visa office file number (some visa offices include the number on the visa).

The BSO should not provide any other details in the email report. This procedure allows the BSO to transmit the report as an unclassified message.

If the reason for refusal was code "I" (other), the officer should send a report by mail to the issuing visa office giving further details of the reason for the refusal.

This reporting system gives IRCC visa offices immediate feedback on their decisions for issuing temporary resident visas (TRVs) and assists in monitoring the effectiveness of the TRV program.

13.12 Electronic Travel Authorization (eTA) and eTA Expansion (eTA-X)

An eTA is an entry requirement for visa-exempt FNs travelling to or transiting through Canada by air. U.S citizens and U.S. lawful permanent residents (USLPR) are some of the exempted populations from this requirement. An eTA is a paperless document electronically linked to a traveller's passport that must be obtained prior to travelling to or through Canada by air.

R7.1(1) requires all FNs from visa-exempt countries to obtain an eTA before entering Canada.

R7.01 defines which citizens, from visa-required countries, are eligible for an eTA when travelling to Canada by air under the eTA-X program. The eligibility criteria are:

- Have held a Canadian TRV in the preceding 10 years; or
- Currently hold a valid U.S. non-immigrant visa (NIV).

An eTA issued pursuant to the eTA expansion provisions of the IRPR has the same legal authority, except that the eligibility criteria differs.

BSOs should be aware that the TRV exemption for "contiguous territory", R190(3)(*f*) may apply to eTA–X clients who were authorized entry at an air POE and subsequently departed Canada for a visit solely to the US or St-Pierre and Miquelon and then returned to Canada via any mode within the period initially authorized for their visit.

13.13 eTA exemptions

R7.1(3) states that select individuals are exempt from the eTA requirement, including:

- Queen Elizabeth II and members of the Royal Family;
- holders of valid TRVs;
- citizens of the United States or a person who has been lawfully admitted to the US for permanent residence (USLPR);
- accredited diplomats, consular and officials in Canada;
- select civil aviation personnel (flight crew, flight safety advisors, accident investigators);
- French citizens who are residents of St. Pierre and Miquelon arriving from St. Pierre and Miquelon;
- foreign military personnel carrying out duties under the Visiting Forces Act;
- FNs seeking re-entry directly from the US or Saint-Pierre-et-Miquelon with prior status in Canada;
- FNs holding a valid U.S. document travelling to and from the U.S. who are passengers on a flight stopping in Canada for the sole purpose of refuelling;
- FNs transiting Canada under the TWOV or the CTP;
- FNs onboard flights diverted to Canada for medical, mechanical, or other emergency reasons.

13.14 eTA validity and cancellation

An eTA will be valid for up to five years or until the passport expires, whichever comes first. A visitor may travel to Canada repeatedly without having to apply for another eTA, so long as their original eTA remains valid.

Unlike a TRV, BSOs at the POE may cancel an eTA and eTA-X when the holder may become ineligible to possess one. The CBSA's OB PRG-2017-41 describes when a BSO may cancel an eTA and eTA-X if at least one of the following conditions are met:

- they are the subject of a declaration made under A22.1(1);
- they were issued a TRP under A24(1);
- they are the subject of a report prepared under A44(1);
- they are the subject of a removal order made under A44(2) or A45(*d*);

- they withdrew their application to enter Canada under R42(1);
- they were refused a temporary resident visa because they did not meet the requirement set out in R179(*b*);
- they were refused a WP because they did not meet the requirement set out in R200(1)(*b*);
- they were refused a SP because they did not meet the requirement set out in R216(1)(*b*); or
- in the case of a FN referred to in R7.01(1), it is established that, on the day on which they made their application for an eTA-X, they did not meet either of the conditions set out in R7.01(2)(*a*) and (*b*).

Please refer to the Wiki page for step-by-step instructions on how to cancel an eTA in GCMS as well as the comments to be inserted in the eTA cancellation *Correspondence* tab.

13.15 Document requirements for FNs

R52(1) provides that a FN seeking to become a temporary resident of Canada must possess a valid passport, identity or travel document. The purpose of this requirement is to ensure adequate identification of the FN and to guarantee that person's re-entry either into the country that issued the passport, identity or travel document or into another country.

R52(1) provides a list of acceptable passports or travel documents for FNs seeking to enter Canada as temporary residents.

Visa officers should ensure that a travel document is acceptable for travel to Canada before issuing a visa. A CBSA officer can normally assume that a document containing an authentic visa is acceptable for travel to Canada, unless there is some reason to question its acceptability.

13.16 Passport and travel document exceptions

R52(2) provides a list of persons who are exempt from the requirement to have a passport or travel document to enter Canada as temporary residents:

- U.S. citizens;
- Permanent residents of the U.S. seeking to enter Canada from the United States or St. Pierre and Miquelon. Note that U.S. Permanent Resident Cards are only acceptable upon presentation on contiguous territory and not valid for international flights from outside Canada unless accompanied by a valid and subsisting passport or travel document;
- Residents of Greenland seeking to enter Canada from Greenland;
- Citizens of France residing in St. Pierre and Miquelon seeking to enter Canada from St. Pierre and Miquelon;
- Military personnel seeking to enter Canada under the *Visiting Forces Act*;
- Persons seeking to enter as or in order to become air crew members and who hold an airline flight crew licence or crew member certificate issued in accordance with International Civil Aviation Organization (ICAO) specifications; and
- Persons seeking to enter Canada as crew members who hold a seafarer's identity document and are crew members of the vessel that carries them to Canada.

13.17 Examining passports

The purpose of examining a passport is to verify information that has been provided by the holder or that appears on any immigration document issued to the person. A BSO should examine each passport to confirm the following:

- the name of the holder;
- the date of birth of the holder;
- other data such as the person's physical description, place of birth, marital status and profession;
- the country of citizenship;
- the photograph of the holder;
- the date of expiry; and
- visa pages (to determine previous trips to Canada or other recent trips or visa refusal stamps, typically found on the last page that may be relevant to the overall examination of the person).

CBSA's National Document Centre (NDC) contributes to helping prevent the movement of unlawful people across the border through the detection and analysis of document and identity fraud at POEs through collaboration with national and international partners on the integrity of their travel and identity documents and issuance processes. The NDC acts as a center of expertise for the CBSA and IRCC in the analysis of travel and identity document fraud. On their page on Atlas, you can find *Document alerts, Document bulletins and Document communiqués.*

BSOs also have access to EDISON TD, a database which allows users to compare doubtful or unknown travel documents with high definition images of authentic ones. Most often, the documents shown are specimens, that is, documents provided by the issuing authority for comparative analysis purposes.

For more information, please consult section 13 of *ENF 32, Passports and Travel Documents.*

13.18 Valid visas in expired passports

Visa officers will not put a visa in an expired document and will not issue a visa for a period surpassing the expiry date of the passport or travel document. Occasionally, documents containing valid visas are cancelled or replaced. If a valid visa inside an expired document is presented at the POE along with a valid passport or travel document, the visa is considered valid.

13.19 Evidence of U.S. citizenship

The following documents may be satisfactory evidence of U.S. citizenship:

- U.S. passports, U.S. passport cards, and Certificates of Citizenship and Naturalization are considered *prima facie* evidence and are acceptable proof of U.S. citizenship.
- A U.S. birth certificate, when accompanied by another document bearing a picture of the holder, is considered an indicator and may be an acceptable proof of U.S. citizenship.

A U.S. military identification card, although a good supporting document, is not *prima facie* evidence of U.S. citizenship. The U.S. military accepts recruits who are not U.S. citizens.

Sometimes, a verbal declaration may be sufficient to satisfy a BSO that a person is a U.S. citizen. For example, driver's licenses, health cards, U.S. Voter's Registration card, school records, credit cards are not prima facie evidence of citizenship, but they are often used along with a verbal declaration to satisfy the BSO of U.S. citizenship. In other circumstances, the BSO may require better documentary evidence for persons claiming to be U.S. citizens. BSOs should also familiarize themselves with the Enhanced Drivers Licence/Enhanced Identification Cards as well as the trusted traveller cards, such as FAST, NEXUS, CANPASS and the U.S. SENTRI card.

Indigenous identity documents which are recognized by the Government of the United States may assist the examining officer in reaching a determination of the person's US citizenship and country of residence. These documents are the US Enhanced Tribal Card (ETC) and I-872 American Indian Card.

To assist the travel industry, airlines and travel agents have been supplied with the following information:

- a U.S. passport constitutes the best form of identification for U.S. citizens travelling to Canada; and
- U.S. citizens may travel to Canada without passports if they have other means of establishing their citizenship, such as a U.S. birth certificate or naturalization papers.

13.20 Conditions imposed on temporary residents

R183(1) provides for the following general conditions that are automatically imposed on all temporary residents:

- to leave Canada by the end of their authorized period of stay;
- to not work, unless they have been issued a WP or are exempt from the requirement to obtain a WP pursuant to R186 and/or R187;
- to not study, unless they have been issued a SP or are exempt from the requirement to obtain a SP pursuant to R188 and/or R189; and
- to comply with all requirements imposed by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.

A BSO does not need to document these conditions for every person authorized to enter Canada as a temporary resident as they are automatically imposed. However, if the BSO believes that a document is necessary as a control measure or as an aid in counselling the person regarding the conditions of their entry, they may generate a VR and explain in the *Notes* tab, without delay, why a VR was issued.

13.21 Duration of temporary resident status

R183(2) states that the period authorized for the stay of a temporary resident is six months or any other period that an officer imposes based on the following criteria:

- the temporary resident's means of support in Canada;

- the period for which the temporary resident applies to stay; and
- the expiry of the temporary resident's passport or other travel document.

13.22 Six-month entry

In most cases, a BSO should routinely authorize entry for a period of six months to a FN requesting entry as a temporary resident, even when the person requests entry for a very brief period. Six months is adequate for most purposes of travel and preclude the need for the person to request an extension.

The BSO should also stamp the foreign national's passport or travel document, inscribe a date of expiry based on a calculation of six months from the date of entry and initial the notation. Please refer to the CBSA Stamp Policy for more information on annotating a travel document. The BSO should counsel the FN on the need to comply with general obligations for the visit and of any extension, should one become necessary.

In instances where the principal applicant of the family is traveling with their family members, BSOs should generally authorize entry to all members of the family for the same length of time as indicated on the WP or SP of the principal applicant.

13.23 Entry for more or less than six months

Based on the information presented during an examination, a BSO at Immigration Secondary may decide to limit a temporary resident's stay to less than six months despite the length of time requested by the foreign national. If requested by the applicant and the BSO is satisfied that the FN is a temporary resident, is able to support themselves and accompanying family members financially, and is not inadmissible for reasons of health or security, the granting of entry for more than six months may be considered.

In no case should the BSO impose a period of time for a temporary resident's stay greater than the validity of the foreign national's passport or travel document. This will not be applicable to U.S. citizens and other FNs exempted under R52(2) from the requirement to be in possession of a passport or travel document.

13.24 When to document a temporary resident on a Visitor Record (VR)

A BSO at Immigration Secondary who limits a temporary resident's stay to a period of less than six months has in essence decided that there is a need to exercise an element of control over the foreign national's length of stay; therefore, a *VR* form IMM 1097B (for manual completion if GCMS is down) or IMM 1442 (in GCMS) is to be issued in order to document this decision. The BSO should record the reasons why a period of less than six months is being imposed in the *Notes* tab of the GCMS application, without delay.

Similarly, the BSO should issue a VR when authorizing a period of stay greater than six months and indicate in the *Notes* tab in the GCMS application without delay why the greater period of time is being granted.

A BSO at Immigration Secondary should document a FN on a VR if, in the BSO's opinion, a FN should be documented for control purposes regardless of the length of stay. This could include:

- a seafarer who is signing off or seeking entry to join a crew;
- a FN entering for medical treatment;
- a person extradited to Canada who is being allowed forward as a temporary resident;
- any temporary resident on whom other conditions pursuant to R185 are being imposed;
- foreign workers entering Canada to perform after-sales service and intending to remain in Canada for longer than two days, except workers performing continuing after-sales service whose entry has already been documented on a VR, the validity of which covers the period for which the person is seeking entry; or
- military personnel and their accompanying family members entering Canada under the *Visiting Forces Act*; and
- FNs entering as clergy under R186(*l*).

In certain situations, BSOs should issue a VR to the FN who is WP exempt so that they can benefit from certain privileges, such as obtaining a Social Insurance Number. These situations include:

- Public Policy: Short-term work permit exemption for certain high-skilled work;
- Public Policy: 120-day work permit exemption for researchers; or
- Missionaries (e.g.: Jesus Christ of Latter Day Saints) coming to Canada for more than a six month period. Case type 13 in the GCMS application must be used when issuing a VR so that they may apply for and obtain provincial health coverage.

Creating or adding to an existing client record in GCMS with corresponding Notes will assist other BSOs in the event a person applies for an extension or if enforcement action is required.

13.25 Issuing VRs

VRs should be processed and issued in GCMS. If GCMS is not operational, a BSO at Immigration Secondary can complete the VR form [IMM 1097B] manually and enter the information in GCMS as soon as the system is available. For detailed information on completing and coding the IMM 1097B form manually, see the coding manual.

There are no cost-recovery fees for documenting temporary residents on a VR.

A BSO who issues a VR, no matter the reason, should enter remarks in the *Notes* tab of the application, without delay.

13.26 Imposing, varying or cancelling conditions on temporary residents

R185 authorizes a BSO at Immigration Secondary to impose, vary or cancel the following conditions individually concerning a temporary resident:

- the period authorized for their stay;
- the work in which they are permitted to engage or prohibited from engaging, including
  - the type of work;
  - the employer;

    - the location of work; and
    - the times and periods of work;
- in the case of a member of a crew, the period within which they must join the means of transportation;
- the studies in which they are permitted to engage or prohibited from engaging, including
    - the type of studies or course;
    - the location of the studies; and
    - the times and periods of the studies;
- the area within which they are permitted or prohibited to travel in Canada; and
- the times and places to which they must report:
    - for medical examination, surveillance or treatment; or
    - the presentation of evidence of compliance with applicable conditions.

All of these conditions should be imposed in writing by providing the FN with a VR, ST, WP or TRP. When conditions of entry are imposed on a manually completed form, it is not necessary to state on the form the conditions precisely as they are worded in the Regulations. An attempt to reflect the substance and spirit of the conditions in the Regulations and, whenever possible, the wording of R183 and R185 should be used. When a BSO at Immigration Secondary completes a form in GCMS, they may select the appropriate conditions from the list on the screen.

The BSO should not use conditions as a means of discouraging a FN from coming into Canada. The reasons for imposing conditions on a temporary resident are to ensure that the person complies with the period and purpose for which they sought entry into Canada and to make the temporary resident aware of the need for formal authorization before extending that period or varying the purposes of the visit.

13.27 Situations where specific conditions may be considered

Situations where specific conditions may be considered include the following:

- For a FN seeking entry to join a crew of a vehicle already in Canada, a BSO at Immigration Secondary should impose a condition that would require them to join the means of transportation within a maximum period of time of 48 hours [R184].
- R185(*d*) authorizes a BSO to impose a condition that limits the area within which a temporary resident may travel in Canada. For example, the BSO might want to use the condition to limit the travel of a person in transit through Canada to another country (perhaps limiting the person to the airport and surrounding area), or the travel of a person coming to Canada to stand trial or to be a witness in legal proceedings.
- R185(*e*) authorizes the BSO to impose a condition on a temporary resident who otherwise complies with the Act and Regulations, but who has a medical condition of public health significance in Canada. The condition should name the time and place where the temporary resident must report for medical observation and treatment while in Canada. For more information on medical surveillance, please refer to section 12.10 above and manual *OP15*, *Medical Procedures*.
- If the BSO imposes conditions on a temporary resident concerning attendance at a school, work, or medical examination, surveillance or treatment, the BSO should, as a control measure, also impose a condition requiring the person to present evidence of compliance with the conditions imposed [as authorized by R185(*e*)(ii)].

13.28 Deposits and Guarantees

R45(1) authorizes a BSO at Immigration Secondary to require, with respect to a person or group of persons seeking to enter Canada, the payment of a deposit or the posting of a guarantee, or both, to the Minister to guarantee compliance with the conditions imposed on the person or group.

The payment of a deposit or the posting of a guarantee is a control measure in cases where the BSO believes that a temporary resident or group of temporary residents may not comply with one or more conditions being imposed. The deposit or guarantee should specify an amount adequate to guarantee compliance and therefore alleviate doubt regarding a temporary resident's intentions in Canada.

For more information on situations that may warrant a deposit or a guarantee, or how to proceed, refer to *ENF 8*, *Deposits and Guarantees*.

13.29 Counselling temporary residents

A BSO should attempt to answer any questions a temporary resident has concerning their status. When a BSO at Immigration Secondary counsels a temporary resident, they may wish to cover the following points:

- the expiry date of the visit;
- any conditions imposed;
- procedures for applying for an extension;
- cost-recovery requirements should the person seek an extension to their status; and
- information about the cancellation of conditions imposed and a refund if the person has paid a deposit or posted a guarantee (see *ENF 8*, *Deposits and Guarantees*).

The sections to follow provide more detailed procedures for the examination of specific classes of persons seeking to enter Canada.

13.30 Recovering missing, abducted and exploited children

See *ENF 21*, *Recovering Missing, Abducted and Exploited Children*, for more information on policies and procedures relating to examining children seeking to enter Canada.

13.31 Examining foreign students

All FNs require written authorization obtained from an IRCC visa office in order to come study in Canada. Certain exemptions apply when it comes to needing a SP. See *OP 12*, *Students*, for specifics.

Certain FN are eligible to apply for a SP at the POE as per R214. With few exemptions, all Quebec-bound study permit applicants must submit a Certificat d'acceptation du Québec (CAQ) or a confirmation letter from the *Ministère de l'Immigration, de la Francisation et de l'Intégration* (MIFI) when applying for a study permit. The CAQ is issued for a maximum of 49 months. Persons exempted from this requirement can be found on the MIFI's web site.

Quebec's *Regulation respecting the selection of foreign nationals* states at paragraph 49(*g*) that those mentioned at R214 are excluded from the requirement of obtaining a CAQ for a period of not more than six (6) weeks from their arrival to Canada. Should they not yet have a CAQ but meet all other eligibility criteria to apply for a SP at the POE, the BSO may issue a SP for a maximum of six (6) weeks and charge the fees. BSOs should also explain the situation in the permit's *Notes* tab without delay. When the FN mentioned at R214 receives their CAQ, they will have to apply for and pay the fees for a new SP.

For more information on this exemption, please refer to section 2.2 *Programme des étudiants étrangers* of the *Guide des procédures d'immigration* of the MIFI (available only in French).

13.32 Maritime procedures

See *ENF 17*, *Maritime Procedures*, for information on the examination of persons seeking entry as crew members or wanting to become a member of a crew.

13.33 Examining foreign workers

Remarks on VRs allowing people to work in Canada

Service Canada is asking that visible remarks be entered on VRs when a VR is issued to a person who is exempt of the need for a WP. Service Canada needs to know that the person is allowed to work in Canada and is exempt from the need for a WP so a social insurance number may be issued. BSOs at Immigration Secondary should clearly enter in the *User Remarks* section of the VR that the temporary resident is exempt from the need to obtain a WP under either: R186, the 120-day WP exemption for researchers in a publicly funded Canadian degree-granting institution (or its affiliated research institution) or the 15- or 30-day WP exemption for certain high-skilled workers.For more information on these last two, see section 13.24 above and OB PRG-2017-26, *New Work Permit Exemptions for High-Skilled Short-term Work and for Research*.

Seasonal agricultural workers

There are two streams of agricultural workers:

- the Seasonal Agricultural Worker Program (SAWP) stream open to citizens of Mexico and other participating Caribbean countries; and
- the agricultural stream (non-SAWP).

Like all other temporary foreign workers, seasonal agricultural workers in both streams require social insurance numbers (SIN) while working in Canada. As of April 1, 2003, all social insurance cards issued to temporary residents have expiry dates on them, coinciding with the end of the validity period of the WP.

It is important that the expiry date matches the last date of the validity of the temporary resident's WP.

Temporary residents who require a social insurance card may find the application form on the Service Canada website.

SAWP work permits should always:

- have an expiry date of December 15th of the current calendar year no matter the duration of employment indicated on the Labour Market Impact Assessment (LMAI). The only exception to limiting the WP to a date other then December 15th would be if the FN's travel document expires before December 15th;
- 98 as the *Case Type* in GCMS; and
- have the following *User Remarks* already added by the issuing office: "Approved MEX/CCSAWP employer only. Valid to work in ALL PROVINCES. Period of cumulative work not to exceed employment duration specified in the LMIA to a maximum of 8 months – R185(*b*)(iv)".

For more information on the SAWP, visit - Hire a temporary worker through the Seasonal Agricultural Worker Program - Overview - Canada.ca

For more information on the non-SAWP stream, visit Hire a temporary foreign worker through the Agricultural Stream: Overview – Canada.ca

Role of countries sending seasonal workers

Agencies from sending countries must make sure of the following: at least 48 hours in advance, accurate departure lists of workers are sent directly to the CBSA airport office in Canada to ensure that the WPs are prepared (printed) before the arrival of each flight.

- Note: IRCC and Employment and Social Development Canada (ESDC) require that BSOs cancel the pre-printed WPs if the worker did not arrive on the scheduled date nor the following day. This ensures that employer compliance conditions are not imposed on an employer erroneously and allows IRCC to use the Labor Market Impact Assessment (LMIA) to issue a WP for another worker, if needed.

At the airport in Canada

Each worker is referred to Immigration Secondary by a BSO at the PIL and presents their own:

- valid passport; and
- WP introduction letter, issued by a visa office.

Role of BSOs at Immigration Secondary

BSOs at Immigration Secondary must make sure of the following:

- Verify the identity of the passport holder;

- Make sure the WP information is correct and matches the passport's biographical data;
- Stamp and properly annotate the passport with the expiry date, their initials and document number of the WP; and
- "Close the loop" in ICS.

13.34 Refugee claimants

For information on processing refugee claimants, refer to IRCC's *PDI, In-Canada claims for refugee protection*. For instructions on handling possible claims for refugee protection see section 13 of *ENF 6*, *Review of reports under A44(1)*.

For information on the United Nations High Commissioner for Refugees, visit the UNHCR website.

13.35 Vulnerable persons

A vulnerable person is a person who has significant difficulties coping with the examination process, due to a specific condition or circumstance.

Examples of persons who may be identified as vulnerable could be someone who is:

- elderly;
- pregnant;
- with physical disabilities or injuries;
- an unaccompanied minor children;
- a victim of gender-based and/or family violence;
- a victim of human trafficking;
- a victim of trauma; and
- children, including those who are victims of abuse.

Individuals react to violence and trauma in various ways, and not all victims of violence and/or trauma exhibit identical or even similar symptoms. While some individuals may show signs of distress, including anxiety, irritability, nervousness, agitation, anger and aggressiveness, others may be easily intimidated and have difficulty communicating. The importance of building trust with victims/survivors might be helpful. For example, officers may need to explain how the examination process works, and their role as officers, to establish credibility and build trust. Officers should keep in mind that establishing a rapport and earning a victim's trust will help victims to be more open and to feel more comfortable about providing information. It may be helpful to separate individuals when conducting interviews if the BSO suspects there may be violence, trafficking, etc. involved. Also ask the victim whether they would be more comfortable in the presence of a female or male officer.

FN victims brought to Canada by human traffickers for exploitation purposes are exposed to increased vulnerabilities because they may have little or no knowledge of Canadian customs, laws and human rights, and this lack of knowledge may be used by the trafficker to compel the victim to provide their labour or service. Victims may react with fear, suspicion, skepticism, distrust, hesitation and/or hostility towards outsiders, especially law enforcement. They may worry about their immigration status in Canada and/or fear of being issued a removal order and deported. They may also be concerned about the continued availability of services in Canada.

Trauma occurs when a victim lives through an experience so extreme that they cannot completely comprehend or accept it. Consequently, it falls so far outside the victim's own system of values for human behaviour that they cannot rationalize it and may even deny that it ever happened. Key symptoms of trauma likely to have serious implications include:

- denial of being a victim of gender-based violence (GBV), even in the face of contradictory evidence;
- de-personalization of the abusive experience and coming to regard it as having happened to another person;
- fragmentation of memory, perception, feeling, consciousness and sense of time;
- difficulty in providing a clear and consistent statements to investigation; and
- tendency to fill in memory blanks by making up plausible elements of a traumatic situation.

Due to these types of trauma, one of the optimal methods for working with victims is to help them feel stable by providing security and assistance.

As a general principle, all offices must be flexible to provide priority processing to travellers who are identified as vulnerable persons.

For additional information on identifying and processing vulnerable persons, see IRCC's PDI, *Processing in-Canada Claims for Refugee protection of minors and vulnerable persons* and *Addressing cases where a person has experienced abuse*.

For *Trafficking in Persons*, refer to *CBSA's Enforcement Manual*, part 2, chapter 15.

Victims Support

In Canada, responsibility for the protection of victims of crime is shared between the federal and provincial/territorial governments. Numerous programs and services are available to victims of crime, including trafficking. These range from health care to emergency housing, and social and legal assistance. Legal-aid programs are administered separately by each province and territory, and eligibility is based primarily on financial need. Similarly, social services such as emergency financial assistance, including food allowances and housing, are administered at the provincial and territorial levels and are available to those in need.

A TRP may be issued by IRCC for victims of family violence or victims of trafficking in persons (VTIP). Should a TRP be issued by IRCC, essential medical care will be provided through the Interim Federal Health (IFH) Program. A vulnerable person, such as a victim of GBV, may be without documents or lack resources such as finances, shelter, or family and friends. However, when a potential victim without legal status is identified at a POE or Inland, and the local IRCC office is unavailable for an interview, the CBSA should ensure the custody and safety of the individual by releasing them on conditions into the care of a NGO, in an immigration holding center, or into the care of a family member. The CBSA must exercise reasonable care for the victim's protection and well-being.

All encountered victims of family violence or trafficking in persons who are FNs, should immediately be referred to IRCC for an interview on immigration options (which could include issuance of a TRP.

Note: The CBSA should immediately contact local Child Protection Services when encountering a child who is believed to be a victim of abuse.

13.36 Biometrically enrolled FNs and PRs

Biometrically enrolled FNs and PRs arriving at a POE will have their travel documents examined and their biometrics compared or verified to assist in making an admissibility decision.

R12.1 lists in which situation biometrics must be collected.

R12.2(1) lists the persons exempt of having their biometrics collected.

R12.5 outlines the procedure for biometric verification upon entry to Canada.
When seeking entry to Canada and when directed by an officer or by alternative means of examination, a biometrically enrolled person shall provide their biometrics for verification.

Biometric Verification – IPIL

If the traveller was biometrically enrolled, the biographic data and photo collected at the time of application will be displayed on the IPIL screen under the Bio tab. The BSO will compare the biometric enrollment photo displayed in IPIL to the traveller and will select whether the photo matches or does not match. If the BSO has doubts as to the traveller's identity, the BSO will refer the traveller to Immigration Secondary for fingerprint verification.

Biometric Verification – PIK with systematic fingerprint verification (SFV)

Biometrically enrolled travellers who complete their primary processing via PIK with SFV will be prompted by the system to complete a fingerprint verification. A no-match result will generate a referral to Immigration Secondary.

At POEs where PIK does not have SFV integrated, the traveller will not be referred to Immigration Secondary but to a referral officer who will do a facial comparison. Should the BSO have doubts on the traveller's identity, they may refer them to Immigration Secondary for fingerprint verification.

Should the verifications raise doubts regarding the identity of the foreign national, existing procedures will be followed to determine admissibility.

See part 11, chapter 7 of the *People Processing Manual* for further information on the processing of biometrically enrolled FNs. For guidelines, refer to the *Job Aid on Systematic Fingerprint Verification*.

Also, BSOs can refer to OBO-2022-02, 2021-HQ-AC-01-19, PRG-2019-07, PRG-2018-69 and 2018-HQ-AC-OPS-12-11 for more information.

13.37 Collection of Biometrics at POEs

Biometrics screening helps to keep Canadians safe. The collection (through enrolment) and verification of biometrics, along with criminal and immigration screening and biometric-based information sharing, strengthen the integrity of Canada's immigration program. This

helps prevent identity fraud, identify those who pose a security risk and stop known criminals from entering Canada.

As per R12.1 the collection of biometrics at the POE is mandatory for WPs, SPs, TRPs, asylum claimants and a limited number of resettled refugees where IRCC has provided a temporary exemption to the biometric requirement as per R12.8. The enrolment can only be done at select Immigration Secondary where there is a LiveScan Kiosk as per R12.001.

In order for the biometrics to be automatically associated to the client, the application must be created in GCMS prior to capturing the traveller's fingerprints for enrollment. Should the automatic association fail, BSOs will have to manually associate the biometrics to the application. For additional information on querying the biometrics holding tank in GCMS and associating biometrics, please refer to Search and Associating Biometrics document and Video: GCMS Support for Fingerprints in the Holding Tank.

For more information such as guides on enrolling biometrics, please consult the Biometrics Toolkit on Atlas as well as the LiveScan User Guide and Quick Reference Card.

Additional guidance can also be found in OBO-2020-075.

14 Dual intent

A22(2) states that the intention of a FN to become a PR does not preclude them from becoming a temporary resident if the BSO is satisfied that they will leave Canada by the end of the period authorized for their stay.

A person's desire to await the outcome of an application for permanent residence from within Canada may be legitimate and should not automatically result in the decision to refuse entry. A BSO at Immigration Secondary should distinguish between such a person and an applicant who has no intention of leaving Canada if the application is refused.

In rendering a decision, the BSO should consider:

- the length of time required to process the application for PR status;
- the means of support;
- obligations and ties in the home country;
- the likelihood of the applicant leaving Canada if the application is refused; and
- compliance with the requirements of the Act and Regulations while in Canada.

In some cases, the BSO may wish to issue a VR documenting the details of the trip for control purposes and provide thorough counselling regarding the conditions of entry. The BSO should enter remarks in the *Notes* tab of the application in GCMS detailing their reasoning and counselling given, without delay. In cases where the applicant has already received a favourable recommendation for PR status, the duration of time authorized at the POE should match the time required to complete the processing of the application.

15 Temporary Resident Permits (TRPs)

A BSO at Immigration Secondary has discretion, pursuant to A24(1), to issue a TRP to an inadmissible FN seeking entry to Canada if satisfied that entry is justified in the circumstances. Consult IRCC's PDI on *Temporary Resident Permits* for more information.

15.1 Process at the POE for persons approved for a TRP by a visa office

- Background: Visa offices that approve TRP applications will generate the TRP electronically in GCMS for issuance at the POE. This process is similar to the present process being used when a SP or WP is issued by a visa office.
- Letter of introduction: The applicant arrives at the POE with a letter of introduction from the visa office. The top right-hand corner of the letter has the application number. BSOs must do an Integrated Name search and not an application number search in GCMS. This ensures the BSO uses the appropriate application in GCMS.
- Facilitation counterfoil: Visa offices issue a facilitation counterfoil [IMM 1346] to FNs who are from a country where a visa is required and have been approved for a TRP. This counterfoil allows the FN to board a commercial carrier bound for Canada.
- There are two types of facilitation counterfoils that can be issued to TRP holders (single entry or multiple entry):
    - When a FN from a visa-required country has been approved by a visa office to travel to Canada to receive a TRP, a counterfoil coded PA-1 will be issued by the visa office.
    - When a FN from a visa-required country has been approved by a visa office to travel to Canada to receive a TRP that authorizes re-entry to Canada, the FN must apply at a visa office for a facilitation counterfoil prior to returning to Canada. This counterfoil will be provided at no cost and be coded PC-1.

Note: Officers at Immigration Secondary must counsel the FN that, should they leave, they require a counterfoil prior to returning to Canada.

15.2 Issuing a TRP approved by a visa office

The BSO at Immigration Secondary will do the following:

- Determine whether the FN is still eligible for the TRP by assessing whether there is any material change in circumstances and ascertaining whether there are other grounds of inadmissibility since being issued the documentation from the visa office;
- Retrieve information from GCMS by doing an Integrated Name Search using the client's bio data;
- Enter the required information, such as contact address in Canada into GCMS;
- Print the TRP on an IMM 1442B form and attach the foreign national's passport-sized photograph. Should the FN not provide a photograph, it should be taken at the POE;
- Stamp the foreign national's passport and notate as per the CBSA stamp policy; and
- Counsel FNs from visa-required countries to obtain a facilitation counterfoil by a visa office if they wish to leave and re-enter Canada.

15.3 Process for initiating a TRP at the POE

Officers may issue TRPs when justifiable and with awareness that the document carries privileges greater than those accorded to other temporary residents (visitors, students and workers). It allows the holder to apply inland for a WP or SP and may give access to health or other social services. It also allows certain holders who remains in Canada continuously for a specified period of time, and who do not become inadmissible on other grounds, to be granted PR status. Factors to consider prior to issuing a TRP are listed below in section 15.4.

For cases involving serious criminal inadmissibility, a brief email outlining the case details (red flagged to indicate high importance) is to be sent to the CBSA's Case Management Branch. Referral to IRCC's Case Management Branch is not required unless the case is high profile or contentious, in which case officers are encouraged to consult with IRCC's Case Management Branch. Detailed remarks must always be included in the appropriate systems when documents are issued.

For cases involving inadmissibility on health grounds, officers should send a short case summary by email to IRCC's Migration Health Branch.

Once the officer has made the decision to issue a TRP, the following procedures must be followed to ensure that all elements of the decision-making process are documented and all policies and procedures are adhered to, in accordance with IL 3 – Designation of Officers and Delegation of Authority:

- Create a paper TRP file for each client by printing and completing Appendix D's *Temporary Resident Permit Checklist*.
- Add the foreign national's contact address in Canada to GCMS.
- Check validity dates and indicate whether the person shall be allowed to leave and re-enter Canada.
- Collect the $200 processing fee if required (see section 15.6).
- Print the TRP on an IMM 1442B.
- Stamp the foreign national's passport as per the CBSA stamp policy.
- Counsel FNs from visa-required countries to obtain a facilitation counterfoil by a visa office if they wish to leave and re-enter Canada.
- Counsel the FN about their inadmissibility and the ramifications of that inadmissibility for future trips to Canada (e.g. require a TRP be issued by visa office prior to any future trips to Canada).
- Create a note in GCMS regarding your justification for issuing a TRP and the counselling given. This is important as it can be referenced if the FN did not heed the counselling given their last trip.

15.4 Assessment of need and risk when issuing a TRP

An inadmissible person's need to enter or remain in Canada must be compelling and sufficient enough to overcome the health or safety risks to Canadian society.

Officers must consider the factors that make the person's presence in Canada necessary (family ties, job qualifications, economic contribution, attending an event) and the intent of the legislation (protecting public health and the healthcare system).

Note: only IRCC can issue a TRP to victims of human trafficking, suspected victims of human trafficking, and victims of family violence.

Factors to consider

A TRP can be issued for up to three years. Will the TRP be valid for re-entry or for only one trip?		
Criminality	Medical	Other
• What was the seriousness of the offence? • Did the crime involve physical harm or violence? • What was the punishment received for the offence? • What are the chances of successful settlement without committing further offences? • Were drugs or alcohol involved? • Is there evidence that the person has been reformed or is rehabilitated? • Is there a pattern of criminal behaviour? • Is the person eligible for a pardon or rehabilitation? • How long has it been since the offence occurred?	• Is the person suffering from a communicable or contagious disease? • How severe is the person's anticipated need for health or social services in relation to the demand for these services by Canadian residents? • What is the cost of the treatment? • How will the costs be covered? • Will provincial public health insurers provide insurance coverage?	• Is this a first-time visit and is the person unaware of their inadmissibility? • Is there an economic benefit for Canadians if the person is coming for business reasons? • Is this an urgent family situation such as a funeral, wedding or other low-risk compassionate reason? • Is there a pattern of previous or multiple violations of the Act or Regulations? • Are there public controversial elements to the case that warrant a referral to National Headquarters? • Is there a settlement risk, as persons continuously on a TRP for a specified period of time will be granted permanent residence? • Are there any Indigenous cultural considerations?

15.5 GCMS remarks

-
-

Note:

-
-

-

-
  -
  -
  -
  -

Important

-
-

15.6 Public policy: Fee exemption for certain TRPs

Certain TRPs issued to FNs who are inadmissible are fee-exempt under public policy.

As of March 1, 2012, a public policy went into effect wherein certain FNs who are inadmissible under A36(2) are exempt (one time only) from the fee for a TRP.

The fee-exempt TRP may be considered only if all of the following conditions apply:

- The person was convicted of an offence, not including child pornography or any sexual offence, and received no term of imprisonment as part of the sentence imposed.
- There have been no other convictions or acts committed that would render the person inadmissible.

The fee exemption is available to those who meet the criteria even if they have been issued a TRP in the past.

Before issuing the TRP, officers must check GCMS to ensure the one-time fee-exempt TRP has not already been granted. Officers must also counsel the FN that they are inadmissible to Canada and that they are being facilitated with a one-time only fee-exempt TRP, that a

TRP is only issued in exceptional circumstances, and that they should apply for another TRP at a visa office if they wish to return to Canada in the future, or to apply for individual rehabilitation if they meet the requirements to do so.

On January 11, 2012, the Minister of Citizenship, Immigration and Multiculturalism approved a public policy that allows BSOs to grant an exemption from the TRP cost recovery fee for TWOV/CTP and emergency landing travellers from visa-required countries who find themselves improperly documented (A41) upon arrival in Canada through no fault of their own.

BSOs should make the validity of the TRP coincide with the FN's newly scheduled departure time.

BSOs issuing TRPs under these circumstances should include the following note in GCMS and on the document: "TRP fee exemption granted pursuant to *Fee Exemption for Temporary Resident Permits Issued to Foreign Nationals in the Transit Without Visa Program, the China Transit Program and Emergency Landing Situations.*"

For more information on the Cost recovery fee exemption for TRPs for A36(2), consult operational bulletin PRG-2012-34.

For more information on the Cost recovery fee exemption under the TWOV/CTP and emergency landing, consult operational bulletin OBO-2019-040 and IRCC's PDI on the subject.

15.7 TRPs issued in high-profile, complex, sensitive or contentious cases

The designated authority must inform the CBSA's Case Management and IRCC's NHQ mailbox by sending a brief email (red-flagged to indicate high importance) outlining the case details when they issue a TRP. Detailed remarks must always be included in the appropriate systems when TRPs are issued.

For more information on these cases, refer to IRCC's PDI on the subject.

15.8 National Interest TRPs

In the event that persons approved for a National Interest TRP (NI-TRP) are referred to Immigration Secondary, officers will note the special coding of the TRP (PAX-1) and the information in GCMS and allow the person to proceed as normal. The information in GCMS will indicate the details for the authorization of the TRP, mainly that no TRP document will be given to the subject at the POE, and that the holder of an NI-TRP counterfoil issued by the visa office does not require referral to Immigration Secondary at the POE for the sole purpose of processing the TRP.

If the holder of an NI-TRP is referred to Immigration Secondary, an email message should be sent to IRCC's Case Management Branch and the issuing visa office.

For more information on NI-TRP, please refer to IRCC OB 463.

15.9 Designated authority to issue a TRP

The designated authority to issue a TRP could be found in the Instrument of Designation and Delegation (IL 3) and is listed below:

BSO

- A36(2), Criminality
- A39, Financial reasons
- A40, Misrepresentation
- A41, Non-compliance
- A42, Inadmissible family member

Superintendent

- A36(1), Serious criminality
- A38, Health grounds

IRCC NHQ only

- A34, Security
- A35, Human or international rights violations
- A37, Organized criminality

Cancelling a TRP

- Certain CBSA officials have now been added to the list of persons who are designated by the Minister to cancel TRPs. Previously, only IRCC officials had this authority. For the complete list of persons designated to cancel a TRP, refer to item 106 of the IRCC Instruments of Designation and Delegation (D & D) Instruments.
- For more details, please refer to OBO-2019-042.

15.10 TRP file folder retention and storage

File folders should be stored in a secure cabinet for two years and then destroyed using an approved shredder.

15.11 Validity of TRPs

Pursuant to R63, a TRP is valid until any one of the following events occurs:

- the permit is cancelled by the delegated authority under A24(1);
- the permit holder leaves Canada without obtaining prior authorization to re-enter Canada;
- the period of validity specified on the permit expires; or
- a period of three years elapses from its date of validity.

15.12 TRPs valid for re-entry to Canada

BSOs should be aware that a TRP holder from a country where a visa is required with prior authorization to re-enter Canada may seek entry to Canada without having obtained a facilitation counterfoil [IMM 1346 counterfoil, coded PA-1 or PC-1] from a visa office. In these cases, the TRP holder is to be granted entry to Canada following a favourable examination for identity and admissibility. The fact that they obtained passage to Canada without the facilitation counterfoil (PA-1 or PC-1 counterfoil) does not render the FN inadmissible. However, a TRP holder, if not exempt under R52(2), will be inadmissible if they fail to produce a valid passport or travel document.

Note: For more information on TRPs, see IRCC's manual *IP 1* and *PDI*, *Temporary Resident Permits*.

16 Persons allowed into Canada by law

16.1 Persons under removal order who are refused entry to another country

A person subject to an enforceable removal order who leaves Canada, but is refused entry into the country they departed to and are subsequently returned to Canada, by force of circumstances, shall be allowed to enter Canada pursuant to R39.

Although a BSO at Immigration Secondary shall allow these persons to enter Canada, they continue to be subject to removal as the removal order remains unenforced as per R240(1)(*d*). The BSO should ensure that the person is in possession of documentation confirming that they have been refused entry to the country to which they were seeking entry. If there has been a lengthy delay between the person's departure and return, the BSO should investigate to ensure that the person has not been authorized to legally enter another country. It is reasonable to expect that the person should be returning to Canada on the next available flight from the country they had attempted to enter.

If the BSO is satisfied that the person was not legally authorized to enter another country, the BSO should counsel the person that they are still under a removal order and that the payment of a deposit, the posting of a guarantee or any conditions imposed remain in effect.

The BSO may impose new conditions or, without a warrant, arrest and detain the person, other than a protected person under A55(2), for removal if the BSO is satisfied that the person is a danger to the public or would be unlikely to appear for removal, especially if the person had been in detention prior to departure.

For more information, see *ENF 10*, *Removals*.

16.2 Persons with certificates of departure who are refused entry to another country

If a person has been issued *a Certificate of Departure* form [IMM 0056B] on departing Canada and is not granted entry to another country, the BSO at Immigration Secondary should cancel the Removal (*Certificate of Departure*) in GCMS and create a Note indicating that that the person was refused entry to that country and was allowed back into Canada pursuant to R39(*a*). The GCMS Notes should state that the person was not authorized to legally enter another country and has not met the requirements of the removal order. Therefore, the officer should ensure that there is an enforceable removal order in GCMS (a new removal order may need to be generated). The order remains outstanding and the person is still required to leave Canada. The BSO may consider whether detention is appropriate or whether the person can and will voluntarily effect their departure. The BSO should also notify the removal officer, if it was an Inland case, of the situation via email.

For guidelines on Certificate of Departure cases, see section 28 of *ENF 10*, *Removals*.

Seizure of documents

If the person is in possession of any travel or identity documents, the BSO should consider whether it is appropriate to seize the documents to facilitate their future removal from Canada. The documents would be forwarded to the office handling the removal.

See section 8 of *ENF 12*, *Search, Seizure, Fingerprinting and Photographing*, for procedures relating to the seizure of documents.

16.3 *Mutual Legal Assistance in Criminal Matters Act* (MLACMA)

Under R39(*b*), persons returning to Canada under a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act* (MLACMA) shall be allowed to enter Canada. This applies only to persons who, immediately before being transferred to a foreign state under the transfer order, were subject to an unenforced removal order.

The MLACMA and treaties implemented under its authority are used by prosecutors, police agencies and other government investigative agencies responsible for the investigation and prosecution of criminal offences. Assistance provided on a reciprocal basis may include activities such as locating and questioning witnesses, obtaining search warrants, locating suspects and fugitives from justice, obtaining evidence, and transferring persons in custody for the purposes of assisting in investigations or testifying in criminal proceedings.

The MLACMA, proclaimed on October 1, 1988, enables Canada to implement treaties, signed with foreign states that oblige Canada to provide legal assistance in the investigation, prosecution and suppression of criminal offences. The Minister of Justice is responsible for the implementation of treaties and for the administration of the MLACMA.

The provisions of the MLACMA prevail over those of IRPA, except for statutes limiting or prohibiting the disclosure of information. The effect of the MLACMA and any treaties that flow from it on the CBSA's operations are limited to three areas:

- facilitating the transfer of persons at POEs;
- taking enforcement action against persons who are allowed to enter Canada for the purposes of mutual legal assistance and who violate any of the conditions of an authorization to enter Canada granted by the Minister of Justice; and
- exchanging information.

The MLACMA allows for testimony, in a foreign state, by officers who, during the performance of their duties, encounter persons wanted for crimes in a foreign state or involved in criminal activity. Requests for officers to testify in the United States are usually made by the Office of International Affairs, which is a branch of the US Department of Justice, to the Canadian Department of Justice. The appropriate course to follow in these cases is set out in the MLACMA, the Canada-United States treaty implementing this Act and the related government policies and procedures.

Officers who are called to testify should be aware of the *Privacy Act*, which prohibits the disclosure of personal information unless an international agreement or arrangement exists. There is also a Statement of Mutual Understanding on Information Sharing (SMU) between IRCC, the U.S. Immigration and Naturalization Service (USINS), and the U.S. Department of State (DOS), which allows participants to assist each other in the administration and enforcement of their respective immigration laws by providing information that might otherwise be prohibited under the *Privacy Act*.

Whenever possible, the Minister of Justice will provide notice to the responsible immigration representative, of the place, date and time of arrival of a person coming to Canada for the purposes of mutual legal assistance. The representative will in turn notify the POE concerned to ensure that a BSO is present to facilitate that person's movement through the POE.

Authorizations to enter Canada

Under section 40 of the MLACMA, the Minister of Justice has the authority to authorize an inadmissible FN to enter Canada.

A BSO at the PIL must refer for a secondary examination, any person seeking to come into Canada under the authority of an Authorization to Enter Canada, issued by the Minister of Justice of Canada.

Persons arriving at POE and seeking to come forward under an authorization signed by the Minister of Justice do not come within the jurisdiction of the CBSA. Such persons are not subject to normal passport and visa requirements, nor can a BSO examine them to determine admissibility or detain them.

Law-enforcement officers will always escort incarcerated persons from one institution to the other. Persons who are not incarcerated in a foreign state and who are coming to Canada in compliance with a request made by a Canadian investigative or prosecuting authority will be met at the POE by a police officer.

In both cases, the escorting officer or the police officer will present a BSO at Immigration Secondary with a copy of the authorization issued by the Minister of Justice. The authorization will indicate the person's name, citizenship, the destination, the specific period of time during which the person is authorized to remain in Canada and any additional conditions that the Minister of Justice deems appropriate [subsection 40(1) of the MLACMA].

The conditions may include reporting to an Inland office during the person's stay and may be varied by the Minister of Justice, particularly with respect to the granting of any extension of the time period for which the person is authorized to remain in Canada.

When a BSO at Immigration Secondary receives a copy of the authorization to enter Canada granted by the Minister of Justice, the BSO must forward it directly to the regional representative responsible for enforcement. The regional representative will ensure that the authorization is sent on for monitoring purposes to the responsible CBSA office in whose area the person concerned is authorized to stay.

A person who comes into Canada under an authorization of the Minister of Justice, and who fails to comply with the conditions set out in the authorization is deemed, for the purposes of IRPA, to be a person who entered Canada as a temporary resident and remains after the period authorized for their stay [subsection 40(3) of the MLACMA].

Assistance and information

An inadmissible FN who is unescorted may approach a POE claiming to be coming to Canada for mutual legal assistance purposes. If so, and if no police officer is on site to meet the person, the BSO should immediately contact the International Assistance Group, Department of Justice Canada, Ottawa, to request confirmation and advice before proceeding with the case (telephone: 613-957-4758 or 613-957-4768).

Information regarding persons arriving in Canada under the MLACMA is considered sensitive. Interception by unauthorized persons may endanger the safety of the escort officer, inmate or other persons. It is imperative that all information regarding these cases be transmitted through secure channels.

16.4 Court transfer orders

A Canadian court can make a transfer order at the request of a foreign state. The Minister of Justice may approve the transfer of a sentenced inmate from a Canadian prison to a foreign jurisdiction where the inmate is required to testify in a foreign court or to assist otherwise in the investigation of a crime. The transfer order specifies the name and citizenship of the detainee, the place in Canada at which the term of imprisonment is being served and the date on or before which the detainee is expected to be returned to the original place of confinement in Canada.

A BSO at the PIL must refer for a secondary examination any person seeking to come into Canada on a transfer order of a Canadian court who is returned to Canada for completion of their sentence.

Persons returning to Canada under the authority of a transfer order are subject to examination.

Officers must check GCMS and assess whether the person is already subject to IRPA enforcement and should provide all relevant information to the CBSA Inland Enforcement officer managing the case. If the person is not subject to IRPA enforcement, but may be inadmissible, officers should gather relevant evidence and forward it to an CBSA Inland Enforcement Office closest to the correctional facility.

For further details on managing persons serving a sentence and IRPA enforcement options, refer to *ENF 22*, *Persons Serving a Sentence*.

16.5 Persons extradited to Canada from countries other than the U.S.

When examining a person who is coming to Canada under extradition proceedings from a country other than the U.S., a BSO should obtain (at a minimum) the following information for control purposes, either from the person being extradited or from the person's escort:

Status	Required Information
Canadian citizen	☐ person's name ☐ proof of citizenship
Permanent resident	☐ person's name ☐ date of birth ☐ country of citizenship ☐ date permanent resident status in Canada was obtained ☐ place where the trial is to be held
Foreign national	☐ person's name ☐ date of birth ☐ country of citizenship ☐ place of permanent residence ☐ place where the trial is to be held

If the extradited person is not a Canadian citizen, a BSO should forward a memorandum containing all information relevant to the person's entry requirements (including a copy of a TRP, if applicable) to the CBSA inland enforcement office nearest the place where the trial is to be held, with a copy to the Director of Enforcement in that region.

17 Examining persons who may be medically inadmissible

17.1 FNs seeking entry for medical treatment

When evaluating temporary resident applications for medical treatment in Canada, BSOs need to assess both the health and good faith of the applicant.

If a FN has a medical condition that could pose a danger to the public health or safety of Canadian residents, the BSO will determine if the FN should submit to an Immigration Medical Examination (IME) to ensure their health condition does not render them inadmissible to Canada under A38(1)(*a*) or A38(1)(*b*). Once the medical exam is performed, the results are sent to IRCC Migration Health Branch (MHB) who will issue an opinion regarding potential inadmissibility under A38(1).

When requesting a medical admissibility opinion, CBSA officers will refer the request to IRCC.MHBIMPN-RITDMDGMS.IRCC@cic.gc.ca. The request must include the following information:

- Request is for an IRCC MHB opinion of medical admissibility under IRPA.
- Client details such as full name, DOB, POB, UCI, etc.
- A narrative articulating the nature of the request.
- Signed Medical Consent and Authorization form from the client to allow sharing of medical information with IRCC.

MHB will offer a medical admissibility opinion based on the information provided, normally within three business days. The medical admissibility opinion may be used as evidence to support an A44(1) report and subsequently a finding of inadmissibility under A38(1) at an admissibility hearing at the ID.

If an applicant is seeking medical treatment that would cause displacement on a waiting list for Canadians, the application should be refused under A38(1)(*c*).

Persons coming to Canada for medical treatment are expected to produce evidence of an agreement with the treating physicians and institutions that clearly indicates the medical condition being treated, the proposed course of treatment and arrangements for payment.

The person must satisfy the BSO at Immigration Secondary that all associated expenses, including travel and accommodations costs, will be discharged without resulting in any cost to Canadian health or social services.

Applicants who provide satisfactory evidence that they will pay the costs of their treatment (usually through an agreement with the Canadian treating physician and medical institution) and who meet all other requirements for temporary residence, do not require a TRP to enter Canada.

Where it is determined that the applicant's circumstances and ability to pay have changed since the letter of agreement was issued, the officer may ask for evidence that the care-provider in Canada is aware of the new circumstances and that payment arrangements are not affected.

A FN who cannot satisfy the BSO that they will be able to pay for medical services and treatment may be inadmissible under A39.

For additional information, see *ENF 5*, *Writing 44(1) Reports*, for more information on procedures for dealing with A44(1) reports on inadmissible persons. See also *ENF 2*,

Evaluating Inadmissibility, for more information on determining inadmissibility as well as *ENF 1*, *Inadmissibility*.

Pursuant to section 22 of the *Canada/Quebec Accord*, Quebec's prior consent is required with respect to foreign visitors entering that province to receive medical treatment.

Foreign nationals who are coming to receive medical care treatment in a Quebec public health facility must apply for and obtain a Quebec acceptance certificate (CAQ). There are no situations where a foreign national would be exempt of this obligation.

For more information on this exemption, please refer to section 2.3 *Programme de séjour temporaire pour traitement médical* of the *Guide des procédures d'immigration* of the MIFI (available only in French).

For information on FNs coming to Canada for the purpose of giving birth, please refer to IRCC guidelines.

17.2 FNs living with HIV/AIDS and the excessive demands criteria

It is IRCC's policy that persons with HIV/AIDS do not represent a danger to public health. Therefore, a FN with HIV/AIDS seeking entry into Canada would not, in the absence of contrary evidence, be inadmissible pursuant to A38(1) and the BSO would not normally request a medical examination based on concerns about danger to public health or safety. However, persons living with HIV/AIDS may be medically inadmissible if they have an associated medical condition that is considered a public health risk such as active tuberculosis.

Another concern is the excessive demand that may be placed on health or social services by any applicant experiencing severe or chronic illness. As with any other FN making application to enter Canada, persons with HIV/AIDS would not normally be expected to place a demand on health services. It is therefore departmental policy that a diagnosis of HIV/AIDS is not in itself a barrier to visiting Canada. When making a determination, BSOs should only consider whether it is likely that the person will require hospitalization during their visit. The carrying of medication used in the treatment of HIV/AIDS is not grounds for denying temporary residence.

18 Options for dealing with inadmissibility and incomplete examinations

A BSO at Immigration Secondary has a variety of options available when an examination cannot be completed or when a person is believed to be inadmissible.

18.1 Further examination

Situations or circumstances may arise where an adjournment is necessary to ensure a proper examination by a BSO in Immigration Secondary. For example, a BSO may require

an interpreter or additional documents, information or evidence to determine admissibility. The facilities may be inadequate or personnel may not be readily available to deal with volumes.

A23 authorizes a BSO to allow a person to enter Canada for the purpose of further examination or for an admissibility hearing. R43(2) clarifies that persons who are authorized to enter Canada for further examinations do not acquire temporary resident or PR status.

Mandatory conditions to be imposed

Where the BSO adjourns an examination under A23, R43(1) requires that mandatory conditions be imposed:

- to report in person at the time and place specified for the completion of the examination or the admissibility hearing;
- to not engage in any work in Canada;
- to not attend any educational institution;
- to report in person to an officer at a POE, if the person withdraws their application to enter Canada; and
- to comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.

Persons whose examination has been deferred and who fail to report as required for continuation of their examination may be subject to an arrest warrant for examination. It is therefore very important that officers consider all relevant information and gather contact information prior to issuing A23. Remarks in the *Examination's Notes* tab should be done without delay and explain the BSO's reasoning for furthering the examination. In addition, FNs may also be reportable for non-compliance under A41(*a*) and R43(*a*) and the MD has the competency to issue the applicable removal order under R228(1)(*c*)(i). The A44 report cannot be concluded until the person is encountered at some point in the future. Therefore, BSOs should send the file to their nearest Inland Enforcement Office once the warrant is issued.

For more details, refer to shift briefing bulletin 2021-HQ-AC-07-16.

18.2 Direction to leave Canada

R40 states that an officer who is unable to examine a person who is seeking to enter Canada at a POE shall direct the person in writing to leave Canada. This does not apply to protected persons or refugee claimants. The decision to direct a person to leave is applicable in cases where a person cannot be properly examined (such as physical impairment due to alcohol or drugs).

The BSO must serve a copy of the *Direction to Leave* form [BSF 503] on the person concerned and on the transporter who brought them to Canada.

The direction ceases to have effect when the person appears again at a POE and a BSO proceeds to examine the person.

Please consult the CBSA Wiki for GCMS functional guidance.

18.3 Direct back

R41 authorizes an officer to direct a FN seeking to enter Canada from the U.S. to return to the U.S. if:

- no officer is able to complete an examination;
- the Minister is not available to consider, under A44(2), a report made with respect to the person;
- an admissibility hearing cannot be held by the Immigration Division; or
- the FN is prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act*.

See section 18.4 of this manual on how and when to use the direct back policy for refugee claimants at land POE under exceptional circumstances.

The FN will be issued a *Direction to Return to the United States* form [BSF 505] document. The date and location of the examination, the Minister's consideration of the A44(1) report, the admissibility hearing, or when an officer will be able to examine their application to enter Canada once they are no longer prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act* are specified on the document.

A person who has been directed to return to the U.S. pending an admissibility hearing by the Immigration Division and who seeks to come into Canada for reasons other than to appear at that hearing, is considered to be seeking entry. If such a person remains inadmissible for the same reasons, and if a member of the Immigration Division is not reasonably available, the person may be again directed to return to the U.S. to wait until a member of the Immigration Division is available. In these circumstances it is not necessary to write a new A44(1) report.

The BSO at Immigration Secondary should bear in mind that time may be required by the person, to allow for travel to the location where they must appear before a member of the Immigration Division and that the circumstances may warrant authorizing the person entry, at an appropriate time in advance of the scheduled date.

BSOs should write detailed remarks without delay in the *Examination's Notes* tab in GCMS concerning the reasons for issuing a direct back.

Please consult the CBSA Wiki for GCMS functional guidance.

18.4 Direct back and refugee claimants arriving at the land POEs from the U.S.

All efforts should be made to process refugee claimants at the time of arrival. Refugee claimants may only be directed back to the U.S. under exceptional circumstances. In cases where a direct back must occur for an exceptional circumstance, approval must be obtained from Travellers Branch, National Headquarters. Also, the *Record of Direct Back* must be completed and emailed to the Border Operations Directorate, Travellers Branch pursuant to the instructions provided below. It should be noted that lack of interpretation services

should not be considered "exceptional" or used as the basis for directing refugee claimant back to the U.S. See section 8.4 of this manual for guidelines on telephone interpretation.

Procedures to be followed before directing a refugee claimant back to the U.S.

Before directing a refugee claimant back to the U.S., BSOs are to fully consider the following options:

- If a BSO is not readily available to take the claim, notify the superintendent that it may be necessary to request assistance from another POE or to call an officer in on overtime.
- Complete the Initial Refugee Claimant Assessment (IRCA) process to determine whether the claimant is low risk and may be authorized to enter for further examination.
- If the claimant is not considered to be low risk, the full refugee intake process should be completed.
- Detain the refugee claimant, if grounds exist. If arrangements cannot be made to conduct the front-end security screening examination and grounds exist, the claimant may be detained according to current detention procedures.

Decision to direct a refugee claimant back to the U.S. under exceptional circumstances

Exceptional circumstances are defined as situations where all of the procedures outlined above have been considered and where an examination still cannot be conducted. Exceptional circumstances could also include sudden or unexpected surges of people or a situation where the health, security or well-being of the refugee claimant would be significantly impacted and it would not be appropriate for the claimant to wait at the POE or be detained. In 2020-2021, this was the case due to the COVID-19 pandemic.

The direct back procedure should not be used in the case of an unaccompanied minor.

Direct back procedure for refugee claimants under exceptional circumstances

Once a BSO has determined that exceptional circumstances exist, the instructions for directing the claimant back to the U.S., pursuant to R41, are as follows:

1. The BSO must obtain approval from the POE Superintendent before directing a refugee claimant back to the U.S.
2. Approval must be obtained from the Duty Executive, Operations Branch, before allowing a direct back to occur. The Duty Executive can be contacted via the Border Operations Centre (613-960-6001).
3. The refugee claimant must be provided with a scheduled appointment to return to the POE to have their refugee eligibility examination completed.
4. The Refugee Claim Application in GCMS should be completed and a further examination event should be created reflecting the details and date upon which the claimant is scheduled to return to the POE.

5. The refugee claimant should be issued a *Direction to Return to the United States* form [BSF 505] stating the date, time and location of the scheduled examination and the claimant is to be advised accordingly. At the POE where local arrangements are in place or can be made, the BSO or Superintendent should seek assurances from the U.S. Customs and Border Protection that the claimant can be made available to return to Canada for their scheduled examination.
6. The BSO must complete the attached *Record of Direct Back Template* (Appendix C) for all refugee claimants that are directed back to the U.S. The template must be sent within one business day of the direct back or on the next business day for late arrivals with the subject line reading "direct back" to the following two email addresses:
    - OPS_TRAVELLERS-VOYAGEURS@cbsa-asfc.gc.ca
    - CBSA.Traveller_Immigration_Prog-Prog_immigration_voyageurs.ASFC@cbsa-asfc.gc.ca

18.5 Detention for examination

Pursuant to A55(3)(*a*), a PR or FN may, on entry into Canada, be detained if the BSO at Immigration Secondary considers it necessary to do so in order for the examination to be completed.

For detailed procedures on A55(3)(*a*), refer to *ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention.*

18.6 Allowing the withdrawal of an application to enter Canada

Allowing a person to withdraw their application to enter Canada is an option a BSO at Immigration Secondary has to permit a FN, whom the BSO believes is inadmissible or if the FN took a wrong turn and had no intention to come to Canada, to leave Canada.

If a BSO examines a FN seeking entry and the person is believed to be inadmissible, the officer may allow the person to voluntarily withdraw their application to enter the country and leave Canada.

Under R42, the officer who examines a FN who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada shall allow the FN to withdraw their application, unless R42(2) applies.

R42(2) provides that a FN shall not be allowed to withdraw their application to enter Canada where a report under A44(1) is being prepared or has been prepared, unless the Minister does not make a removal order or refer the report to the ID for an admissibility hearing. In other words, once an officer writes an A44(1) report, the allowed to leave option may only be exercised at the MD level.

Before writing an inadmissibility report under A44(1), officers should determine whether the objectives of the IRPA are better served by allowing the person to voluntarily withdraw their application to enter Canada pursuant to R42.

If a person is allowed to leave Canada voluntarily, officers should counsel the person as follows:

- inform the person why they are believed to be inadmissible;
- inform the person that if they leave Canada voluntarily, they will be free to seek entry to Canada once the factor causing inadmissibility has been overcome; and
- inform the person of the possible consequences of an A44(1) report, including the possibility of an admissibility hearing and/or a removal order being made against them.

If a person is allowed to leave Canada voluntarily, the officer or MD must give the person an Allowed to Leave Canada form (IMM 1282B).

R42(3) provides that FNs who are allowed to withdraw their application to enter Canada must appear without delay at a POE to verify their departure from Canada.

Sometimes a person who is being allowed to withdraw their application to enter Canada is authorized to enter Canada pursuant to A23 when a flight is not immediately available to affect their departure.

No matter the situation, BSOs should write detailed remarks in the *Notes* tab of the Examination in GCMS without delay.

R37(*c*) provides that the examination of the FN ends only when the officer verifies their departure from Canada.

Please consult the CBSA Wiki for GCMS functional guidance:

- Allowed to Leave Canada by MD
- Allowed to Leave Canada by Officer

19 Examinations that may lead to prosecution

Immigration examinations relate to admissibility and, for the most part, the infractions identified during this process result in enforcement actions leading to removal. During the examination, BSOs may encounter serious offences that may warrant further investigation for the purposes of a criminal prosecution. It is important that BSOs are aware that the admissibility determination process does not include gathering evidence as part of a criminal investigation.

This section also addresses the arrest of Canadian citizens who are found to have committed an offence under IRPA.

19.1 Procedures

The BSO must make a determination of admissibility. In order to make a determination, BSOs collect information under the regulatory examination process. After the admissibility decision has been reached and if the BSO suspects a criminal offence under A117 to A131 has occurred, the officer must advise the person of their rights under the *Charter* and caution them before proceeding with any further examination including questioning the individual. Criminal Investigations Division (CID) should also be contacted before further examination.

Generally, if information is lawfully collected for the purpose of an admissibility examination, that information can be subsequently used as part of a criminal investigation or prosecution. The BSO must ensure they can clearly articulate to the court when the information was obtained for the regulatory purposes to make the determination of admissibility and when the officer started to examine further for evidence of a potential criminal offence while ensuring the individual's rights were not violated. The officer must be able to articulate how each question asked is relevant to their role in making an admissibility determination and that the individual was advised of their rights under the *Charter* and was cautioned once the BSO believed a criminal offence had occurred. Failure to do so can have a negative impact on the outcome of the case. For this reason it is imperative that the BSO take detailed notes. This is particularly important if the person willingly provides information after being cautioned.

In accordance with any accepted local procedures, and in consultation with their superintendent, BSOs should continue to use their discretion in deciding when to refer a case to the CID or local police for investigation but they must also be aware of the potential consequences of continuing an examination after the administrative process is complete and once a criminal offence is suspected. When in doubt, it is best to advise the individual of their rights and caution them regarding making any statements to protect the admissibility of those statements should the case end up being referred to CID.

Refer to section 4.1 of this manual for legislative powers and authorities to examine and seize.

19.2 *Criminal Code* offence discovered by a designated officer

Subsection 163.4(1) of the *Customs Act* authorizes the President to designate any officer for the purposes of Part VI.1 of the Act; this authority is usually delegated to the Regional Director General. These officers are referred to as "designated officers". Subsection 163.5(1) of the *Customs Act* states that a designated officer, when at a customs office and performing the normal duties of an officer, or acting in accordance with section 99.1 has, in relation to a criminal offence under any other Act of Parliament, the powers and obligations of a peace officer under sections 495 to 497 of the *Criminal Code*, and subsections 495(3) and 497(3) of that Act apply to the designated officer as if they were a peace officer. It should be noted that this does not apply to criminal offences under the *Customs Act* or the *Immigration Refugee Protection Act*, as the expanded authorities under subsection 163.5(1) of the *Customs Act* are not required for an officer to arrest for offences under those Acts.

As soon as a designated officer has reasonable grounds to believe that a person has committed an offence under the *Criminal Code* or any other Act of Parliament, the examination under IRPA is to be temporarily suspended.

A superintendent should be consulted immediately. The CID, the police agency of jurisdiction or the Regional Intelligence Officer must also be contacted for further guidance as soon as possible. The officer may arrest the individual in accordance with section 495 of the *Criminal Code*. The detainee must be immediately advised of their right to retain counsel and cautioned regarding making statements. PRs and FNs are also to be informed of their right to have the nearest representative of their government notified of their arrest and detention as per the *Vienna Convention*.

The immigration examination resumes once the person is released and taken to a CBSA officer. For further information, refer to sections 19.5 and 19.6 below.

19.3 Arrest and caution

Subject to the limitations set out in subsection 495(2) of the *Criminal Code*, the person may be arrested under subsection 495(1) if there are reasonable grounds to believe he or she has committed an offence. The individual must then be promptly informed of the reasons for the arrest and of the right to retain counsel as well as be cautioned regarding making statements. PRs and FNs must also be informed of their right to have the nearest representative of their government notified of their arrest and detention as per the *Vienna Convention*. Refer to the *CBSA Enforcement Manual*, Part 6, Chapter 1, *Arrest and Detention* for the policy and procedures.

19.4 Canadian citizens

On rare occasions, evidence of a Canadian citizen committing an offence under IRPA will be uncovered at the POE. Should the BSO decide to proceed with an arrest, they are to caution and arrest the Canadian under the authority of subsection 495(2) of the *Criminal Code* as noted in section 19.3 of this manual.

19.5 Note-taking

As officers may be required to provide testimony in court proceedings several months after a referral to the CID or police has been made, diligent note taking is essential to establish why certain actions were taken and what the predominant purpose of the officer's actions was at the time. It is important to note that it is the court's interpretation of the BSO's testimony of the events supported by the notes that will determine whether the information/evidence obtained during the administrative process is admissible in court. Therefore, notes should include the events leading to the referral to CID or the police and the time the person was placed under arrest and advised of their rights and cautioned. Comments and statements made by the subject must be recorded verbatim. Notes must also identify the officers and superintendent involved in the case, including those implicated in the chain of custody.

The chain of custody, or continuity of evidence, must be ensured in order to meet the rigorous evidentiary standards applied in criminal courts. Material evidence should be removed from the person's possession and taken into custody immediately upon detection. The seized evidence must be kept in view and under the control of the officer. When an assisting BSO watches over goods or evidence, this officer becomes part of the chain of custody and could be called as a witness: therefore, the assisting BSO should also maintain notes. Refer to the *CBSA Enforcement Manual*, Part 8, Chapter 1, *Notebooks*, for more information regarding the CBSA officers' policy for use of the notebooks.

19.6 Completing suspended examinations of FNs (refer to section 19.2)

A BSO may encounter circumstances where it is appropriate to suspend the immigration examination to allow a criminal process to proceed. The subject will be placed under arrest for the offence and advised of their rights and cautioned. The BSO must also issue a warrant for arrest pursuant to A55(1) with a Warrant for Arrest form [BSF499] and an *Order of the*

Canada Border Services Agency to Deliver Inmate form [BSF498] pursuant to A59 in order to ensure that the examination is completed once the person is released after the criminal proceedings. Inland Enforcement Investigations must be informed to ensure effective follow up.

For additional information, please refer to *ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention.*

20 Unauthorized border crossings

A BSO who becomes aware that a person is attempting an unauthorized border crossing should first notify the RCMP or police of jurisdiction. The primary responsibility for patrolling between the border rests with the RCMP. The CBSA Investigations Division should also be notified.

Officers shall not attempt to stop persons fleeing to or from Canada in high-risk situations (e.g. to establish roadblocks to stop port runners or to participate in vehicle pursuits). In these situations, officers are required to ensure that officer and public safety is maintained (e.g. open a lane and clear traffic from the area).

Some points to remember are the following:

- BSO should not attempt to investigate an unauthorized border crossing and should refer the unauthorized crossing to CID.
- BSOs shall follow the provision of the CBSA Directive on Use of Force and Reporting and the CBSA SOP on Use of Force and Reporting, when they believe that the use of force is justified in the course of administering or enforcing Program Legislation.
- BSOs who are trained and certified in defensive tactics and are in possession of defensive equipment are expected to manage situations up to such point that the BSO believes that the limit of their training and personal abilities has been attained. Where these limits have been reached, the BSO shall permit the individual to proceed into Canada and immediately notify the police force of jurisdiction.
- BSOs should use communication equipment to keep in contact with the POE, should they require assistance.
- BSOs may consider requesting that the CID lay changes under A124 if an investigation determines that a person has eluded examination or entered Canada by improper means.
- If the BSO has sufficient information relating to the identity of the person who failed to appear for examination (e.g. examination started but person left POE before end of examination), and the person is a foreign national, BSO should also issue an immigration arrest warrant for examination.

21 Media Cases

When high-profile, contentious or sensitive cases are identified or are in the national media, BSOs must follow the procedures outlined below to inform NHQ.

1. Inform and consult the immediate superintendent once it is suspected that the case meets the criteria of a high-profile, contentious or sensitive case.

- More information on the types of cases that are potentially high-profile is available on IRCC's Handling high-profile, complex, sensitive or contentious cases page.
- Superintendents are also to report significant events, as outlined in the Incident Reporting Criteria, to the Border Operations Centre (BOC) while respecting regional reporting protocols that are in place.

2. Inform NHQ by sending an email that includes
   - "High-Profile Case" followed by the subject's last name and given name in the subject line.
   - The applicant's name, date of birth, file number and/or client identification number (if applicable).
   - A case chronology, including case-specific details and a summary of the reason(s) the case is, or has the potential to be, high-profile.
   - Any action taken or recommendations to resolve the case (if applicable); and
   - Any other pertinent information.
   - The following distribution list:
     - Immigration Program Manager (overseas cases) or manager or supervisor (inland cases);
     - NHQ-NAT-High-Profile-Haut-profil@cic.gc.ca (which includes NHQ-Communications-Cases@cic.gc.ca ; the current Director General and Senior Director of Case Management Branch and the Office of the Assistant Deputy Minister);
     - Case-Management, CBSA-NHQ case-management@cbsa-asfc.gc.ca
     - Nat_National_Security_Coordination@cbsa-asfc.gc.ca; and
3. Use the Single Reporting Tool (SRT) to report a significant event to the BOC and follow up, as necessary, to keep information up to date and ensure case notes are detailed and able to feed into briefing documents, if required.
4. Refer any communication-related responsibilities to NHQ Communications. Any cases that have implications in Canada (including those cases that initiate overseas) also need to be coordinated with Communications in the affected region.

22 Disembarkation and Roving Teams (DART)

22.1 DART overview

Disembarkation screening refers to the rapid verification by BSOs that airline passengers possess travel documents. Under A15(3), an officer has the authority to board and inspect a vehicle and to examine and record documents carried by a person on board a vehicle.

The purpose of screening disembarking passengers is to identify and segregate persons not in possession of passports or travel documents from the normal flow of passengers. In addition, inadmissible travellers who may pose a risk or who are otherwise inadmissible can be identified through intelligence-based indicators such as identified trends, lookouts and Advanced Passenger Information/Passenger Name Record (API/PNR) information received from the National Targeting Centre's (NTC) Targeting Travellers unit (TT).

Disembarkation screening also enables a BSO to identify which airline has carried an improperly documented passenger to Canada and ensures that the CBSA can levy administration fees and removal costs against a liable transporter. When two international flights arrive within a brief period of time, for example, passengers from each flight may

intermingle at the PIL. This can make it difficult to determine which carrier brought an improperly documented passenger to Canada and to properly assess liability.

On-board inspections, disembarkation screening, pre-PIL roving and post-PIL activities are part of the examination continuum. At these preliminary checks, the DART officer does not do a full examination and does not make a decision to authorize or deny entry. Instead, the officer verifies that a passenger has the necessary documentation and refers undocumented and suspected inadmissible persons to Immigration Secondary for an in-depth examination. This does not usurp the authority of the PIL as DART referrals do not bypass the PIL.

22.2 DART mandate and objectives

As a part of the CBSA's mandate to manage access to Canada, the mandate of DART is to increase the CBSA's capacity to:

- identify improperly documented or otherwise inadmissible FNs;
- associate improperly documented FNs to commercial transporters to promote compliance with the CBSA's administrative programs;
- identify and interdict individuals who pose a threat to the health, safety and security of Canada including persons who pose a security threat, serious criminals, human smugglers, human and international rights violators, and persons engaged in trans-national organized crime; and
- analyze and contribute to the intelligence pool on illegal migration trends and patterns.

The objectives of DART are to:

- use intelligence, trend and statistical analysis and other innovative passenger assessment techniques (i.e., API/PNR referrals) to improve secondary examination referrals;
- identify, intercept and control passengers who pose a danger, security threat, or are a flight risk;
- monitor and promote transporter compliance by linking undocumented persons with transporters;
- assist in the collection of evidence for immigration admissibility reports and prosecutions;
- assist in the collection, analysis and dissemination of intelligence related to travel routes used by illegal migrants and smuggling networks;
- promote cooperation, coordination and the exchange of information with partner agencies;
- maintain a professional, responsive and visible presence to deter inadmissible persons from entering Canada; and
- remove fraudulent documents from circulation thereby preventing their future fraudulent use.

22.3 DART activities

DART activities can vary from one POE to another due to operational requirements, differing priorities and other considerations. Specific DART activities can include:

- inspection of airline passengers for possession of passports and travel documents and required visas;
- searches of aircraft for discarded or hidden documentation;
- searches of Customs Controlled Areas (CCA) for discarded or abandoned documentation;
- seizure of documents;
- roving in designated CCA to detect human smugglers and persons discarding documents;
- completing certain examinations and case files on high-risk cases such as suspected human smugglers;
- compilation and maintenance of intelligence data, statistics and daily logs;
- internal information-sharing within the CBSA (local office, other POEs, Criminal Investigations intelligence offices, overseas liaison officers [LO]);
- external information-sharing (Royal Canadian Mounted Police (RCMP), Global Affairs Canada (GAC), Office of the Solicitor General, airlines) depending on specific agreement with each partner;
- targeting and passenger assessment of flights;
- establishing transporter liability;
- interviewing passengers at Immigration Secondary;
- collection and analysis of officer case notes;
- GCMS and ICES searches/queries;
- use of internal communications systems; and
- analysis of statistical and other relevant records.

Although DART officers are BSOs, their primary function is to perform DART activities. When circumstances permit, however, or when a superintendent requires emergency support, DART officers should offer their assistance to the on-site superintendent.

For more information on the Customs Controlled Areas, please refer to *CBSA Enforcement Manual* part 6, chapter 9.

Minimal delay to travelling public

Disembarkation screening by DART teams should be completed as quickly and efficiently as possible. To ensure that the *bona fide* travelling public is not unduly disrupted or delayed, the POE superintendent should ensure that an appropriate number of officers are assigned to screen passengers, taking into consideration the different sizes of aircraft and passenger volumes.

22.4 Intelligence-based targeting of airline flights

DART officers propose and confirm flights to be screened with their on-site superintendent based on tactical intelligence identifying flights and persons of interest to the CBSA. Determining which flights to target for disembarkation screening is based on the following:

- lookouts and intelligence information;
- advance passenger information received from NTC's TT unit;
- trend analysis;
- flights of heightened interest to the CBSA;
- point of embarkation;

- number of passengers on board;
- size of the aircraft;
- estimated time of arrival of the next flight to be monitored; and
- number of officers available to conduct disembarkation checks.

While all carriers should be the target of periodic disembarkation screening, those carriers with a history of carrying undocumented passengers may be subject to more frequent screening.

Specific case information is received and analyzed by DART teams through:

- in-person client interviews at Immigration Secondary;
- officer case notes;
- FOSS history checks, GCMS searches and SSI reports;
- reports provided by the CBSA's Immigration Intelligence Branch;
- statistical reports;
- liaison officers located around the world who provide information on illegal migration and smuggling trends;
- NTC's TT officer that provides API and PNR information on arriving passengers; and
- other agencies such as the RCMP.

In a reciprocal manner, DART officers contribute to the intelligence pool with trend and illegal traffic information that is used by the liaison officer network to interdict inadmissible travellers abroad and deny them boarding on flights to Canada. Information gathered from DART intercepts is entered in the Support System for Intelligence (SSI) that is used by the CBSA's intelligence officers in Canada and abroad to monitor and analyse illegal migration and human-smuggling trends. Additionally, DART officers ensure that suspected human smugglers and others in possession of fraudulent documents are referred to the CID. Cases of potential human trafficking should be referred to the CID and Intelligence for further investigation and liaison with partners.

Intelligence support

The DART officers provide an integral operational link within the CBSA's intelligence and liaison officer networks overseas. These are major resources for DART teams and can provide valuable assistance in identifying human smuggler routings. The two-way exchange of information also provides the opportunity to interdict inadmissible persons abroad and deny them the opportunity to board flights to Canada.

Regional intelligence officers can provide a variety of services, which may include:

- document examination training;
- document analysis;
- emerging trend information; and
- SSI analytical reports.

Liaison officers are located in key locations around the world and play an integral part of the screening, identification and interception of improperly documented persons trying to enter Canada. Together with DART officers, they form part of the continuum of the passenger assessment process that begins abroad and continues on arrival in Canada. They are both key elements in Canada's multiple-border strategy.

API/PNR liaison

NTC's Targeting Travellers unit uses advance passenger information to identify known inadmissible persons and passenger name records analysis to assess individuals who may pose a potential risk prior to their arrival in Canada. This enables DART officers to use their limited resources more strategically to target flights and persons of interest.

This is key to the intelligence-based targeting of flights by DART officers. While NTC's TT unit provide strategic information about the arrival of persons linked to terrorist organizations, criminal activity and other factors that render them inadmissible, DART acts on this intelligence information to intercept inadmissible persons immediately on arrival. Passengers who pose security or flight risks can be quickly intercepted and maintained in a controlled environment pending their examination.

22.5 DART procedures

Notification to partners

With as much lead time as possible and in accordance with local procedures, DART officers should notify partners such as Transport Canada and RCMP officials of the flights they intend to screen and of other pre-PIL roving activities.

Pre-disembarkation procedures

DART officers should verify that proper communication (i.e., radio contact) has been established with the on-site superintendent before leaving the office to perform disembarkation checks. Superintendent should remain in continual contact for updates, emergencies and requests for assistance.

Boarding flights and gate checks

DART officers should, whenever possible, be gate-side at least five minutes before the flight's scheduled arrival time.

DART members will then make a final decision as to which level of disembarkation check is to be performed. The airline representative must be advised of the level of disembarkation.

Furthermore, a request should be made to the airline to ensure that an announcement is made on board the flight to prepare the passengers (levels I and II only). This announcement should clearly indicate to passengers that the CBSA will be doing a check to ensure that they possess the necessary documentation to enter Canada and that they should have their documentation ready for presentation. Only then will the disembarkation screening proceed.

Document screening is conducted on board the aircraft, at a point as close to the exit of the aircraft as possible, or wherever else deemed appropriate by the DART officer. Normally, officers will proceed down the aisle and allow passengers whose documents have been verified to leave the aircraft.

When boarding flights and conducting gate checks, DART officers should be mindful of the fact that they are in an excellent position to pass information along to the officers at the PIL. If a DART check of a passenger does not turn up any immigration concerns, but strong indicators are present that the particular traveller may be of interest to Customs, DART officers should make every effort to inform the officer at the PIL or an officer at Customs Secondary examination of these indicators to assist them in completing their examination.

Level I (boarding the flight): A minimum of two officers is required to do a check at this level.

DART members will conduct level-one disembarkation checks in the following manner:

- in a two-aisle aircraft, officers should stay parallel to each other in their respective aisles while doing document checks;
- in a single aisle aircraft, at least one officer checks documents on the left side of the aircraft and another officer, in single file with all other officers, completes the right side of the aircraft; and
- in a Boeing 747, at least one officer proceeds to "the bubble," while another officer checks documents of the passengers in first class. Once those sections have been completed, officers then proceed to economy class. It is preferable that at least three officers check this type of aircraft.

The officers inspect passports, travel documents and visas for authenticity. If any concerns arise regarding a particular document, the document may be held for further examination. If a person is suspected to be improperly documented, without documentation or otherwise inadmissible, they will be instructed to remain seated, and their documents will be held. In this instance, the flight attendant should be approached to determine if the passenger is travelling alone. If confirmed, the disembarkation check can be resumed. If another person accompanied the passenger, the documents of that passenger should be held as well. A request can be made to the flight attendant to ensure that the passenger and their travelling companion(s) remain seated until the completion of the check.

Airlines may be requested to hold persons on board an aircraft under the authority of A148(1)(*b*) and R261.

After the disembarkation check has been completed, the officer will:

1. search the improperly documented passenger's seat, any companion's seat and the immediate vicinity, including washrooms, to locate any documentation that may be hidden or discarded;
2. determine if the passenger is sitting in their originally assigned seat. If the person is not in their originally assigned seat, search that area as well;
3. complete a BSF 453 form confirming the passenger's presence (see section on improperly documented passengers below for procedures on completing the BSF 453 form); and
4. inform the flight director or crew of the conclusion of the check and thank them for their assistance.

Upon completion of the disembarkation check, DART members will:

1. escort the improperly documented arrival (IDA) to the crew counter in the PIL area so that the BSO at the PIL can complete the primary examination;
2. once the primary examination is complete, escort the IDA to Immigration Secondary; and
3. surrender any documentation and provide details of the case to the on-site superintendent .

DART members will not be obligated to report any individuals, but when circumstances allow, DART officers will offer their assistance to the superintendent .

If no passengers require an escort, but documents have been held, DART officers will proceed to the Immigration Secondary examination area as soon as practicable to explain the rationale for the seizure. If no documents have been held and there is no one to be escorted, team members can proceed directly to the next flight.

Level II (gate screening): A minimum of two officers is required to do a check at this level.

DART members will conduct level-two disembarkation checks in the following manner:

- stand facing each other in the area where the boarding finger meets the terminal building so that the disembarking passengers must pass between the officers; and
- confirm that each person has a passport, or other required documentation.

If a passenger presents satisfactory documentation, the officer will allow the passenger to proceed to the PIL.

Depending on the circumstances, the officer may instruct the passenger to wait in an area in plain view of at least one officer or continue to the PIL if one of the following situations occurs:

- a passenger is not in possession of any travel documents; (in this instance, the flight attendant should be approached to determine if the passenger is travelling alone and to confirm their seat number. A document search should be conducted as in level I);
- the officer is not satisfied with documents presented; or
- the officer suspects the person to be inadmissible for any other reason.

DART members will hold the document and, in the latter case, the passenger may be given a receipt. If required, officers may ask for the assistance of airline personnel to maintain visual contact with those persons instructed to wait.

Upon completion of a disembarkation check, DART members will:

1. escort the IDA to the crew counter in the PIL area so that the BSO at the PIL can complete the primary examination;
2. once the primary examination is complete, accompany the IDA to Immigration Secondary; and
3. surrender any documentation and provide details of the case to the on-site superintendent.

DART members will not be obligated to report any individuals but, when circumstances allow, DART officers will offer their assistance to the superintendent.

If no passengers require an escort, but documents have been held, officers will proceed to Immigration Secondary as soon as practicable to explain the rationale for the seizure. Holding documents during the course of an examination does not constitute a seizure action. If the person is to depart the POE without their document (i.e. A23) or go into detention, then it becomes a seizure and a BSF698 *Notice of Seizure of Travel and/or Identity Document(s)* must be completed.

If no documents have been held, and there is no one to be escorted, team members can proceed directly to the next flight.

Level III (flight observation): A check at this level is performed when only one officer is available.

This type of disembarkation screening is usually completed for low-risk flights, or when flight-arrival times are scheduled close together. This level of screening should also be considered when staffing levels prohibit officers from doing a level I, or level II disembarkation check or, in a special circumstance, where surveillance is required.

DART members will conduct this level of disembarkation check in the following manner:

1. Arrive at the gate five minutes prior to the estimated time of arrival of the flight.
2. Inform the airline representative at the gate that an officer will be observing the flight and will not be requiring passengers to present their passports as they disembark the aircraft. Also, they should specify that no announcement to the passengers should be made.
3. Position themselves at a suitable distance, while ensuring that there is a clear view of the passenger flow from only the targeted flight.
4. While observing the passengers, officers make suitable notes with regards to passengers who may be of interest to Immigration Secondary, and those accompanying them.
5. Officers may ask individual passengers for documentation if there is a strong suspicion that they may have improper documents, or no documents at all.
6. Generally, it is most beneficial to follow the passengers down to the PIL area. This will allow officers the opportunity for further observation and may prevent the destruction or discarding of documentation in garbage containers or washrooms.
7. If DART members are not proceeding directly to the Immigration Secondary area, they should inform the on-site superintendent of the outcome of the disembarkation. If required, DART members should relay any observations, their location and, if required, request assistance.
8. At the earliest convenient break in disembarkation checks, go to the Immigration Secondary area to link any identified improperly documented arrivals with the carrier used to convey them to Canada, referring to the notes taken while observing the disembarkation.
9. If an undocumented passenger who the DART officer observed disembarking a flight is encountered in the Immigration Secondary area, the DART officer should complete a BSF 453 form in accordance with procedures. If it is not practical to complete a BSF 453 form, the DART officer shall complete a statutory declaration as soon as possible.

Upon completion of all necessary paperwork, DART members may now advise the on-site superintendent and proceed to the next flight planned for disembarkation.

Roving DART activities

In addition to boarding flights and conducting gate checks, DART officers conduct roving exercises in the Customs Controlled Areas (CCA) area to identify other irregular activities such as the destruction or handing of documents to an escort or smuggler. DART officers engaged in pre-PIL roving may ask a BSO at the PIL for a specific person to be referred to Immigration Secondary. All DART referrals must pass through the PIL before being sent to Immigration Secondary. DART officers may engage in post-PIL activities when they have targeted suspected human smugglers or other suspected inadmissible persons when new information has come to light after the passenger has cleared the PIL.

Improperly documented passengers

If an improperly documented passenger is encountered, the officer should complete a *Confirmation by Transporter Regarding Passenger(s) Carried* form [BSF 453] at the earliest opportunity, either during disembarkation screening or as soon as the passenger has been escorted to the PIL and to the Immigration Secondary area. The local airline representative is also required to sign the form. If the representative refuses to sign, the DART officer should place a note on the form accordingly. If it is not practical to complete a BSF 453 form, the DART officer shall complete a statutory declaration stating which flight the IDA disembarked and outlining details about the lack of documentation.

Since passengers normally have documents at the time of boarding, it is possible that improperly documented passengers have hidden or destroyed their documents en route. Undocumented and other inadmissible passengers identified by DART must be presented at the PIL for completion of Customs' procedures and then escorted to the Immigration Secondary area for a complete examination.

Once IDAs have been identified, the DART member must ensure that:

1. The appropriate areas of the aircraft are searched for documentation.
2. The flight attendant and IDA have been queried as to any accompanying travellers;
3. An airline representative has signed a BSF 453, when possible, for the passenger's arrival on their airline, and thanked for their assistance.
4. Should a disembarkation check be performed and IDAs not be identified until their arrival in Immigration or Customs Secondary, a request can be made to the airline staff to visually identify that person and sign the BSF 453 form confirming their presence on their flight. Airline personnel cannot be compelled to sign a BSF 453 form. If airline personnel refuse to sign the BSF 453 form, a note should be made on the form accordingly. If it is not practical to complete a BSF 453 form, the DART officer shall complete a statutory declaration form [IMM 1392B].
5. The passenger is escorted, if necessary, to the Immigration Secondary area only after they have cleared the PIL and the on-site superintendent is informed.
6. The CCA are checked for possible smugglers.

Reporting improperly documented passengers

In all cases where an improperly documented person has been detected, a BSO should:

- create a physical file ensuring that all secured documents are placed in the file;
- take a photograph and fingerprints of the person and place copies in the file;
- place copies of any documents found in the person's possession in the file;
- ensure that the passenger, their carry-on luggage and their checked luggage are searched for documentation;
- obtain a flight manifest when possible;
- clearly make a note on the file to indicate whether disembarkation screening has been done so that the person entering SSI data may check "yes" in the disembarkation-screening field; and
- when entering SSI, check "yes" when asked "BSF 453 completed", if applicable or advise person entering SSI to do so.

Note-taking

DART officers should make note of the date, time and flight number in their notebooks or DART logs and record any information that may be relevant to the examination or prosecution of passengers. Keeping a written record of this information may be useful if the officer is later called to testify in court. More information on officer note-taking is available in *ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention*.

22.6 Communication and cooperation with partners

Within the CBSA

The CBSA airport staff should keep one another, as well as their regional and national headquarters, informed of DART developments. All such communications should be maintained on the master regional and/or national headquarters' file.

With partners

The CBSA should consult Transport Canada, the RCMP and airline representatives at the POE regarding any changes to disembarkation screening procedures that affect the configuration or operation of local facilities. Good communication among partners is essential to ensure cooperation and to minimize disruption of airport operations and delays to passengers.

DART officers should provide feedback to agencies and individuals who have initiated a DART action, while keeping in mind privacy legislation. This would include timely updates and outcomes from referrals, lookouts or general information that was provided to the DART team. DART officers are encouraged to participate in orientation sessions with partners to further their understanding of the requirements of IRPA and its Regulations and to promote cooperation and the exchange of information. DART officers should be vigilant for opportunities to engage partners and participate in joint activities that would promote understanding and cooperation.

With the CBSA Immigration and Customs Enforcement Team (ICET)/ Flexible Response Team (FRT)

The CBSA has Immigration and Customs Enforcement Teams (ICET), also known as Flexible Response Teams (FRTs), that occasionally operate pre-PIL in a manner similar to the CBSA's DART teams. Both DART and ICET/FRT report to the Enforcement Division, which is run by the Chief of Enforcement Operations. DART and ICET/FRT should make every effort to communicate on a daily basis to enhance the understanding of each other's activities and to coordinate the targeting of flights whenever possible. While DART and ICET/FRT have different mandates and often target different flights, occasionally it will be operationally beneficial for both teams to target the same flights. In these instances, both teams are required to coordinate their activities to enhance effectiveness and to minimize delays to the travelling public. Among other things, ICET/FRT officers can assist with document verification and the search for documents aboard aircraft.

With airlines

It is essential that carriers understand and support disembarkation screening. POE superintendent should initiate and maintain frequent communications with local airline managers and clearly explain the purpose, procedures, and legislative foundation for disembarkation screening.

22.7 Suspected human smugglers

DART officers must accompany any suspected human smugglers to the PIL, then to the Customs Secondary area for a thorough search. DART officers should identify themselves to the BSO at the PIL and have the suspected human smuggler referred to both Immigration and Customs Secondary areas.

If evidence of human smuggling is discovered, the DART officer should immediately contact the Criminal Investigations Division. The DART officer should then escort the person to Immigration Secondary for an immigration examination to determine citizenship and admissibility.

If no evidence of human smuggling is discovered, the DART officer should accompany FNs to Immigration Secondary for examination to determine admissibility. Where the person provides satisfactory verbal or documentary proof that they are a Canadian citizen, the BSO authorizes the person to enter Canada at that point. It is not necessary to refer Canadian citizens to Immigration Secondary if the BSO is satisfied that they have that status. Documentation may be photocopied at Customs Secondary if necessary for further investigation or intelligence purposes.

DART officers should notify their superintendent of all cases of suspected human smuggling and forward the case information to their Criminal Investigations office and regional intelligence office.

22.8 Potential prosecutions

DART officers are instrumental in identifying and gathering evidence to prosecute human smugglers and traffickers. DART officers can play a key role in identifying, documenting, assessing, referring and assisting the RCMP or CBSA Criminal Investigations (depending on the charge) in the laying of charges under IRPA and the *Criminal Code*.

When there is a concern that charges should be considered, the BSO and/or the CBSA Enforcement Division should ensure that the CBSA Criminal Investigations and Intelligence are contacted and provided the details of the case. If the RCMP or CBSA Investigations conducts an investigation, the BSO and/or Enforcement Division should notify their superintendent or supervisor immediately.

BSOs must be familiar with the heightened evidentiary requirements for prosecutions. Documents for a criminal charge must be transferred and secured in a manner that is consistent with the *Canada Evidence Act*.

Chronicled statements must comply with the *Canadian Charter of Rights and Freedoms*. See section 7.1 of manual *ENF 12*, *Search, Seizure, Fingerprinting and Photographing*, relating to seizure, and the *Canadian Charter of Rights and Freedoms*.

Written declarations should be completed and confirmed with the CBSA Investigator or the investigating RCMP officer. In situations where a statement is taken from a passenger, the responsible officer should make every attempt to make the passenger available for the CBSA Investigator or the RCMP to interview. The declaration form is IMM 1392B.

22.9 Interviewing Canadian citizens, PRs and persons registered under the Indian Act

DART officers must be cognizant of the change in the legal obligation of the individual when dealing with PRs, persons registered under the *Indian Act* and Canadian citizens and conduct the interview accordingly. Any statement made in response to an officer's question may be inadmissible in court if the person has not been given the proper cautioning prior to making the statement.

DART officers should utilize these opportunities to inform partner agencies of Immigration Secondary's role with respect to the specific case and the reasons for the actions taken. This may include instances where no action is taken at that specific time. In these instances, DART officers must use the utmost care to ensure that the partner agency does not perceive Immigration Secondary as unwilling to act, but rather understands the inability to proceed due to legal restrictions.

When examining Canadian citizens, persons registered under the *Indian Act* and PRs, DART officers must:

1. confirm that the person concerned is in fact a Canadian citizen, persons registered under the *Indian Act* or PR;
2. receive permission from the person to conduct an interview, or to examine any documentation in their possession;
3. collect any evidence that may link the person to an improperly documented arrival;

4. if no evidence exists, then conclude the interview and thank them for their cooperation. If evidence of aiding and abetting exists, contact the CID immediately regarding the possible laying of charges. If the investigator attends, properly transfer all evidence relating to the charge to them. If the investigator does not wish to attend, then conclude the interview and thank the person for their cooperation; and
5. in all cases where evidence exists, a note should be added to GCMS detailing the occurrence. Also, all pertinent details should be relayed to Immigration Intelligence.

Evidentiary requirements may place DART officers in the best position to complete reports of this nature.

22.10 Training

All DART officers are required to be certified in Control and Defensive Tactics (CDT) training. In addition, DART officers should generally have a minimum of one year′s experience as an examination officer at the POE. This is to ensure that the officers are fully aware of the CBSA′s mandate, objectives, and policies and have a good working knowledge of operational procedures, internal communication systems and statistical analysis and have recent experience in interviewing clients.

DART officers also need to be aware of the principles and dynamics underlying and motivating human behaviour, the influences of cultural differences, attitudes and behaviour and of departmental interviewing techniques. DART officers are usually required to complete up to two weeks′ training that may include courses on:

- DART orientation;
- airline responsibilities;
- fraud document detection;
- immigration intelligence orientation;
- Jetway training;
- evidence and criminal charges;
- CSIS profiles and interviewing techniques;
- cross-cultural awareness;
- anger management;
- first aid and CPR;
- note-taking;
- Customs Controlled Areas; and
- processing Indigenous travellers.

22.11 Uniforms and appropriate protective and defensive equipment

DART officers are required to wear their uniform while on duty in accordance with the Uniform Policy. DART officers are also required to wear appropriate protective and defensive equipment including protective vests, OC spray, baton, handcuffs and duty firearm (where applicable) when working outside of the secure office setting.

Any divergence from the standard uniform or equipment complement must be approved by local management and must be consistent with national guidelines.

22.12 Statistical and intelligence reports

For audit purposes, POEs must keep an accurate record of the flights where a disembarkation screening has taken place. The daily Action Reports should reflect the reason the flights were selected and the number of improperly documented passengers that were identified. These reports may be used as evidence by the Transporter Obligations Program's Industry Compliance Unit when assessing the fees to be levied on carriers.

DART superintendents are responsible for compiling (from the daily Action Reports) a monthly report of DART activity during the previous month. The monthly reports should contain statistics on the number of disembarkations performed, the number of improperly documented FNs intercepted, as well as other DART actions initiated through referrals by Intelligence, NTC's Targeting Travellers unit, the RCMP, the airlines or other sources.

NHQ Intelligence Branch will provide regular Intelligence reports to NHQ Ports and Border Management, regional headquarters and airport DART superintendent about overseas interceptions by Liaison Officers.

23 Alternate means of examination (AME)

R38 lists alternative means of examination that may be used instead of appearing at a POE for an examination by a BSO. Refer to *ENF 29*, *Alternative Means of Examination Programs* for more information.

23.1 Trusted Traveller Programs (TTPs)

TTPs are designed to expedite the border clearance process for pre-approved, low-risk travellers. TTPs such as CANPASS, NEXUS, FAST and CDRP are available to U.S. and Canadian citizens and PRs. Successful applicants are issued authorizations to present in an alternate manner such as photo identity cards. Persons holding these authorizations are still applying for entry, but their examination will be expedited as background checks regarding criminality and previous immigration and customs infractions have been completed.

See People Processing Manual, pt. 3 for more information on TTP.

24 Advance passenger information (API) and passenger name record (PNR)

24.1 API information

The Passenger Information (Customs) Regulations, as well as R269, obligate all commercial air carriers/commercial transporters to provide the CBSA with Advance Passenger Information (API) relating to all persons on board, or expected to be onboard, the commercial conveyance travelling to Canada prior to, and at, the time of departure from the last point of embarkation of persons before the conveyance arrives in Canada, despite the final destination or transit port. The information is sent electronically. This enables the NTC-TT officers to conduct pre-arrival targeting, security, criminality and FOSS history checks and GCMS searches on the travellers prior to their arrival in Canada.

API consists of the following data elements, mostly contained in the machine-readable zone (MRZ) of most passports and travel documents:

a) their surname, first name and any middle names, their date of birth, their citizenship or nationality and their gender;

(b) the type and number of each passport or other travel document that identifies them and the name of the country or entity that issued it;

(c) their reservation record locator number, if any;

(d) the unique passenger reference assigned to them, if any, by the person who is required to provide information or, in the case of a crew member who has not been assigned a unique passenger reference, notice of their status as a crew member;

(e) any information about the person in a reservation system of the person who is required to provide information or in a reservation system of the representative of such a person; and

(f) the following information about their carriage on board the commercial conveyance:

> (i) if the person is carried or is expected to be carried on board the commercial conveyance by air, the date and time of take-off from the last point of embarkation of persons before the commercial conveyance arrives in Canada or if the person is carried or is expected to be carried on board the commercial conveyance by water or land, the date and time of departure from the last point of embarkation of persons before the commercial conveyance arrives in Canada,
>
> iii) the last point of embarkation of persons before the commercial conveyance arrives in Canada,
>
> (iii) the date and time of arrival of the commercial conveyance at the first point of disembarkation of persons in Canada,
>
> (iv) the first point of disembarkation of persons in Canada, and
>
> (v) in the case of a commercial conveyance that carries persons or goods by air, the flight code identifying the commercial carrier and the flight number.

The API data elements are captured at the time of check-in when the machine-readable zone of the passport or travel document is swiped or entered manually.

24.2 PNR information

The Passenger Information (Customs) Regulations, as well as R269, obligate all commercial air carriers/commercial transporters to provide the CBSA with Passenger Name Record (PNR) information relating to persons on board the commercial conveyance travelling to Canada at the time of departure from the last point of embarkation of persons before the conveyance arrives in Canada, despite the final destination or transit port. The information is sent electronically and is matched, in PAXIS, with the API data provided. This enables the

NTC officers to conduct pre-arrival targeting, security, criminality and FOSS history checks and GCMS searches on the travellers prior to their arrival in Canada.

The PNR information available in a transporter's reservation system can be extensive, and the data elements captured will vary for each transporter. Some transporters do not have PNR systems in use for some flights and thus are not obligated to provide the data for those flights.

24.3 Disembarkation and Roving Team (DART)

Prior to a commercial vehicle's arrival in Canada, the NTC-TT unit will analyse the API and PNR information, enter required lookouts in ICES, and ensure that the BSOs and the DART receive detailed information on persons who may be inadmissible to Canada. The NTC-TT have the decision-making ability to flag a person, prior to their arrival at the PIL, for referral to Immigration Secondary.

25 Entering data on previously deported persons (PDP) into the Canadian Police Information Centre (CPIC)

The primary objective for entering data on PDPs into the CPIC is to enhance public safety and security by providing peace officers with the necessary information to form reasonable grounds that the person may be arrested without a warrant, as per A55(2)(*a*). The CPIC-PDP database will equip peace officers across Canada with information that a FN has been deported from Canada, has returned to Canada without authorization as required by A52(1) and, at the time of the person's removal, there were reasonable grounds to believe that the person is a danger to the public or is unlikely to appear.

After a name is queried in the CPIC and it is a direct match to a person found in the PDP database, the information on the CPIC will instruct law enforcement partners to contact the Warrant Response Centre (WRC) for further assistance.

Information on individuals in the CPIC-PDP database originates from FOSS/GCMS. For more information on this subject, see *ENF 10*, *Removals*.

25.1 POE procedures for completing the *Authorization to Return to Canada* (ARC) application

The completion of *Authorization to Return to Canada* (ARC) applications is normally the responsibility of visa offices. However, on occasion, the POE is required to deal with individuals where completion of an ARC application is necessary. Therefore, *Authorization to Return to Canada* application functionality in GCMS is accessible at POE and the authority to grant or deny the ARC has been designated at the POE to the Chief of Operations level (see IL 3, CIC IDD: Instrument of Designation and Delegation, item 88).

The *Authorization to Return to Canada* application functionality is used to record the processing and disposition (approval or denial) of an ARC, regardless of the type of removal order (i.e., exclusion order cases where written authority is required). When granting an ARC, an ARC application must be completed in GCMS.

Before a physical copy of the *Authorization to Return to Canada Pursuant to Subsection 52(1) of the Immigration and Refugee Protection Act* form [IMM 1203B] is issued, the applicable cost of $400 must be collected and, if CBSA/IRCC paid for their removal, recovery fees must be collected.

FNs must repay the following:

- $750 for removal to the U.S. or Saint-Pierre and Miquelon [R243(*a*)]; or
- $1,500 for removal to any other destination [R243(*b*)].

Recovery payment must be entered into the Travellers Entry Processing System (TEPS), and the K21 form must be completed using the code 48455, Repayment of Removal Costs, as the cost recovery type.

For more information on the repayment of removal costs, please refer to *ENF 10*, *Removals*.

There are currently no exemptions to the cost recovery fee for an ARC. When authorization to return to Canada has been denied, the officer must indicate the denial in the *Authority to Return to Canada* application in GCMS and issue a *Denial of Authorization to Return to Canada Pursuant to Subsection 52(1) of IRPA* form [IMM 1202B].

25.2 Completing an ARC application in GCMS

The *Authorization to Return to Canada application functionality* is accessible in GCMS. The person must be an existing client in FOSS/GCMS and a removal order or PDP document must exist. For more information on completing an *Authorization to Return to Canada* application in GCMS, refer to GCMS Help or the user guide on the CBSA GCMS Wiki.

An ARC can be completed by a BSO designated by the responsible manager to have GCMS access to create ARC documents.

Note: The rationale for the decision to Approve or Refuse must be fully explained in the *Notes* tab without delay.

The completed ARC application will be recorded in GCMS.

25.3 Amending an ARC decision in GCMS

In exceptional circumstances, there may be occasions where a BSO has issued an ARC and information is later revealed that the document was issued in error. BSOs should take note that once the *Decision* field has been completed and the document finalized, the ARC cannot be re-opened and amended. This is because a positive decision will have electronically removed the person's record from CPIC-PDP. It is therefore imperative for BSOs to be sure of their decision before completing the ARC in GCMS. The document can be edited until the *Decision* field has been filled. Should unanticipated circumstances occur requiring that the decision be changed after the ARC has been finalized, the following protocol must be followed:

To reverse a positive decision

An email must be sent to Warrant Response Centre (WRC) with a short explanation requesting to re-enable the PREV.DEP flag. Copy and paste the email sent to WRC into the *Notes* tab of the ARC.

To reverse a negative decision

A new ARC must be created, choose Approved in the Final Assessment menu, explain the reason for the reversal in the *Notes* tab. There is no need to advise the WRC.

25.4 Effect of ARC decisions on the PDP database

Where there is a PREV.DEP flag enabled in FOSS/GCMS, the effect of the ARC will be as follows:

- a decision to GRANT an ARC will disable the PREV.DEP flag in FOSS/GCMS, remove the person from the PIL "Hit List" and automatically remove the record from CPIC; or
- a decision to DENY an ARC will maintain the PREV.DEP flag in FOSS/GCMS, cause the client to remain on the PIL "Hit List" and maintain the record in CPIC.

25.5 Remedial action at POEs

Person is in possession of an ARC but PREV.DEP flag still enabled

BSOs at Immigration Secondary must be prepared to deal with a person who is referred from the PIL because a PREV.DEP flag appears against the person's name when queried. When a referred individual is in possession of an ARC and is still flagged as PREV.DEP in FOSS, the following remedial action must be taken:

- If an examination of FOSS historical notes and GCMS notes satisfies the BSO at Immigration Secondary that a positive ARC decision was made and the fees collected, but the visa officer neglected to create an ARC application in GCMS on which to record the decision, the officer, upon authorizing entry into Canada, must create an ARC application in GCMS in order to disable the PREV.DEP flag and remove the record from CPIC-PDP.
- If an examination of FOSS/GCMS notes indicates that the visa officer issued an ARC in error, without considering the need for written authorization to return to Canada, the decision to grant or deny such authorization rests with the BSO at Immigration Secondary.

Entry denied on other inadmissibility grounds

There may be circumstances where a BSO at Immigration Secondary will deny entry to Canada on new inadmissibility grounds to a previous deportee who has been authorized to return to Canada by a visa officer (and therefore the PREV.DEP flag will have already been disabled by the ARC). In such circumstances, BSOs should understand that the requirement

to obtain authorization to return to Canada has been overcome by the granting of the ARC and they should not be exploring ways in which they can re-enable the PREV.DEP flag.

26 *Foreign Missions and International Organizations Act* (FMIOA)

The *Foreign Missions and International Organizations Act* (FMIOA) extends privileges and immunities to foreign missions and certain international organizations that operate and/or hold meetings or conferences in Canada. Section 5 of the FMIOA provides that an order in council (OIC) can be signed by the Governor in Council with respect to certain international organizations. The OIC accords international organizations and their representatives privileges and immunities outlined in certain sections of the *Convention on the Privileges and Immunities of the United Nations* and the *Vienna Convention on Diplomatic Relations*. The OIC can remain permanently in force [such as the OIC that grants privileges and immunities to the International Civil Aviation Organization (ICAO) headquarters in Montreal] or can be signed to cover a specific meeting or conference of an international organization held in Canada (such as G8 meetings). Finally, the OIC can be signed to encompass all of the provisions in section 5 of the FMIOA, or can limit which privileges and immunities will be accorded.

On April 30, 2002, a new subsection of section 5 of the FMIOA came into force. Subsection 5(4) states that "In the event of an inconsistency or conflict between an order [OIC] made under subsection (1) and any of sections 33 to 43 of the *Immigration and Refugee Protection Act*, the order [OIC] prevails to the extent of the inconsistency or conflict." This means that representatives of international organizations covered by an OIC of the Governor in Council are not subject to the inadmissibility provisions of IRPA. These representatives are not to receive any additional documentation, such as TRPs. They shall be granted temporary resident status in the normal manner. If officers feel there is a need to further document the arrival of one of these representatives, a Client Note can be entered in GCMS.

NHQ will receive advance notification of all OICs of the Governor in Council, the regions and ports may be given alternate directions when applicable.

27 FOSS/GCMS enforcement flag amendments

27.1 Background

Thorough POE examinations are necessary to ensure the safety of all Canadian citizens, PRs and visitors to Canada. Secondary examinations are, for the most part, considered routine and should not be viewed as an accusation of wrongdoing on the part of the traveller.

Enforcement flags are generated when an immigration enforcement action was previously recorded in FOSS or in GCMS and is linked to the IPIL database. Upon seeking entry to Canada at the PIL, persons who have been the subject of previous enforcement actions may be automatically referred to Immigration Secondary due to an active enforcement flag contained in their FOSS/GCMS record. A person may discuss the issue with the POE officer the next time they seek entry into Canada.

Although FOSS/GCMS will always retain a traveller's immigration enforcement history, it is possible to amend these enforcement flags. The determination to request a flag amendment is made at the discretion of the BSO and cannot be guaranteed. All enforcement history remains intact in FOSS/GCMS, but the flag may be modified from the IPIL database so that it no longer generates a mandatory referral at the PIL. Furthermore, only past enforcement flags will be considered, ensuring that if any enforcement action were to take place in the future, the enforcement flag would automatically be reactivated.

27.2 Considerations

When determining an enforcement flag amendment, the following questions should be considered:

- How often does the traveller visit Canada?
- What was the infraction?
- Is there a history of enforcement actions?
- Was the traveller a minor at the time of the enforcement action?

27.3 Procedures for amending an enforcement flag

Individual officers should not contact the Operations Support Centre directly for an enforcement flag amendment. Officers must follow the procedures below:

1. Check FOSS history (all records) and GCMS records via GCMS Integrated Search to ensure that the client has only one unique client identifier (UCI). In cases where more than one UCI exists, household the UCIs by following the instructions in WIKI before amending an enforcement flag.
2. Conduct a CPIC/U.S National Crime Information Center (NCIC) check on each client that was previously reported for criminal inadmissibility to ensure that the client is no longer criminally inadmissible to Canada.
3. Where an Info Alert is the reason for the flag at IPIL, BSO who are MDs and superintendents have the authority to expire them by following Step 11 of the *Processing guide of an Info Alert*.
4. Where it is due to a Failed (negative) Admissibility Assessment in GCMS, BSOs must create a new Examination and Pass (positive) the Admissibility Assessment. Refer to the step-by-step on the Wiki page for procedures.

For more information on this, consult OBO-2020-011 and PRG-2017-38.

27.4 Enforcement flags on Canadian citizens and persons registered under the *Indian Act*

Normally, once a PR of Canada receives citizenship, IRCC grants the citizenship and this information is reflected in GCMS (or previously in FOSS as an NCB Type 11). Occasionally, BSOs will encounter travellers with immigration enforcement flags who have become citizens, but who are still being flagged due to a previous immigration enforcement flag. This is another instance where a BSOMD or superintendent can expire a FOSS Legacy Info Alert via GCMS.

With the coming into effect of Bill S-3 in 2019, some persons that were considered FN are now persons registered under the *Indian Act* and therefore enter Canada by right. All enforcement flags against these people should be amended as per the steps above.

Appendix A Memorandum of Understanding between IRCC and the CBSA

Appendix B Quarantine Operations Centres

Public Health Agency of Canada (PHAC)

Quarantine Operations Centres

Effective May 1, 2019, PHAC centralized the management of border and travel health notifications and the assessment of ill travellers through the new PHAC Notification Line: 1-833-615-2384 and email phac.cns-snc.aspc@canada.ca. Service in both official languages will be available 24 hours a day, seven days a week.

For more information, refer to *People Processing Manual, pt 8, ch. 5.2, Quarantine - Liaison with the Public Health Agency of Canada.*

Appendix C Record of Direct Backs for Refugee Claimants at the Land Border

Record of Direct Backs for Refugee Claimants at the Land Border			
	1	2	3
Name of the refugee claimant (last name, given name)			
GCMS UCI ()			
POE			
Name of the superintendent who approved the Direct Back			
Reason for directing back under exceptional circumstances*			
Date and time of Direct Back dd/mm/yy – 00h00			

Scheduled date of return dd/mm/yy			
Remarks			

Have you considered the following arrangements before directing the refugee claimant back?

☐ Making arrangements to reduce the waiting time for the refugee claimant by:

☐ Invoking overtime hours for border services officers to process a claim

☐ Calling in border services officers from a nearby POE

☐ Using the telephone translation service

☐ Detaining the claimant, if grounds to detain exist, to complete the examination

*Exceptional circumstances are defined as situations where all the procedures outlined above have been considered and an examination still cannot be conducted. The well-being of the claimant should be considered in conjunction with the impact on POE operations. When it has been determined that a case can be substantiated as an exceptional circumstance, the border services officer must obtain approval from the POE superintendent before directing a refugee claimant back to the United States.

Appendix D Temporary resident permit (TRP) annual compliance review and checklist

Annual TRP compliance review

In January of each year, Regional Programs Officers in each region will select 10 TRPs issued over the course of the previous calendar year. The TRPs will be reviewed for inclusion of the mandatory elements explained in section 15.5. The results of the review are to be submitted to HQ by the end of the January that the review is taking place. (ie. In January of 2025, select 10 TRPs issued throughout all of 2024. The results are to be submitted by the end of January, 2025).

Included in the review is a check that anyone making decisions under a delegated authority or performing the functions of a Minister's Delegate must have successfully completed the training prescribed to those positions before exercising their authority as per section and the Agency's National Training Standards.

The Apollo folder with the instructions and required material for the review can be found here: Annual TRP Compliance Review

TRP file checklist

A short form checklist to assist with ensuring file completion can be found here:

TRP Checklist

*This is not used for the compliance review process noted above

"G"

Contents

Updates to chapter

Listing by date:

2025-02-20
Substantive and minor changes, as well as clarifications, have been provided throughout the chapter to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Content added throughout to reflect new inadmissibilities for sanctions under section 35.1 and transborder criminality under subsection 36(2.1) of the IRPA.
Section 8 and section 10: Content updated to reflect jurisprudence on officer scope of discretion under subsections 44(1) and 44(2) of the IRPA.
Appendices B, C, D: Updates to align with new court decisions.
Appendix F: Updates to reflect legislative and regulatory changes.

2023-04-17
Minor corrections and clarifications have been made throughout the chapter. Updates made to reflect changes to other manual chapters.
New content has been added to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Section 6.6: New section added to provide guidance and resources on dealing with vulnerable persons, including victims of gender-based violence (GBV).
Section 9.5: Amended to reflect regulatory changes to include new ground for directing persons back to the United States under section 41 of the IRPR where the foreign national is prohibited from entering Canada by an order or regulation made under the *Emergencies Act* or the *Quarantine Act.*
Section 9.6: Content on restoration of status updated to reflect change in terminology from "implied" status to "maintained" status.
Section 9.9: New section added on impact of Ministerial public policies.
Section 12.4: Updates to content on information sharing and evidence obtained by mistreatment or torture.
Section 13.4: Additional guidance on multiple allegations.

2019-10-28
Substantive and minor changes, as well as clarifications, have been provided throughout the chapter.
New content has been added to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Sections have been re-written for clarity and/or moved and re-organized for more logical flow of information.
Section 3.1: Amended to include several new or updated forms.
Section 9.8: Content added to reflect amendments to IRPA provisions regarding inadmissible family members under section A42.
Section 11.6: New section added to clarify the scope of end of examination for a person who makes a claim for refugee protection at a port of entry or inland office, following the addition of subsection R37(2) of the IRPR.
Section 14.6: New section added to reflect changes to IRPA and IRPR requiring that decision-makers impose prescribed conditions on security (A34) inadmissibility cases.

2013-08-20
Sections 3 and 9 have been updated to reflect the addition of subsections 16(1.1) and 16(2.1) to

the Immigration and Refugee Protection Act as of the coming into force of the Faster Removal of Foreign Criminals Act.
Subsection 8.4 was added to provide guidance on further allegations of inadmissibility subsequent to a declaration pursuant to A42.1 by the Minister of Public Safety and Emergency Preparedness.

2011-01-01
The following changes were made to chapter ENF 5, entitled "Writing 44(1) Reports": Section 1: Minor changes were made to section 1
Section 4: Minor changes were made throughout Section 4. Section 5: Minor changes were made to Section 5.1.
Section 8: Changes were made to the paragraph explaining the Cha decision in 8.1 Section 8: Minor changes were made to Section 8.2
Section 8: Minor changes were made to Section 8.3 Section 8: Minor changed were made to Section 8.5 Section 8: Minor changes were made to Section 8.9 Section 11: Reference to ID manual deleted.

2009-10-30
The following changes were made to chapter ENF 5, entitled "Writing 44(1) Reports": Hyperlinks to manuals and forms were added throughout ENF 5 for ease of reference. Section 3: Hyperlinks were added to access forms in Section 3.1.
Section 4: Minor changes were made to include internet and intranet websites for the Delegation and Designation Authorities and Instruments.
Section 8: Minor changes were made throughout Section 8.1. Section 8: Minor changes were made to Section 8.4.
Section 8: A paragraph was added to Section 8.9, writing an A44(1) report on a permanent resident. Minor changes were made to the paragraph on released cases to clarify when an officer may require counsel to leave.
Section 11: All reference to the Reciprocal Agreement between the United States and Canada was removed as it expired on October 30, 2009. This section was combined with section 10: Procedure: Point of Finality as section 10.1.
Section 12: Minor changes were made to section 12.1.
Section 12: Section 12.2 was updated to reflect the procedure on accessing the HELP screen in FOSS and is now section 11.2.
Section 12: Section 12.4 was rewritten for clarity and is now section 11.4.Section 13: Minor changes were made to the Note for clarity and is now section 12.

2007-08-10
The following changes were made to ENF 5 Appendices A and B entitled "Writing a report against a foreign national" and "Writing a report against a permanent resident".
Appendix A: Items to bring to the interview have been amended to reflect documents held by foreign nationals.
Appendix B: Permanent residents have been advised that they may have legal counsel present if they wish, however it is not a right, it is a privilege.

2007-04-12
The following changes were made to chapter ENF 5, entitled "Writing 44(1) Reports": Section 1: The words "Minister of CIC" have been added at the end of the first paragraph. Section 4: Minor changes were made to paragraph 3 in order to include CBSA.
Section 8: Substantial changes appear to sections 8.1 and 8.7.
Section 12: The words "Minister of CIC" have been added in section 12.1, and an insert was

added to section 12.3, first paragraph.
Section 13: Minor changes have been made throughout the section. Appendices A and B: Substantial changes appear to both appendices.

2005-11-04
Changes made to reflect transition from CIC to CBSA. The term "delegated officer" was replaced with "Minister's delegate" throughout text, references to "departmental policy" were eliminated, references to CIC and CBSA officers and the Ministers of CIC and PSEP were made where appropriate, and other minor changes were made. Appendix C was removed and Appendix D and E were renamed C and D.

2004-08-20
ENF 5 - Writing 44(1) Reports has been updated to reflect an amendment to paragraph 229(1)(k) of the Immigration and Refugee Protection Regulations. The amendment allows the Immigration Division of the Immigration and Refugee Board to issue a removal order at a hearing resulting from multiple allegations that include failure to comply with residency obligations.

2003-09-22
Chapter ENF 5, entitled Writing 44(1) reports, specifically Section 8 on Making a decision to write an A44(1) report, has been updated and is now available on CIC Explore.
The amendments were made in response to commitments made to Standing Committee during their study of IRPA which called on CIC to strengthen guidelines with respect to how we make a determination to refer reports to the IRB, especially in cases of permanent residents. These changes were made in consultation with all the domestic regions as well as the Enforcement Program Management Board. The guidelines are intended to ensure greater consistency in the steps taken to obtain information, prior to deciding the disposition of an A44(1) report.
Among the changes to this chapter, the highlights include: Section 8:
Section 8.1 has been updated to provide clear guidelines on keeping a record of an inadmissibility in all cases.
Section 8.3 addresses the issue of forwarding incomplete files to the Hearings Unit.
Section 8.7 establishes information-gathering guidelines that are to be undertaken prior to writing an A44(1) report.
Appendix A and Appendix B were also revised. For further information, please contact: susan.savriga@cbsa.gc.ca.

1 What this chapter is about

This chapter provides functional direction and guidance on writing a report under subsection 44(1) of the *Immigration and Refugee Protection Act* (IRPA) and how to prepare and present such a report to the Minister of Public Safety and Emergency Preparedness (PS) or the Minister of Immigration, Refugees and Citizenship Canada (IRCC).

2 Program objectives

The objectives of Canadian immigration legislation with regard to the inadmissibility provisions are:

- to protect the health and safety of Canadians and to maintain the security of Canadian society;
- to promote international justice and security by fostering respect for human rights and denying access to Canadian territory to persons, including refugee claimants, who are criminals or security risks.

3 The Act and Regulations

The following table includes some of the most relevant provisions under the IRPA or the *Immigration and Refugee Protection Regulations* (IRPR) that may apply during the A44(1) process. Some of the authorities listed below pertain specifically to Border Services Officers (BSOs) at the port of entry or IRCC officers assessing applications; others are more relevant to CBSA Inland Enforcement Officers (IOEs).

Table 1: Sections of the IRPA and the IRPR applying to the A44(1) process

Provision	Act and Regulations
Delegation of powers	A6(2)
Examination by officer	A15(1)
Obligation - answer truthfully Obligation- appear in person for examination Obligation - relevant evidence Obligation- interview with the Canadian Security Intelligence Service	A16(1) A16(1.1) A16(2)(b) A16(2.1)
Obligation on entry - permanent residence Obligation on entry - period for their stay	A20(1)(a) A20(1)(b)
Permanent resident	A21(1)
Temporary resident Dual intent	A22
Entry to complete examination or hearing	A23
Temporary resident permit	A24
Residency obligation	A28
Security	A34
Human or international rights violations	A35
Sanctions	A35.1

Serious criminality	A36(1)
Criminality	A36(2)
Transborder criminality	A36(2.1)
Organized criminality	A37
Health grounds	A38
Financial reasons	A39
Misrepresentation	A40
Cessation of refugee protection	A40.1
Non-compliance with IRPA or IRPR – foreign national Non-compliance with IRPA or IRPR – permanent resident	A41(a) A41(b)
Inadmissible family member	A42
Imposition of conditions	A44(3)
Mandatory imposition of conditions – inadmissibility on grounds of security Duration of conditions	A44(4) A44(5)
Applicable removal order – Immigration Division	A45(d)
No return without prescribed authorization	A52(1)
Right of appeal to Immigration Appeal Division (IAD)	A63
Loss of appeal rights	A64
Protected person	A95
Ineligibility to refer refugee claim	A101
Cessation or refugee protection	A108
Vacation of refugee protection	A109
Non-refoulement – Protected person	A115(1)
Ministerial Opinion for protected person – Danger to the public	A115(2)(a)
Rehabilitation	R18
Seeking to enter Canada	R28(b)
End of examination	R37(1)
End of examination – claim for refugee protection	R37(2)
Direct back to the United States	R41(b)
Withdrawing application/Allow to leave	R42
Conditions A23	R43(1)
Report – family members	R227(1)
Applicable removal order – Minister	R228
Applicable removal order – Immigration Division	R229

3.1 Forms

The following table includes some common forms used in the A44(1) process. This is a non-exhaustive list and some may only apply to officers carrying out the administration of the IRPA at the port of entry.

Table 2: Forms

Form Title	Form Number
Direction to Return to the United States	BSF505
Allowed to Leave Canada	IMM 1282B
Subsection 44(1) and 55 Highlights – Inland Cases	IMM 5084B
Subsection 44(1) Highlights – Port of Entry Cases	BSF516
Request for Criminal Information	BSF567
Acknowledgement of Conditions	BSF821
Notes to File	BSF788
Acknowledgement of Conditions for IRPA Section 34 Cases	BSF798
Entry for Further Examination or Admissibility Hearing	BSF 536
Use of a Representative	IMM 5476

4 Instruments and delegations

A4 sets out which Minister is responsible for the administration of the IRPA. The Minister of Citizenship and Immigration [also known as Immigration, Refugees and Citizenship Canada (IRCC)] and the Minister of Public Safety and Emergency Preparedness (PS) are jointly responsible for the administration and enforcement of the IRPA, however there are some differences. The IRCC Minister is responsible for the overall administration of the IRPA, unless otherwise specified. The Minister of PS has the primary responsibility for the administration of the IRPA as it relates to the following:

- port of entry examinations;
- policy lead relating to enforcement of the IRPA including arrest, detention and removal;
- establishment of policies respecting the enforcement of the IRPA and inadmissibility under A34/A35/A35.1/A36(2.1)/A37; and
- declarations referred to under A42.1 (Ministerial Relief provision)

Pursuant to A6(1), the responsible Minister has the authority to designate specific persons or classes of persons to carry out any purpose of any provision of the IRPA with respect to their individual mandate as described in A4, and to specify the powers and duties of the officers so designated. This is referred to as the **designation of authority**. In addition, A6(2) authorizes that anything that may be done by the **Minister** under the Act may be done by a person that the Minister authorizes in writing. This is referred to as **delegation of authority**.

Each Minister who has responsibilities under the IRPA has written an instrument of delegation and designation that is periodically updated. The Delegation of Authority and Designations of Officers (D & D) instruments stipulate who has the authority to perform specific immigration-related functions. CBSA and IRCC personnel are designated by position to perform all delegated or designated authorities, including those associated with A44(1)/A44(2) functions. It is to be noted that the IRPA D & D instruments have a hierarchical link which means only the lowest level of authority is included in the D & D instruments as every position above this one (with a direct hierarchical link) has the same authority to perform specific immigration-related functions.

CBSA and IRCC officers should always review both the CBSA and the IRCC D & D instruments as they have authorities delegated and designated under both instruments, which can be found on the IL 3 – Designation of Officers and Delegation of Authority.

The authority of an officer to prepare an inadmissibility report under A44(1) has been designated to certain CBSA and IRCC officials. It is important to note that while IRCC officers have been designated the authority to write reports for most inadmissibility sections, A44(1) reports for inadmissibility under A34 (security grounds), A35 (grounds of violating human or international rights), A35.1 (sanctions) and A37 (grounds of organized criminality) may only be prepared and reviewed by CBSA.

All reports written by CBSA or IRCC officers will be reviewed by the Minister's Delegate (MD) who has been delegated the authority under the D & D instruments. If the MD is of the opinion that the report is well-founded, the MD will make the appropriate decision based on the evidence and determine whether to:

- issue a removal order, if the allegation is within the MD's authority pursuant to R228); or
- refer the report to the Immigration Division of the Immigration and Refugee Board (IRB) pursuant to R229.

For additional information see Appendix F: Table: Immigration and Refugee Protection Act (IRPA) Inadmissible Classes

Note: Policy requires that even where officers and officials acting in the capacity of the Minister's Delegate (including chiefs and directors) have the delegated authority under the D & D instruments, they should not perform Minister's Delegate functions and reviews until they have successfully completed the necessary training to perform the A44(2) function. This policy is consistent with the Federal Court's decision in Zhang v. Canada (Citizenship and Immigration), 2014 FC 362 where judicial review was granted based on a finding that there was an inadequate record before the court to conclude that the MD had received the required Minister's Delegate Review training and was therefore authorized to issue a removal order.

5 Definitions

Adult legally responsible
An adult legally responsible for a minor or suspected incompetent person may be their parent or legal guardian. If the accompanying adult is not a parent or guardian, reasonable efforts must be made to contact a parent or guardian. For more information on accompanying adults, please refer to ENF 21 Recovering Missing, Abducted and Exploited Children.

Foreign national
A person who is not a Canadian citizen or a permanent resident; includes a stateless person [A2(1)].

Indian
A person who is registered as an Indian under the Indian Act [R2].

Minor
A minor is a person under 18 years of age. Persons claiming to be less than 18 years of age. are to be treated as minors unless there is conclusive evidence that they are 18 years old or older.

Permanent resident
A person who has acquired permanent residence status and has not subsequently lost that status under A46 [A2(1)].

Persons unable to appreciate the nature of proceedings
This phrase refers to persons who are unable to understand the reason for the proceedings or why they are important, or cannot give meaningful instructions to counsel about their case. An opinion regarding competency may be based on the person's own admission, the person's observable behaviour at the proceeding, or an expert opinion on the person's mental health or intellectual or physical faculties. Pursuant to R228(4)(b) and R229(4)(b), the authority to issue any removal order for persons unable to appreciate the nature of the proceedings shall be the ID.

Protected person
A person on whom refugee protection is conferred in Canada and whose claim or application has not subsequently been deemed to be rejected because of cessation or vacation proceedings [A95(2)]

6 Departmental policy

6.1 Procedural fairness

All officers involved in the administration and enforcement of the IRPA must consider and weigh all the relevant facts and factors before them. All officers are to support the objectives of the IRPA by ensuring all decisions taken under the IRPA are consistent with the Canadian Charter of Rights and Freedoms (Charter)[1] and the principles of natural justice and procedural fairness.

The principles of natural justice exist as a safeguard for individuals in their interactions with the state. These principles stipulate that whenever a person's "rights, privileges or interests" are at stake, there is a duty to act in a procedurally fair manner.

This includes, but is not limited to, the individual's rights to the following:

- know the case to be met;
- have an opportunity to present evidence relevant to the case;
- provide a response to facts or new information that will be considered by the decision-maker;
- receive notice of decision and reasons for the decision;
- have the evidence fully and fairly considered;
- right to impartial decision-maker who is free from bias; and
- right to an interpreter where necessary and, where the person is detained, right to counsel.

[1] *Constitution Act*, 1982, PART I

In general terms, procedural fairness considerations to be applied in each case will be different, depending on a number of factors. The Federal Court has found that the content of the duty of fairness in A44 proceedings will vary depending on the nature and circumstances of the decision being made. For example, in Awed v. Canada (Citizenship and Immigration) 2006 FC 469, the Court found that where an officer calls a permanent resident or foreign national for an interview in order to confirm facts that would support an A44(1) opinion and report, the content of the duty of fairness at the initial stage is minimal. The Court found, however, that such a degree of fairness requires that the officer advise the person of the purpose of the interview so that the person is put on notice of the possible consequences and has an opportunity to make meaningful submissions. In Canada (Minister of Public Safety and Emergency Preparedness) v. Cha, 2006 FCA 126, the Federal Court of Appeal (FCA) found that it was open to the Federal Court judge to find that the officer had breached the duty of fairness in failing to inform the applicant of the possible consequences of the initial A44(1) interview, however the FCA disagreed with the Federal Court's conclusion that section A44 determinations call for a relatively high degree of participatory rights in respect of persons who are inadmissible on grounds of serious or simple criminality in Canada, as officers and MDs are simply on a fact-finding mission at the A44 stage.

It is important for officers to differentiate those cases where the MD may issue a removal order and those cases where the jurisdiction to issue a removal order lies with the ID, as different procedural requirements and considerations will apply in order to ensure that procedural fairness and natural justice are met.

The spectrum of procedural fairness will also depend on the status of the person concerned and additional considerations will apply for permanent residents and protected persons (See section 8, 'Considerations before writing an A44(1) Report- Scope of officer discretion'; section 9.2, 'Special considerations for protected persons'; section 10, 'A44(1) reports concerning permanent residents of Canada').

6.2 Procedures for persons less than 18 years old or persons unable to appreciate the nature of the proceedings

R228(4) provides for specific safeguards for certain vulnerable persons by requiring that where the person:

- is under 18 years of age and not accompanied by a parent or an adult legally responsible for them; or
- is unable, in the opinion of the Minister, to appreciate the nature of the proceedings and is not accompanied by a parent or an adult legally responsible for them

the matter must be referred to the ID for an admissibility hearing. **In these cases, the MD does not have jurisdiction to issue a removal order.**

Such cases will call for a higher degree of procedural fairness at the A44 stage and officers must take extra care to ensure that the person's interests are represented and that the evidence has been fully and fairly considered.

During the ID proceedings, a designated representative will be appointed pursuant to A167(2) to represent the person's interests and ensure that procedural fairness requirements are met with

respect to presenting evidence relevant to the case and providing a response to facts or new information that will be considered by the decision-maker. In these hearings, parties will also be governed by the Immigration and Refugee Board of Canada Chairperson Guideline 8: 'Procedures With Respect to Vulnerable Persons Appearing Before the IRB'

Where a person appears to be unable to appreciate the nature of the proceedings, it is important for officers to identify this as soon as possible during the A44(1) process. Where an officer, in the course of their interactions with a person, has identified that a person has a suspected or known mental illness and does not appreciate the nature of the proceedings, this should be clearly documented in notes and flagged for the MD.

In such cases, officers should also ensure that other departmental and agency guidelines with respect to dealing with vulnerable persons are followed. See section 6.6 'Dealing with vulnerable persons'; ENF 20 Detention; and ENF 34 Alternatives to Detention.

For additional guidance, including how to identify a vulnerable person, see IRCC Program delivery instructions on Processing in-Canada claims for refugee protection of minors and vulnerable persons.

6.3 Official languages

Both the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms* establish the right of individuals who are subject to administrative proceedings in Canada to communicate with employees of IRCC and CBSA in the official language of their choice, either in French or English. Officers carrying out the administration of the IRPA must respect the right of the individual to proceed in French or English. In order to ensure that procedural fairness is maintained, officers should ensure that the Minister's documents are provided in the language of the proceedings and, where necessary, obtain translations (e.g., a certificate of conviction from another country that is not in French or English that the Minister is relying on as evidence).

6.4 Interpreters

Officers must be satisfied that the person concerned is able to understand and communicate in either of the official languages in which the proceeding is being held. If necessary, an interpreter is to be provided to enable the persons to understand and communicate fully.

Note: Travellers arriving at a port of entry into Canada do not have an automatic right to an interpreter upon request during routine port of entry examinations, however there are situations where officers at the port of entry are required to suspend the proceedings until a qualified interpreter is available. This may include circumstances where the officer is considering denying entry to the traveller. For further information, see Nere v. Canada (Citizenship and Immigration), 2018 FC 672.

CBSA officers should consult guidelines on the use of interpreters contained in ENF 4 Port of entry examinations (section 8.5, 'Use of interpreters').

For further information, see IRCC Program delivery instructions (PDI) on interpreters.

6.5 Counsel

Persons do not have a right to counsel at examinations or A44(1) interviews **unless they are detained**. In all detained cases, persons must be given the opportunity to obtain and instruct counsel at their own expense. Counsel includes a barrister, solicitor, family member, consultant or friend.

In detained cases, officers must inform persons of their right to counsel prior to commencing the interview. This right applies in all cases (port of entry or inland) where a person is detained under an Act of Parliament and includes situations where the person is detained by the criminal courts while facing charges or serving a sentence and interviewed for IRPA purposes.

Port of entry: Generally, CBSA's policy is not to permit counsel at a port of entry examinations unless arrest/detention has occurred. However, if an officer is dealing with an individual who does have counsel present, the officer should allow the counsel to remain present as long as counsel does not interfere with the examination process.

Note: In Dehghani v. Canada (Minister of Employment and Immigration), [1993] 1 S.C.R. 1053], the Supreme Court of Canada (SCC) determined that the principles of fundamental justice do not include the right to counsel for routine information-gathering, such as that gathered at port of entry examination interviews. The SCC further held that an Immigration Secondary examination at a port of entry does not constitute a detention within the meaning of paragraph 10(b) of the Canadian Charter of Rights and Freedoms.[2]

For further information regarding the right to counsel at POE examinations, see ENF 4 Port of entry examinations.

In non-detained inland cases (CBSA/IRCC): A non-detained person does not have the right to have counsel present during A44(1) interviews, however in the spirit of procedural fairness, the officer shall inform the person of the possibility of obtaining counsel prior to commencing the interview. Officers should permit counsel's participation should the individual subject to the A44(1) process have a counsel. Call-in notices for interviews should advise the person that they may have counsel present.

Where counsel is representing the person concerned at an examination or A44(1) proceeding, officers should ensure that counsel's identity, the fact of counsel's presence at the proceeding and statements made by counsel on behalf of the person concerned are documented in the officer's notes, and that counsel's representations have been considered in their decision. Officers may also need the person's representative to complete a Use of a Representative form (IMM 5476).

For further information, see IRCC Program delivery instructions (PDI) on Use of

[2] Although the SCC held that secondary examination does not constitute detention, this decision also highlighted that detention within the meaning of section 10(b) of the Charter would result where restraints on the person's liberty by state authorities have gone beyond those required for the routine processing or screening of their application to enter Canada. Further, while the SCC's decision affirmed that delays in routine examinations due to operational necessity do not mean the person is "detained", officers should be cognizant that unreasonably lengthy delays in the examination could lead to the conclusion that the person is detained within the meaning of section 10(b) of the Charter.

Representatives.

Participation by counsel involves speaking on the client's behalf, presenting evidence and making submissions on the issues. Allowing counsel to participate, if ready to do so, does not mean that the officer is required to tolerate disruptive or discourteous behaviour by counsel. Where such conduct is encountered, counsel may be asked to leave and/or the proceeding may be adjourned to another time. In such cases, the officer should ensure to document their reasons for taking such action.

6.6 Dealing with vulnerable persons

6.6.1 Considerations for vulnerable persons in the context of A44

It is an overall goal of Canada's immigration program to treat all persons with dignity and respect. In exercising their IRPA authorities, officials must approach all cases in a nonjudgmental manner, remain sensitive to the potential needs and limitations of vulnerable persons, and recognize that a person they are dealing with may have experienced some form of violence, abuse or trauma.

In the context of A44, vulnerable persons may face particular challenges, including an impaired ability to answer questions/provide information to officials respecting a potential IRPA inadmissibility, due to a physical or psychological frailty or for other reasons. Such persons may include, but would not be limited to:

- minors (under 18 years of age), including unaccompanied minors;
- elderly persons;
- individuals with severe medical conditions or physical disabilities;
- persons with a suspected or known mental illness;
- persons who have suffered traumatic experiences that resulted in some degree of vulnerability, including:
    - victims[3] of gender-based violence (GBV) (see section 6.6.3);
    - victims/suspected victims of trafficking in persons (VTIPs) or family violence.

In the context of A44 procedures, officers should:

- Identify vulnerable persons at the earliest opportunity in order to ensure that appropriate accommodations are made and any relevant considerations are factored into decisions and actions taken. In some instances, officers will need to use their observational skills, discretion and sound judgement in identifying a person as vulnerable.

- Recognize that a vulnerable individual's ability to respond to questions or provide information may be severely impaired, and remain sensitive to the impact of a perceived vulnerability during the A44 process, including during interviews.

- To the extent possible, prevent vulnerable persons from becoming traumatized or re-traumatized during the A44 process.

[3] It is important to recognize wherever the term "victim" is used, that some persons who have experienced violence, trauma or abuse may prefer to be referred to as "survivors" rather than "victims".

Where an individual who is subject to IRPA enforcement action is identified as a victim of violence, trauma or abuse, including victims of GBV, family violence or trafficking in persons, or other forms of abuse such as sexual abuse or labour abuse, officers must take a victim-centered and trauma-informed approach in order to avoid re-victimizing people who report violence or abuse.

A **victim-centred** approach focuses on the needs and concerns of victims to ensure a compassionate and sensitive delivery of services in a nonjudgmental manner.

A **trauma-informed** approach is one that avoids triggering trauma that may have placed the individual in their current situation.

The guidelines in sections 6.6.2 to 6.6.5 are aimed at assisting officers in identifying vulnerable persons and applying a victim-centred and trauma-informed approach when dealing with vulnerable persons at A44.

In addition to the guidelines set out in this manual chapter, officers should always ensure that other Departmental and Agency guidelines with respect to dealing with vulnerable persons and minors are followed, including IRCC's Program delivery instructions on Identifying sensitive cases and on Processing in-Canada claims for refugee protection of minors and vulnerable persons, where applicable.

6.6.2 Sexual orientation and gender identity and expression and sex characteristics[4]

Some IRPA enforcement cases may involve individuals with, or who are perceived to have, sexual orientations, gender identities and expressions (SOGIE)[5] that may not conform to socially accepted norms in a particular cultural environment. Such individuals include, but are not limited to: Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex and additional sexually and gender diverse (2SLGBTQI+) individuals. Depending on factors such as race, ethnicity, religion, faith or belief system, age, disability, health status, social class and education, individuals with diverse sexual orientations and identities may recognize and express their identity differently.

Individuals may conceal their SOGIE out of mistrust or fear of repercussion by state and non-state actors, or due to previous experiences of discrimination, stigmatization, bullying, ostracism, violence or sexual assault. These circumstances may manifest themselves as an individual being reluctant to discuss, or having difficulty discussing, their SOGIE with an officer based on a fear or general mistrust of authority figures, particularly where intolerance or punishment of individuals with diverse SOGIE are sanctioned by state officials in an individual's country of origin.

Officers need to be sensitive to the possibility that SOGIE issues may exist in any case they encounter when executing their IRPA authorities. Officers must follow all relevant guidelines and procedures pertaining to handling SOGIE cases during the A44 process, remain sensitive to

---

[4] Please note that terminology in this section may have further evolved following the publication date of this manual. Consult most recent GoC publications for most up to date terminology.

[5] Also includes individuals with, or who are perceived to have diverse sex characteristics and may also be referred to as SOGIESC. For example, see the Immigration and Refugee Board of Canada's Chairperson's Guidelines on Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics: https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx

gender-related considerations when interacting with the person and be careful to use gender-neutral or inclusive terms or terms that reflect the person's gender identification in documentation/notes and when completing Departmental and Agency forms.

Officers should consult the Internationally recognized sexual orientation or gender identity or expression (SOGIE) definitions on IRCC's Connexion for further information.

6.6.3 Victims of gender-based violence (GBV)

When considering enforcement under A44, officers need to be sensitive to the fact that a person they encounter may have been subjected to specific violence, trauma or abuse based solely on their **gender, perceived gender, gender identity or gender expression**, as well as **sexual orientation**. This is referred to as gender-based violence (GBV), which is a human rights violation.

It is important to note that GBV is not limited to physical violence and can also include emotional/psychological abuse, harassment, threats, sexual violence, coercive control, humiliation, financial abuse, discrimination or neglect. It is important to note that these may also occur online through "cyberviolence"[6].

Officers should be aware that certain individuals face a greater risk of experiencing GBV, including: women, girls, 2SLGBTQI+ people and people living with disabilities. Moreover, the risk of GBV may be increased with the intersection of any two or more of these characteristics. Other groups that may experience high levels of GBV may also include Black women and newcomer women to Canada[7].

Intimate partner violence (IPV), also referred to as domestic violence or spousal violence, is a widespread form of GBV that encompasses multiple forms of harm perpetrated by a current or former intimate partner or spouse. IPV can occur in many types of relationships, including between married or common-law spouses as well as within dating relationships, regardless of gender and sexual orientation and whether or not the partners co-habit.

For further information respecting IPV, see the Government of Canada's Fact sheet on Intimate partner violence.

Depending on their cultural background, victims of GBV may be reluctant to disclose their experiences in order to not "shame" their families or communities. Similarly, women who have been subjected to IPV/domestic violence or abuse may also be reluctant to provide information, especially against the alleged perpetrator. Officers should be alert to such cases and will ensure to the extent possible that specific accommodations are made during interviews as set out (e.g., have a female officer either conduct or be present during an interview, and arrange, if possible, for a female interpreter). See section 6.6.4 below for additional guidance on conducting interviews.

Victims and survivors of GBV may be encountered both at the port of entry or inland. In such cases, officers should:

---

[6] "Use of technologies to facilitate virtual or in-person harm including observing and listening to a person, tracking their location, to scare, intimidate or humiliate a person" (Government of Canada, Fact sheet: Intimate partner violence (Canada.ca).

[7] Government of Canada, What is gender-based violence? (Canada.ca)

- Consider the factors that led to the individual's breach of IRPA requirements or conditions, including the possibility that the person was placed in their situation as part of abuse or through coercion or threats;
- Be aware that perpetrators of GBV are known to use threats of denunciation to immigration authorities as a tool to control and oppress victims through fear of deportation and/or detention. For example, Immigration Enforcement Officers (IEOs) responding to a tip about a foreign national overstaying their status shall consider any such factors that may lead the officer to believe that the foreign national was placed in that situation by an abuser;
- Within the confines of an officer's limited discretion at A44(1), be sensitive to personal circumstances as well as the consequences of immigration enforcement;
- Where appropriate and within an officer's scope of discretion, consider other options where there are IRPA inadmissibility concerns. At the port of entry, this may include allowing the person to withdraw their application to enter Canada (i.e. Allowed to leave) or issuing a Temporary resident permit (TRP) to overcome an inadmissibility that may have resulted from GBV. In the inland and port of entry context, this may include a referral to IRCC for TRP consideration and/or to community-based service organizations experienced in providing services to GBV victims and survivors in accordance with existing policy and regional procedures or allowing the person to make arrangements to leave Canada if they plan to do so.

For further resources on GBV, please refer to the Government of Canada's Gender-Based Violence Knowledge Centre (Canada.ca).

6.6.4 Interviewing vulnerable persons

Officers must be alert to situations where a person's ability to answer questions and present information during A44 proceedings may be impacted by one or more factors listed in section 6.6.1 above. Officers may find that vulnerable persons may have issues affecting their memory, behaviour, or ability to recount relevant events including symptoms that have an impact on the consistency and coherence of their statements.

Officers should be cognizant that individuals react to violence, trauma and abuse in different ways and not all victims will exhibit identical or even similar signs and/or symptoms. While some individuals may show signs of distress, including anxiety, irritability, nervousness, agitation, anger and aggressiveness, others may be easily intimidated and have difficulty communicating.

In order to conduct A44 interviews in a way that avoids traumatizing vulnerable persons or re-victimizing persons who have experienced violence, trauma or abuse, officers should:

- Recognize that some vulnerable persons may display less obvious symptoms of a vulnerability, which may not become apparent until the person is interviewed/examined. Officers may need to rely on observational skills and sound judgement in identifying signs and symptoms of a vulnerability.
- Be aware that some vulnerable persons may require special accommodations during the interview. Remain sensitive to the fact that victims of severe trauma may have difficulties coping with the interview process because they are confined to a closed room with the interviewer.
- Create optimum conditions to minimize stress. Allow for frequent breaks, if necessary and to the extent possible.

- Be conscious of cultural and gender considerations which may affect communication such as the person and officer being the same gender, where possible.
- Recognize that victims of violence or abuse may fear people in authority and may be intimidated by the many questions that are being asked by officials.
- Recognize that victims of GBV or other forms of violence or abuse may become distressed at the prospect of being interviewed by an officer of the opposite sex.
- Where appropriate, speak to the person alone first in a confidential setting and ask if they are comfortable speaking in front of family members (particularly parents, children or relatives of a particular gender).
- Provide the person with a fair opportunity to tell the story.
- Be cognizant that there may only be one opportunity for an individual to reach out to authorities, and for authorities to refer a victim of violence or abuse to victim support services.
- Be courteous, respectful, sensitive and aware of own biases.
- Be aware that some questions may cause a victim to recall painful events.
- Treat the person with sensitivity and with empathy and with full respect of their human rights.
- Avoid an authoritarian approach.
- Avoid over-familiarity through eye contact or body language.
- Ask simple questions and use encouragement.
- Use active listening.
- Allow free speech and avoid interruption.
- Remember that if the vulnerable person is under 18 years of age or unable to appreciate the nature of the proceedings, procedural safeguards set out in section 6.2 will apply.

6.6.5 TRPs for victims or suspected victims of trafficking in persons (VTIP) or family violence

Officers should keep in mind that there are specific policy guidelines in place respecting suspected or known victims of trafficking in persons (VTIP) and victims of family violence. While only IRCC officials may issue TRPs to VTIPs or victims of family violence, CBSA officials should follow the guidelines set out in the IRCC Program delivery instructions for handling these cases. For example, cases in which a foreign national is identified by the CBSA as a VTIP or victim of family violence should be referred to the responsible IRCC local office on an urgent basis. There are also instructions pertaining to IRCC procedures for contacting CBSA with respect to individuals who are subject to a removal order that are applying for a VTIP or victim of family violence TRP.

When dealing with victims or suspected victims, officers must continue to apply existing policy guidance respecting VTIPs and victims of family violence. For example, officers will take a victim-centred and trauma-informed approach when a permanent resident or foreign national is identified as a possible VTIP and follow existing guidelines and procedures specific to identifying and interviewing suspected VTIPs, as well as identifying and conducting interviews for suspected human traffickers who are encountered at the port of entry or inland.

Officers should always be alert to any information that raises concerns that a minor child has been trafficked, smuggled or abducted. In such situations, officers should refer to the procedures set out in the following guidance:

- ENF 21 Recovering missing, abducted and exploited children
- Temporary resident permits (TRPs): Considerations specific to victims of trafficking in persons

7 Procedure: Making a decision to write an A44(1) report

7.1 Preparation and transmission of an A44(1) report

Under A44(1), an officer may prepare a report if that officer is of the opinion that a permanent resident or foreign national in Canada is inadmissible. Officers cannot assign the discretionary authority to another person, nor can another person fetter an officer's discretion by obliging an officer to do or not do something that is at the officer's discretion. However, once a report is prepared under A44(1), it must be transmitted to the MD.

Although an A44(1) report may result from an examination, an examination is not a necessary prerequisite for an officer to prepare and transmit a report to the MD. This is due to the fact that officers are only authorized to proceed with an examination under prescribed circumstances. For further information regarding the examination process, please refer to section 11.4, 'Procedure: Overview of the examination process' and ENF 4 Port of Entry Examinations.

The wording of A44(1) allows an officer to prepare a report in relation to a permanent resident or a foreign national "who is in Canada". In most cases, particularly in regards to foreign nationals, the inadmissibility will be directly linked to the person's physical presence in Canada (e.g., non-compliance with A29(2) for remaining in Canada beyond the period authorized). In general, an officer will only prepare an A44(1) report where the person is physically present in Canada, however this requirement must be considered in context. Where an officer receives credible evidence that a foreign national or permanent resident is no longer in Canada, the officer should not proceed to write a report under A44(1). However, given that permanent residents have a right of entry and may be out of Canada for a number of reasons (e.g., vacation, work, etc.), it may be reasonable for an officer to proceed to write an A44(1) report against a permanent resident without confirming that the permanent resident is physically present in Canada at the time of the writing of A44(1) report, as long as procedural fairness requirements have been met. This will also depend on the facts and circumstances of the case and may only be considered where there is no credible information to suggest that the person is no longer residing in Canada.

7.2 Procedure: Evidentiary requirements

To form the opinion that a person is inadmissible to Canada, an officer must have knowledge of the evidentiary rules and requirements for immigration matters. Knowledge of what may be required to substantiate an allegation of inadmissibility is an important consideration in all cases. Each allegation has specific requirements for evidence and officers are to be guided by the content of ENF 1 Inadmissibility; ENF 2 Evaluating Inadmissibility; and ENF 18 Human or international rights violations.

Before officers make a decision to write a report under A44(1), they must be satisfied that the applicable burden and standard of proof can be met and that sufficient evidence has been or may be gathered to ensure that each element of an inadmissibility allegation can be satisfied.

7.3 Burden of proof

The burden of proof, in the context of immigration legislation, refers to who is responsible for establishing admissibility under the IRPA.

Under A45(d), the burden of establishing admissibility depends on whether or not the person has been authorized to enter Canada.

In cases of foreign nationals who are seeking entry (primarily applicable to Port of Entry cases) or those who entered Canada illegally, the onus is on the individual to establish that they are not inadmissible. Where the person has been authorized to enter Canada, the burden to establish inadmissibility is on the Minister.

Table 3: Burden of proof

Persons authorized/not authorized to enter	Details	Burden of proof
Permanent residents and foreign nationals authorized to enter	A45(d) requires the Immigration Division to make a removal order against a permanent resident or a foreign national who has been authorized to enter Canada, if it is satisfied that they are inadmissible. Consequently, in cases involving persons who were granted entry into Canada, including permanent residents, the onus rests on the Minister to establish that the person is inadmissible.	Minister
Foreign nationals not authorized to enter	A45(d) requires the Immigration Division to make a removal order if it is not satisfied that a foreign national who has not been authorized to enter Canada is not inadmissible. A21(1) states that a foreign national becomes a permanent resident and A22(1) states that a foreign national becomes a temporary resident if an officer is satisfied that, inter alia, the foreign national is not inadmissible. This applies to persons seeking entry into Canada or those persons who have entered illegally. Consequently, the onus is on these persons to establish that they are not inadmissible.	Foreign national

7.4 Standard of Proof

The term “standard of proof” refers to the degree to which the decision-maker must be satisfied.

Immigration proceedings are civil in nature and therefore the general standard of proof is the one applicable to civil matters: balance of probabilities. However A33 provides that, unless otherwise provided, the standard of proof for allegations listed under sections A34 to A37, is a lower standard of proof: reasonable grounds to believe that the facts have occurred, are

occurring or may occur, applies.

"Balance of Probabilities" is a civil standard of proof used in administrative tribunals. It means that the evidence presented must show that the facts as alleged are more probable than not. The party having the burden of proof must demonstrate that the evidence presented outweighs any opposing evidence or arguments. It is a higher standard of proof than "reasonable grounds to believe", but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

"Reasonable grounds to believe" is a bona fide belief in a serious possibility that a fact has been established based on credible evidence. Reasonable grounds to believe is more than suspicion. Some objective basis for the belief has to exist. Put another way, the fact itself need not be proven; it is enough to show reasonable grounds for believing the allegation true. Information used to establish reasonable grounds should be specific, compelling, credible and be received from a reliable source.

The following table summarizes the standard of proof for sections A34 to A42:

Table 4: Standard of proof

Reasonable grounds to believe	Balance of probabilities
• Security (A34) • Violation of human or international rights (A35) • Sanctions (A35.1) • Criminality (A36) – except for A36(1)(c) for permanent residents • Transborder criminality [A36(2.1)] • Organized criminality (A37)	• Act committed outside Canada – for permanent residents only [A36(1)(c)] • Health grounds (A38) • Financial grounds (A39) • Misrepresentation (A40) • Cessation (A40.1) • Non-compliance with the Act or the Regulations (A41) • Inadmissible family member (A42)

8 Considerations before writing an A44(1) Report- Scope of officer discretion

8.1 Limited discretion of officer at A44(1)

The fact that an officer has the discretionary power to decide whether or not to write an A44(1) report does not mean that the officer can disregard the fact that someone is, or may be, inadmissible.

Rather, discretion under A44 means that officers and MDs have some flexibility in managing cases where the person is inadmissible, however the objectives of the IRPA may or will be

achieved without the need to seek a removal order or write a formal inadmissibility report under A44(1), for example:

- where an officer allows the voluntary withdrawal of an application to enter Canada (Allowed to leave) option at a port of entry (see section 9.4);
- where an officer decides to issue a Temporary Resident Permit (TRP) to a foreign national who is seeking entry to work in Canada and who was convicted of a non-violent offence many years ago, taking into account the relevant assessment risk factors (see section 9.7);
- where a person is already the subject of a removal order and an officer has determined that the objectives of the IRPA would not be served by the issuance of an additional removal order;
- where an IRCC officer restores status to a foreign national who has remained in Canada beyond the period authorized.

While the body of case law respecting the scope of an officer's discretion varies, the courts have affirmed that an officer's discretion under A44, is very limited.

The courts have also found that this scope of discretion varies depending on the inadmissibility grounds alleged, whether the person concerned is a permanent resident or a foreign national, and whether the MD or the Immigration Division has the authority to issue a removal order. In other words, the scope of discretion has been viewed as "variable and flexible".[8]

For example, in Canada (Minister of Public Safety and Emergency Preparedness) v. Cha, 2006 FCA 126, a case involving a foreign national inadmissible under paragraph 36(2)(a) of the IRPA, the Federal Court of Appeal (FCA) outlined that the particular circumstances of a foreign national, the nature of the offence, the conviction, and the sentence are beyond the reach of an officer when considering whether or not to write an A44(1) report for criminality or serious criminality against a foreign national.

More recent jurisprudence[9] confirms that officers making decisions under A44 have very limited discretion, particularly in matters concerning serious criminality and organized criminality, and that there is no obligation to consider factors related to humanitarian and compassionate (H&C) or 'personal circumstances'. These decisions also confirm that at this the 44 stage, officers and MDs are conducting a fact-finding mission into "readily and objectively ascertainable facts" and that this administrative screening function applies to both foreign nationals and permanent residents.

In all cases, officers must carefully consider the consequences of not writing an A44(1) report as a means of creating a formal record of an inadmissibility, given that this decision may have an impact on possible future dealings with the person. This will be particularly important in cases involving security (A34), violation of human or international rights(A35), sanctions (A35.1), serious criminality [A36(1)] and organized criminality (A37), regardless of the status of the individual. In such cases, it is important to have a formal record of that inadmissibility. This is best accomplished by preparing an A44(1) report.

---

[8] Sharma v. Canada (Public Safety and Emergency Preparedness), 2016 FCA 319.

[9] Obazughanmwen v. Canada (Public Safety and Emergency Preparedness), 2023 FCA 151; Sidhu v. Canada (Public Safety and Emergency Preparedness), 2023 FC 1681; Matharu v. Canada (Public Safety and Emergency Preparedness), 2024 FC 902

Note: In most cases where an officer has made a decision to manage a case of an inadmissible person without writing an A44(1) report (e.g., where an officer is exercising their discretion to issue a TRP to overcome inadmissibility or allow the withdrawal of an application to enter Canada), there will be a corresponding disposition in GCMS which contains the officer's reasons and rationale. However, where an officer's decision does not have a corresponding record in GCMS, officers should record their decision, rationale and any specific circumstances considered in their decision in GCMS notes.

8.2 Priority Cases: Inadmissibility under A34, A35, A35.1, A36(1) and A37 of the IRPA

It was affirmed by the FCA in Sharma v. Canada (Public Safety and Emergency Preparedness), 2016 FCA 319, that within the context of A44, officers and the MD must always be mindful of Parliament's intention in drafting the IRPA to make security of Canadians a top priority.

In *Sharma*, the FCA also concluded that the Court's rationale in Cha in support of a limited discretion under A44 would appear to apply equally to both foreign nationals and permanent residents.

Although the factors contained in these guidelines may be considered when writing an A44(1) report, an officer must always consider the various objectives of the IRPA, in particular A3(1)(h) and (i). As suggested by Federal Court of Canada jurisprudence, in cases of inadmissibility under A34, A35, A36(1) and A37, the scope of discretion enjoyed by officers making a decision regarding whether or not to write an A44(1) report will be very narrow and it generally is reasonably open to an officer or an MD to prioritize public safety and security.

9 A44(1) reports concerning foreign nationals

9.1 Considerations before writing an A44(1) report

Keeping in mind the scope of discretion related to considerations for writing an A44(1) report outlined in section 8 of these guidelines, the following non-exhaustive factors may be considered when exercising the limited discretion under A44(1) with respect to foreign nationals (including officer options at the port of entry such as allowing the person to withdraw their application to enter Canada under R42):

- Has the person been granted protected person status in Canada? What is the nature or category of the inadmissibility?
- Is the person already the subject of a removal order?
- Is the person already the subject of a separate inadmissibility report incorporating allegations that will likely result in a removal order?
- Is the officer satisfied that the person is, or soon will be, leaving Canada on their own volition? And in such a case, is the imposition of a future requirement to obtain an authorization to return warranted?
- Is there a record of the person having previously contravened immigration legislation?
- In the case of non-compliance, was it unintentional or excusable for a valid reason?
- Has the person now been fully counselled on the topic of their inadmissibility? And is the officer satisfied that the person now understands what is required in future to overcome their inadmissibility?

- Is there any reason to believe that, after having previously been counselled on the topic of their inadmissibility, the person simply chose to ignore that counselling?
- Has the person been cooperative?
- Is there any evidence of misrepresentation?
- Has the person applied for restoration of status, and does the person appear to be eligible?
- Has a temporary resident permit been authorized?
- How long has the person been in Canada?
- In minor criminality cases, is a decision on rehabilitation imminent and likely to be favourable?

9.2 Special considerations for protected persons

Under the IRPA, protected persons are provided with certain protections, including the right of *non-refoulement* under A115(1) and, subject to A64, the right under A63(3) to appeal to the Immigration Appeal Division (IAD) against a decision to make a removal order against them. This was recognized by Justice Décary in Cha, who noted that the Act and the Regulations treat permanent residents differently than Convention Refugees who are, in turn, treated differently than other foreign nationals.

It should be noted, however that the Federal Court jurisprudence would support that protected persons are not entitled to a higher degree of procedural fairness or participatory rights with respect to the operation of A44(1) than other foreign nationals or permanent residents [see Awed v. Canada (Citizenship and Immigration) 2006 FC 469]. Officers should also keep in mind that the Federal Court has made findings to support the principle that officials carrying out A44(1) and (2) assessments are not obliged to speculate about how and when future deportation might take place [Faci v. Canada (Public Safety and Emergency Preparedness), 2011 FC 693].

In cases of protected persons, officers may also consider as an additional factor in their recommendation to the MD, whether the facts of the case would support a referral for a Ministerial opinion ('Danger Opinion') under A115(2). For further information, see section 14.5, 'Overview: Minister's opinions/interventions'.

9.3 Dual intent

A22(2) states that the intention of a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that the person will leave Canada by the end of the period authorized for their stay.

Dual intent is present when a foreign national who has applied for permanent residence in Canada (or is entitled to apply for permanent residence within Canada) also seeks to enter Canada for a temporary period as a visitor, worker or student. If an officer has concerns/doubts about the foreign national's bona fides, the foreign national must be made aware of these concerns and given an opportunity to respond to them.

Some examples of dual intent could include:

- a foreign national frequently visiting a Canadian spouse who has complied with previous conditions of entry and is otherwise not inadmissible, even if an application

for permanent residence has not yet been submitted;
- a foreign national who has applied or intends to apply for permanent residence, but is visiting Canada to assess employment opportunities, setting up household, etc.

The Federal Court in Rebmann v. Canada (Solicitor General), 2005 FC 301 held that an officer is required to take into account the foreign national's dual intent in entering/remaining in Canada as a temporary resident and provide analysis of the relevant evidence with regards to the foreign national's intention to establish permanent residence in Canada to show that the foreign national will not leave Canada by the end of the period authorized for their stay as a temporary resident.

An officer should distinguish between a foreign national whose intentions are bona fide and a foreign national who has no intention of leaving Canada at the end of their authorized stay if the application for permanent residence is refused.

However, the possibility that a foreign national may, at some point in the future, be approved for permanent residence does not absolve the individual from meeting the requirements of a temporary resident, specifically, to leave Canada at the end of the period authorized for their stay, in accordance with R179.

In assessing the foreign national's intentions, officers should weigh all the factors relevant to the case, including the length of time the foreign national has spent in Canada, the means of support; obligations and ties in the home country, previous compliance with requirements of the IRPA and any compassionate circumstances of the person concerned. These factors should be considered before proceeding with administrative enforcement action [i.e., writing an A44(1) report].

Officers are reminded to use their own judgment and the flexibility afforded to them by subsection A22(2) when making decisions on cases where the foreign national also has the intention to become a permanent resident.

In all cases, officers must ensure that GCMS notes clearly demonstrate the officer's reasoning in their decision.

For further guidance on assessing dual intent considerations, see IRCC Program delivery instructions on Dual intent. See also: ENF 4 Port of entry examinations.

9.4 Allowing withdrawal of application to enter Canada/ Allowed to leave (Port of entry cases)

If a Border Services Officer examines a foreign national seeking entry and the person is alleged to be inadmissible, the officer may allow the person to voluntarily withdraw their application to enter the country and leave Canada.

Under R42, the officer who examines a foreign national who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada shall allow the foreign national to withdraw their application, unless R42(2) applies.

R42(2) provides that a foreign national shall not be allowed to withdraw their application to enter Canada where a report under A44(1) is being prepared or has been prepared, unless the

Minister does not make a removal order or refer the report to the ID for an admissibility hearing. **In other words, once an officer writes an A44(1) report, the allowed to leave option may only be exercised at the MD level.**

Before writing an inadmissibility report under A44(1), officers should determine whether the objectives of the IRPA are better served by allowing the person to voluntarily withdraw their application to enter Canada pursuant to R42. In such circumstances, the same factors as outlined above in section 9.1, 'Considerations before writing an A44(1) report', are applicable.

If a person is allowed to leave Canada voluntarily, officers should counsel the person as follows:

- inform the person why they are believed to be inadmissible;
- inform the person that if they leave Canada voluntarily, they will be free to seek entry to Canada once the factor causing inadmissibility has been overcome; and
- inform the person of the possible consequences of an A44(1) report, including the possibility of an admissibility hearing and/or a removal order being made against them.

If a person is allowed to leave Canada voluntarily, the officer or MD must give the person an Allowed to Leave Canada form (IMM 1282B).

For further information on this procedure, see ENF 4 Port of entry examinations.

9.5 Procedure: Directing persons back to the United States under R41

R41 authorizes an officer to direct a foreign national seeking to enter Canada from the United States (U.S.). to return to the U.S. if:

- no officer is able to complete an examination (R41(a));
- the Minister is not available to consider, under A44(2), a report made with respect to the person (R41(b));
- an admissibility hearing cannot be held by the ID (R41(c); or
- the foreign national is prohibited from entering Canada by an order or regulation under the *Emergencies Act* or the *Quarantine Act*

In such cases, the person concerned may be given a Direction to Return to the United States form (BSF505) in appropriate circumstances.

Officers should be aware that **refugee claimants** may only be directed back to the U.S. under **exceptional circumstances**. For further guidance on how and when to use the direct back policy for refugee claimants at land POE under exceptional circumstances, officers must consult ENF 4 Port of entry examinations.

A person who has been directed to return to the U.S. pending an admissibility hearing by the ID and who seeks to come into Canada for reasons other than to appear at that hearing is considered to be seeking entry. If such a person remains inadmissible for the same reason(s), and if a member of the ID is not reasonably available, the person may be directed again to return to the U.S. to wait until a member of the ID is available. In these circumstances it is not necessary to write a new A44(1) report.

Note: Persons directed back to the U.S. who choose not to return to Canada will not be subject to enforcement action, as they have no desire to continue with their application to enter Canada.

Such persons will simply be deemed to have withdrawn their application. Officers should therefore not counsel the person that failure to return in these instances will result in enforcement action while the person is not in Canada.

In exceptional cases, it may be appropriate to pursue enforcement action for persons seeking entry who have failed to comply with R44(3) following a Direction under R41. Officers should consider all information and individual circumstances of each case before they elect to proceed with writing an A44(1) report for non-compliance, including the circumstances surrounding the failure to comply and the intent of the person concerned.

For further information, see ENF 4 Port of entry examinations.

9.6 Restoration of status

R182 describes a mechanism by which a visitor, worker or student who has lost temporary resident status for having failed to comply with any of the conditions imposed under R185(a), R185(b)(i) to (iii) or R185(c), may nevertheless submit an application to IRCC within the 90-day period of the loss of their status and, if eligible, have that status restored.

It is important to note that under the D & D instruments, only IRCC officials have the authority to consider an application for restoration of status.

The application submitted to IRCC shall be approved if the processing officer is satisfied that the foreign national continues to meet the initial requirements of their stay, and has not failed to comply with any other conditions imposed and is not the subject of a declaration made under A22.1. It is to be noted that an officer shall not restore the status of a student if the student is not in compliance with a condition set out in R220.1(1).

Note: If a temporary resident has applied for an extension of their authorized status **before** the status expires, they are considered to have **maintained status** (formerly referred to as "implied status") until a decision is made on their application. Maintained status works by operation of law [R183(5)], and the temporary resident cannot be reported for non-compliance until a decision is made on their application for an extension, unless other IRPA inadmissibilities are present. For further details regarding procedures for persons with maintained status, see IRCC Program delivery instructions on Temporary residents: Maintained status during processing (previously called implied status).

The following guidelines must be taken into account by Inland Enforcement Officers (IEOs) prior to taking enforcement action in such cases:

Scenario 1: Foreign national is out of status, but has applied for restoration of status within the 90-day period and is otherwise admissible– decision pending

Foreign nationals who have submitted an application to have their status restored within the 90-day period, and who are not inadmissible under any other section of the IRPA or the IRPR, should not be subject to an A44(1) report. In such circumstances, officers must allow for a decision to be rendered by IRCC before taking enforcement action, an approach which is consistent with the Federal Court's findings in Sui v. Canada (Minister of Public Safety and Emergency Preparedness), 2006 FC 1314.

Scenario 2: Foreign national is out of status and has not applied for restoration of status but still within 90-day eligibility period

While there is nothing in the IRPA or the Regulations that prohibits an officer from writing an inadmissibility report during the 90-day restoration period where no application for restoration has yet been made, officers should consider whether or not to pursue enforcement action in such cases. After taking appropriate steps to ensure that a restoration application has not been made, should an officer decide to write an A44(1) report and refer the report to the MD for review, the officer should articulate their reasoning for pursuing enforcement action in the decision, if such action is pursued prior to the expiration of the 90-day eligibility period.
In order to adhere to the principles of procedural fairness and natural justice, the officer must consider each case on its own merits and may consider the following:

- Does the foreign national state that they wish to remain in Canada and for what purpose?
- Has the foreign national already made arrangements to depart Canada in the immediate future?
- Is the foreign national evasive about their departure plans or the intent to remain in Canada?
- Has the foreign national otherwise been in compliance with the terms and conditions of their temporary resident status?
- If the foreign national does not apply for a restoration of status, is the officer satisfied that the foreign national will appear for future immigration interviews and/or depart Canada voluntarily?
- If the officer is satisfied that the foreign national will seek to remedy lapsed status within the 90-day period, then the officer may wish to allow the 90-day application period to lapse before reviewing the case again in consideration of enforcement action.

Scenario 3: Foreign national is out of status beyond the 90-day restoration of status eligibility period, or is otherwise inadmissible under the IRPA or Regulations

If an officer encounters a foreign national who has overstayed their authorized period of stay beyond the 90-day eligibility period for applying for restoration of status, or where the foreign national is otherwise inadmissible under the IRPA or Regulations, the officer may pursue appropriate enforcement action, which includes writing an A44(1) report and referring it to the MD for a review under A44(2).

9.7 Temporary Resident Permits (TRPs) - Port of entry and IRCC only

In some cases, a designated officer may exercise their authority under A24(1) to issue a TRP to allow a foreign national who is inadmissible or does not meet the requirements of the IRPA to enter or remain in Canada where it is justified in the circumstances. TRPs are always issued at the discretion of the delegated authority and may be cancelled at any time.

The authority to issue a TRP is determined by the IRCC Designation and Delegation (D & D) Instrument and depends on the nature of the allegation.

Note: For CBSA, TRPs may only be issued by designated officials at the **port of entry**.

There are instances where the person who has the delegated authority to review the A44 report (the MD) does not have the designated authority to issue a TRP. In such cases, the official with authority to review the report (i.e., the MD) may make a recommendation to the person with the designated authority to issue a TRP.

TRPs should only be issued in accordance with the IRPA and the IRPR, and must follow the IRCC Program delivery instructions on Temporary resident permits. In all cases, officers and MDs must leave a record, which includes detailed notes entries in GCMS, of their decision or recommendation. For further information, see ENF 4 Port of entry examinations, section 15.5, 'GCMS remarks'.

TRPs should only be issued after careful consideration of **all assessment factors** as the document carries privileges greater than those accorded to other visitors, students and workers with temporary resident status. Before issuing a TRP, an officer must consult the departmental and agency guidelines on risk assessment factors and procedures for issuing TRPs. This applies to both initial and subsequent TRPs.

Where an officer does not have the authority to issue a TRP but has reviewed the case and is recommending the issuance of a TRP, the officer must prepare a written a case summary that includes a recommendation for a final decision. The officer will refer the case file to the decision-maker with the designated authority to issue a TRP for a final determination. If the decision is made to issue a TRP, the decision-maker will determine the period of validity of the TRP.

For further instructions and procedures for TRPs, officers must refer to the IRCC Program delivery instructions on Temporary resident permits and ENF 4 Port of entry examinations.

Additional considerations for TRP issuance:

- A person is **not eligible for a TRP if less than 12 months have passed since their claim for refugee protection was last rejected** [or determined to be withdrawn or abandoned as described under A24(4)].
  Exception: The one-year ban on accessing a TRP under A24(4) does not bar an IRCC officer, on their own initiative, from considering a TRP for a victim of human trafficking.

- There are specific IRCC policy guidelines respecting certain **vulnerable persons including suspected or known victims of human trafficking or victims of family violence.** Only IRCC officials may issue TRPs to victims of human trafficking or victims of family violence, however CBSA officials should follow the procedures set out in the Program delivery instructions above for handling these cases.

- If a **student, worker or visitor with valid temporary resident status is reported under A44(1)** but a decision is made not to hold an admissibility hearing or issue a removal order, that person remains a temporary resident, and a TRP is not required

9.8 A44(1) reports for inadmissible family members

Officers should be aware that they may need to assemble information about the family members of a person who is the subject of an A44(1) report and decide whether family members should

also be reported and/or made subject to a removal order. Under A42, accompanying and non-accompanying family members may be inadmissible to Canada under prescribed circumstances. This provision may only apply to family members who are foreign nationals, other than protected persons.

Officers should always consider reporting family members in order to avoid separating families or having other family members abandoned when one member must be removed from Canada.

R1(3) provides that:

1.(3) For the purposes of the Act, other than section 12 and paragraph 38(2)(d), and for the purposes of these Regulations, other than paragraph 7.1 (3)(a) and sections 159.1 and 159.5, "family member" in respect of a person means:

(a) the spouse or common-law partner of the person;
(b) a dependent child of the person or of the person's spouse or common-law partner; and
(c) a dependent child of a dependent child referred to in paragraph (b).

Officers should note that under A42, a foreign national who is a temporary resident, applying to enter or remain as a temporary resident and has a family member who is inadmissible under A34, A35, A35.1 or A37, is inadmissible to Canada whether they are accompanying them or not. It is also important to note that pursuant to the exceptions set out under A42(2), foreign nationals seeking temporary resident status who have an accompanying or non-accompanying family member who is inadmissible under any of the other provisions (A36, A38, A39, A40 or A41) of the IRPA cannot be reported under A42.

Where an officer writes an A44(1) report against a family member for inadmissibility under A42, the MD has jurisdiction under R228 to issue the applicable removal order. Officers should note, however, that for the purposes of A52(1), the making of a removal order against a foreign national on the basis of inadmissibility under A42 is a prescribed circumstance that does not oblige the foreign national to obtain the authorization of an officer in order to return to Canada.

R227 sets out the prescribed circumstances under which an A44(1) report against a foreign national is also considered a report against the foreign national's family members in Canada.

R227(2) provides that, in the case of a report and a removal order made by the ID against a foreign national who has family members in Canada, the removal order issued by the ID against a foreign is also a removal order against the family members in Canada without the need for a separate inadmissibility report provided that an officer informed the family member(s):

- of the report;
- that they are the subject of an admissibility hearing and, consequently, have the right to make submissions and be represented, at their own expense, at the admissibility hearing; and
- that they are subject to a decision of the ID that they are inadmissible under A42 on grounds of being an inadmissible family member.

While this procedural avenue may be available under the IRPR, it is generally recommended that where an officer decides to pursue enforcement action against inadmissible family members of a foreign national under A42, the officer should proceed by way of writing a

separate A44(1) report for each family member after the removal order has been made against the foreign national.

Officers should always be alert to the possibility that the family member of a foreign national may be inadmissible in their own right and be mindful of situations where the evidence against a foreign national also independently supports an A44(1) report against their family member that is unrelated to the A42 inadmissibility.

9.9 Impact of Ministerial public policies

Before writing an A44(1) report, officers should be aware of any public policies approved by the responsible Minister that are currently in force, as well as any operational guidance related to impacts of the public policy on procedures or considerations for decisions made under the IRPA. In general, these public policies grant temporary remedies or exemptions for certain IRPA requirements for certain categories of persons who meet specified criteria set out in the policy. They are generally in place for a specific and temporary period of time, however, some public policies may remain in place for an extended period. Officers should ensure that they follow any new guidance or instructions related to new public policies.

Officers should be aware that, unless a public policy specifies that a person is excluded from certain requirements under the IRPA or the IRPR, all other legislative obligations and inadmissibility provisions continue to apply.

10 A44(1) reports concerning permanent residents of Canada

While permanent residents are given an opportunity to make submissions as part of procedural fairness during the A44 process, they cannot be **compelled** to attend an interview, answer questions or provide submissions. As noted in section 11.7, permanent residents are only subject to an obligation to answer questions when subject to examination at a port of entry, and only insofar as it relates to establishing that they hold permanent resident status.

The submissions and evidence provided on behalf of a permanent resident should be reviewed on a case-by-case basis and an officer must clearly articulate which factors were considered.

Officers must ensure that all relevant factors have been addressed in their written recommendation to the MD and may best achieve this by preparing a narrative report under A44(1), which is to accompany the A44(1) report when it is transmitted to the MD. Officers must also ensure that they forward to the MD all submissions and documents filed by the person concerned as well as any other evidence relied on in the officer's recommendation.

In Hernandez v. Canada (Minister of Public Safety and Emergency Preparedness), 2007 FC 725, the Federal Court held that while a narrative report is not required when referring the A44(1) report to the MD, where the officer has prepared such a report, all accompanying notes or appendices must be provided to the MD in full. The court also held that once such material is created and delivered to the Minister, it must be provided to the person concerned prior to the admissibility hearing – this is particularly so when a specific request has been made.

See Appendix E: Sample A44(1) Narrative report.

Officers should also provide reasons for giving more weight to certain documents over others where there is conflicting or inconsistent information before them. For example, where there are conflicting versions of events pertaining to a criminal offence, an explanation as to why one version is being relied on over the other should be provided in the officer's recommendation.

10.1 A44(1) reports for criminality cases

In Medovarski v. Canada (Minister of Citizenship and Immigration); Esteban v. Canada (Minister of Citizenship and Immigration), 2005 SCC 51, the SCC stated that the objectives in the IRPA reflect an intent to prioritize security and that this objective is given effect by removing persons with criminal records from Canada. The SCC noted that in drafting the IRPA, Parliament demonstrated a strong desire to treat criminals less leniently than under the former Immigration Act. This was noted in Sharma, where the FCA affirmed that officers and MDs, when dealing with matters under A44(1) and A44(2), must always be mindful of the various objectives of the IRPA, in particular A3(1)(h) and (i). The FCA also concluded that the Court's rationale in Cha in support of a limited discretion under A44 would appear to apply equally to both foreign nationals and permanent residents.

It is strongly urged that, whenever possible, officers who prepare the A44(1) report in serious criminality cases obtain detailed documentation to support the assessment. Hearings Officers will also find this documentation essential when presenting the case before the ID or when defending a removal order that is challenged at the IAD.

Three principal factors indicate the seriousness of an offence:

- the circumstances of the particular incident under consideration;
- the sentence imposed; and
- the maximum sentence that could have been imposed.

The fact that a conviction falls within A36(1) is itself an indication of its seriousness for immigration purposes. It is also important for officers to be aware that sentences imposed by the courts may have been subject to plea bargaining. The Crown may agree to a reduced sentence if the person pleads guilty. The circumstances of the crime are not viewed less seriously, but saving the court the time and expense of a full trial is taken into consideration in determining the sentence.

The best documentation is a transcript of the trial judge's remarks on conviction or sentencing, commonly known as the Judge's Reasons for Sentence. Additionally, reports from probation officials, police agencies, correctional facilities, etc. provide valuable information regarding the circumstances of the offence and sometimes the potential for rehabilitation.

The following may be considered when assessing the seriousness of an offence:

I. Circumstances of the offence:

- Did the crime involve violence?
- Did the crime include the use of a firearm?
- Was it a crime against a person (specifically, was it a crime against a child or children, mentally or physically challenged persons, or senior citizens), a racially motivated crime, a crime of gender-based violence, a hate crime or a crime involving trafficking in large

quantities of drugs or in hard drugs (for example, heroin)?
- How serious were the consequences for the victim?

II. Criminal history:

- Is the permanent resident a first time offender?
- Is there a pattern of committing offences (recidivist), and, if so, are the offences committed becoming more serious?
- Was the permanent resident influenced by others in the commission of the crime?

III. Length of sentence:

- What type of sentence was imposed on the permanent resident?
- Was jail imposed?
- Has probation or parole been denied?

10.2 Loss of appeal right cases

During the assessment under A44(1) for permanent residents and protected persons, officers should gather all information pertaining to whether or not the person will have a right of appeal to the Immigration Appeal Division (IAD).

For inadmissibility under A36(1)(a) for permanent residents, it is important for officers to obtain the most accurate evidence of the sentence imposed to determine whether the person retains a right of appeal. Under A64, a loss of appeal rights for serious criminality under A36(1)(a) must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months. Where it is not clear from the evidence whether the sentence meets the six month threshold under A64(2), before making any assessment under A44(1), the officer should determine how the judge calculated the total sentence imposed as reflected in the court documents, taking into account the imposition of further credits for time served. Regardless of what assessment is made by the officer, and especially in cases where the right of appeal is in doubt, officers should clearly articulate that the determination as to whether the person concerned retains a right of appeal ultimately rests with the IAD.

10.3 Whether to consider personal circumstances for permanent residents and protected persons in recommendation to MD to accompany A44(1) report

During the course of A44(1) proceedings, an officer may receive evidence or submissions relating to a permanent resident or protected person's personal circumstances and why a removal order should not be sought.

As confirmed by the courts[10], officers are not obligated to consider personal circumstances during the A44(1) process. However, the courts have also affirmed that officers retain the discretion to consider these circumstances, and if they exercise their discretion to do so, it has to be reasonable. The discretion is tempered by their limited role at A44(1).[11] The guidance in this section is intended to assist officers determine when and how to exercise such discretion.

---

[10] Obazughanmwen v. Canada (Public Safety and Emergency Preparedness), 2023 FCA 151; Sidhu v. Canada (Public Safety and Emergency Preparedness), 2023 FC 1681; Matharu v. Canada (Public Safety and Emergency Preparedness), 2024 FC 902

[11] Dass v. Canada (Public Safety and Emergency Preparedness), 2024 FC 624

Officers must always keep in mind the principles set out in sections 8.2 and 10.1 above when rendering decisions under A44(1), including Parliament's intention in drafting the IRPA to make security of Canadians a top priority.

In consideration of the various objectives of the IRPA and the limited discretion of officers at A44 as confirmed by the courts, the CBSA's policy is that officers must consider the factors below when deciding whether or not to exercise their limited discretion to consider evidence or submissions filed by the person concerned regarding personal circumstances.

Generally speaking, the following factors would weigh **against** consideration of personal circumstances in an officer's recommendation to the MD:

- the inadmissibility falls under section A34, A35, A35.1 or A37;

- A36(1) serious criminality cases in the following circumstances:
  - the permanent resident or protected person was previously issued a warning letter by CBSA or had a previous removal order stayed or quashed by the IAD on humanitarian and compassionate grounds;
  - the reportable offence: involved violence that resulted in bodily or psychological harm to another person, the use of a firearm or is a sexual offence; was committed against a vulnerable person (e.g. minor child or intellectually or physically challenged persons, or senior citizen), was a racially motivated crime, a crime of gender-based violence, including domestic violence, a hate crime or a crime involving trafficking or smuggling in large quantities of a controlled substance or weapons;
  - the criminal record of the permanent resident or protected person demonstrates a pattern of escalating seriousness

If the decision is **not** to consider personal circumstances, the officer at 44(1) should state this in their recommendation to the MD. For example, the officer may state in their decision: "I am not exercising my discretion to consider evidence and/or submissions filed on behalf of (*name of person concerned*) pertaining to their personal circumstances given the seriousness of the reportable offence".

If an officer exercises discretion to consider personal circumstances

While the courts have affirmed that an officer is not required to consider personal circumstances, if an officer does exercise their discretion to consider such factors, they must ensure that the factors considered are weighed in a fair manner and render a decision that is "justified, intelligible and transparent".[12] Any assessment of a person's personal circumstances must be **reasonable** in the circumstances of the case. In addition, the courts have held that in cases involving allegations of criminality or serious criminality, where such factors are rejected, an explanation should be provided, even if only very brief in nature.[13]

---

[12] Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 SCR 653 [Vavilov] wherein the SCC affirmed at para. 85 that a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker".

[13] McAlpin v. Canada (Public Safety and Emergency Preparedness), 2018 FC 422

If an officer decides to consider the personal circumstances of the permanent resident (or protected person), the CBSA's policy is that they must balance these with the objectives of the IRPA to protect public health and safety, and maintain the security of Canadian society by denying access to Canadian territory to persons who are criminals or security risks.

If an officer does exercise their discretion to consider personal circumstances in their recommendation to the MD, considerations may include, but are not limited to the following:

- Age at time of landing—has the person been a permanent resident of Canada since childhood?
- Was the permanent resident an adult at the time of admission to Canada?
- Was the person granted protected person status in Canada?
- Length of residence—how long has the person resided in Canada after the date of admission?
- Location of family support and responsibilities—are family members in Canada emotionally or financially dependent on the permanent resident? Are all extended family members in Canada?
- Degree of establishment—is the permanent resident financially self-supporting? Are they employed? Do they have a marketable trade or skill? Has the permanent resident made efforts to establish themselves in Canada through language training or skills upgrading? Is there any evidence of community involvement? Has the permanent resident received social assistance (frequency/duration)?
- Criminality—has the permanent resident been convicted of any prior criminal offence? Based on reliable information, is the permanent resident involved in criminal or organized crime activities? What is the nature and frequency of the person's interactions with the law? (for further details please refer to section 10.1 'A44(1) reports for criminality cases').
- What is the potential for rehabilitation? How much time has passed since the last conviction? Has the permanent resident already been released? For how long? Has the permanent resident accepted culpability, expressed remorse, enrolled in or completed educational, skills upgrading or rehabilitation programs (for example, Alcoholics Anonymous, Narconon/narcotics rehabilitation programs, anger management programs, life skills)? Are family members willing and able to support/assist?
- History of non-compliance and current attitude—has the permanent resident been cooperative and forthcoming with information? Has a warning letter been previously issued? Does the permanent resident accept responsibility for their actions? Are they remorseful?
- Best interests of any children directly affected by the decision.
- Right of appeal—does the person have a right of appeal to the Immigration Appeal Division if a removal order is issued?

None of these factors will necessarily outweigh other factors of the case. Moreover, in Faci v. Canada (Public Safety and Emergency Preparedness), 2011 FC 693 the Federal Court made findings to support the principle that officials carrying out A44(1) and (2) assessments are not obliged to speculate about how and when future deportation might take place.

Overall, any consideration of personal circumstances, which is **not required** but if done, must be reasonable, and must be weighed against the objectives of the IRPA to protect public health

and safety, and maintain the security of Canadian society, denying access to Canadian territory to persons who are criminals or security risks.

Note: By inviting a permanent resident to provide information or make submissions regarding their personal circumstances at A44(1), this creates an expectation that the officer will engage with this information in the A44(1) assessment and address it in the decision.

Where the officer at A44(1) has exercised their discretion to consider personal circumstances in their recommendation, the MD must consider this information and explain in their decision whether or not they concur with the officer's recommendation.

10.4 Residency obligation cases under A28(2) - Prescribed considerations

If, following an examination of a permanent resident, an officer concludes that a permanent resident has failed to comply with the residency obligation under A28, the officer may prepare a report for inadmissibility under A41(b) against a permanent resident, taking into account prescribed considerations set in the IRPA. A28(2)(c) specifically requires officers and the MD to take into account humanitarian and compassionate considerations, including the best interests of a child directly affected by the determination, when assessing whether such considerations overcome any breach of the residency obligation prior to the determination.

Officers must articulate consideration of these prescribed factors in the decision to write a report under A44(1) and/or their recommendation to the MD.

Note: Officers should be aware that there are procedures in place for permanent residents who wish to renounce their permanent resident status pursuant to A46(1)(e). In certain cases, it may be appropriate for a designated officer (IRCC or port of entry CBSA) to process a renunciation application under R72.6 in place of an A44(1) report. For further guidance, officers should consult with the IRCC Program delivery instructions on Renouncing permanent residence.

For further information, see ENF 23 Loss of permanent resident status.

11 Procedure: Gathering evidence for the A44(1) report

11.1 Evidentiary requirements

Officers should be mindful that any piece of evidence gathered may be used at an admissibility hearing. All evidence gathered should therefore be of a quality sufficient to satisfy the MD, or the ID member, of the person's inadmissibility.

Officers must take steps in all cases to provide adequate documentation to substantiate the inadmissibility allegation(s) in a report and evidence must be on file to support all elements of the inadmissibility. Files should not be forwarded to the MD or to the Hearings Officer (where jurisdiction lies with the ID) unless all evidence substantiating the allegation is on file, except in rare circumstances. In such cases, officers will record in the case notes the attempts that were made to obtain the evidence, so that the MD or the Hearings Officer, if applicable, may follow up, where it is agreed that this is appropriate. This is especially important in cases where detention is also being pursued.

For further information on obtaining evidence and determining equivalency, see ENF 1 Inadmissibility and ENF 2 Evaluating Inadmissibility

11.2 Evidentiary requirement: Proof of status in Canada

Under the IRPA, Canadian citizens and persons registered as Indians under the *Indian Act* have an unqualified right to enter and remain in Canada and are not subject to the inadmissibility provisions of the IRPA. Therefore, before writing an A44(1) report, an officer must have evidence to confirm that the person does not hold such status in Canada. In cases of permanent residents, officers must confirm through the appropriate queries that the person has not obtained Canadian citizenship and ensure that due diligence has been exercised before proceeding with further enforcement action.

For permanent residents, the officer must also obtain documentary evidence to establish that the person holds such status in Canada. For further information, see ENF 1 Inadmissibility and ENF 2 Evaluating Inadmissibility

Note: Due to the possibility of duplicate identities in GCMS, officers should conduct full name queries in the GCMS Integrated Search view to ensure accurate information is obtained.

11.3 Persons claiming to be Canadian citizens or registered Indians under the *Indian Act*

Under the IRPA, Canadian citizens and persons registered as Indians under the *Indian Act* have an unqualified right to enter and remain in Canada and are not subject to the inadmissibility provisions of IRPA. Therefore, before writing an A44(1) report, an officer should have evidence to confirm that the person does not hold such status.

In cases of permanent residents, officers must confirm through the appropriate queries that the person has not obtained Canadian citizenship and ensure that due diligence has been exercised before proceeding with further enforcement action.

Should an officer detect the possibility of Canadian citizenship or registered Indian status, the officer shall investigate or cause an investigation of the matter to be initiated before taking any further steps to write a report or refer the case to an MD.

In questioning persons in this regard, officers should be fully cognizant of the *Citizenship Act* and/or make contact with a citizenship officer who can provide assistance and guidance. Should a person claiming to be a Canadian citizen make a refugee claim to an officer, the officer must ascertain whether that person is indeed a Canadian citizen. If such is the case, the officer should advise the person that Canadian citizens may not make a refugee claim, as they already enjoy the protection of Canadian citizenship and the right to enter and remain in Canada.

11.4 Procedure: Overview of the examination process

The procedural requirements and legal obligations related to gathering information from the person for the purpose of writing an A44(1) report will depend on whether the person is still subject to examination.

Pursuant to A15(1), individuals who make applications under the IRPA are subject to an

examination for various reasons, including to determine whether that person has a right to enter Canada or may become authorized to enter or remain in Canada pursuant to A18(1).

R28 provides that, for the purposes of A15(1), a person makes an application to an officer by:

- submitting an application in writing;
- seeking to enter Canada;
- seeking to transit through Canada as provided in R35; or
- making a claim for refugee protection.

Where the person makes an application, there is a legal obligation under A16(1) to answer truthfully all questions put to them by an officer for the purpose of the examination, and produce all documents or other evidence reasonably required.

Moreover, pursuant to A16(1.1), a person who makes an application must, on request of an officer, appear in person for an examination. The power to compel someone to submit to an examination under 16(1.1) may be used overseas, inland and at ports of entry.

- For foreign nationals, the requirement to produce evidence may extend to the provision of photographic and fingerprint evidence [A16(2)].
- Pursuant to A16(2.1), a foreign national who makes an application must, on request of an officer, appear for an interview for the purpose of an investigation conducted by the Canadian Security Intelligence Service (CSIS) and must answer truthfully all questions put to them during the interview. Officers should note, however, that the power to compel for a CSIS interview under A16(2.1) can only be used for inland and port of entry applications.

For further information, see ENF 4 Port of entry examinations (section 5, 'Examinations')

11.5 End of examination

The IRPR provide that an examination begins "when a person makes an application to the officer." Persons seeking to enter Canada are considered to have made an application pursuant to R28(b) as they are "seeking to enter Canada".

R37 specifies the point at which the examination of a person who seeks to enter Canada, or makes an application to transit through Canada, ends. In general terms, examinations will end when an officer makes a decision on the application before them or, in cases referred to the MD, when a decision has been made.

At a port of entry, with the exception of refugee claimants, persons seeking to enter or transit through Canada remain subject to an examination until:

> (a) a determination is made that the person has a right to enter Canada, or is authorized to enter Canada as a temporary resident or permanent resident, the person is authorized to leave the port of entry at which the examination takes place and the person leaves the port of entry;
> (b) if the person is an in-transit passenger, the person departs from Canada;
> (c) the person is authorized to withdraw their application to enter Canada and an officer verifies their departure from Canada; or
> (d) a decision in respect of the person is made under subsection 44(2) of the Act and the person leaves the port of entry.

This means that during an examination at a port of entry the person may be brought back to an officer for a re-examination of their admissibility and appropriate action could be taken until the examination is complete. Such re-examinations may result in an A44(1) report.

It should be noted by officers at the port of entry that while permanent residents are subject to examination when seeking entry, the IRPA gives permanent residents of Canada the right to enter Canada at a port of entry pursuant to A19(2) once the officer is satisfied that the person holds permanent resident status. The obligation to answer truthfully under A16(1) for permanent residents is linked to A18(1) and must be related to examination for the purpose of establishing that the person holds permanent resident status in Canada.

While an officer who is satisfied at examination that a person holds permanent resident status must admit that person, the officer may also form an opinion during examination that the permanent resident is inadmissible for other reasons under the IRPA. In such cases, the officer should advise the person that while it has been established that they have a right to enter Canada, there are reasons to believe that they could become the subject of a report under the IRPA which could lead to the issuance of a removal order. If the person wishes to continue answering questions or providing information/submissions pertaining to the allegation, they should be given an opportunity but are not required to do so. Even if a permanent resident becomes the subject of an A44(1) report, they continue to have a right to enter until a final determination has been made regarding their loss of status.

For further information, see ENF 4 Port of entry examinations (section 5.6, 'End of examination' and section 11.4, 'Investigating permanent residents for inadmissibility')

11.6 Procedure: End of examination for refugee claimants

The point at which examination ends is different where the person is a refugee claimant as the application exists up until the claim has been decided.

R37(2) provides designated officers the authority to examine a refugee claimant until a decision is made in regards to the claim.

> End of examination — claim for refugee protection
>
> (2) The examination of a person who makes a claim for refugee protection at a port of entry or inside Canada other than at a port of entry ends when the later of the following occurs:
>
> (a) an officer determines that their claim is ineligible under section 101 of the Act or the Refugee Protection Division accepts or rejects their claim under section 107 of the Act;
>
> (b) a decision in respect of the person is made under subsection 44(2) of the Act and, in the case of a claim made at a port of entry, the person leaves the port of entry.

This means that even after a claim is determined eligible and referred to the Refugee Protection Division (RPD), officers may compel a refugee claimant to appear for an examination to verify and/or obtain information from the refugee claimant as the circumstances warrant, even where the initial examination took place at the port of entry. However, the circumstances under which a claimant is directed to answer questions or produce evidence related to ineligibility should be limited to the scope of the inadmissibility section or exclusion grounds being investigated. The

purpose of the examination should be related to identity or grounds of ineligibility, such as serious inadmissibility [A34, A35, A35.1, A36(1) or A37] or exclusion under section E or section F of Article 1 of the Refugee Convention.

During the examination, officers (including inland officers) will be able to question the refugee claimant for the purposes of the examination and require the claimant to produce all relevant evidence and documents that the officer reasonably requires, as new information or evidence becomes available while the claim is in process.

- Officers should be mindful that where the refugee protection hearing is underway by the RPD, the authority to examine under R37(2) should proceed in a manner that does not interfere with the refugee protection hearing.
- Concerns relating to the merits of the claim, or a refugee claimant's general credibility should not be the purpose of the examination. Instead, matters relating to the merits of the claim or credibility shall be raised before the RPD in the context of a Ministerial intervention (see section 14.5, 'Overview: Minister's opinions/interventions')
- At ports of entry, if a refugee claimant is determined to be ineligible to be referred to the Refugee Protection Division, the claimant continues to be under examination until: (i) a decision in respect of the person is made under A44(2), and (ii) leaves the port of entry. For information concerning port of entry immigration "end of examinations", refer to ENF 4 Port of Entry Examinations.
- At inland offices, if a refugee claimant is determined to be ineligible to be referred to the RPD, the authority to examine the claimant ends, pursuant to R37(2)(a). Should additional information be required from the person to gather additional evidence necessary for an admissibility hearing before the ID, or to enforce a removal order, it may be collected under the authority provided in A16(3)- where arrested, detained, or subject to examination or a removal order. Otherwise, the officer may request an in-person interview where determined to be appropriate (See also: section 11.7, 'Procedure: Gathering evidence for persons not subject to examination').
- It should be noted that when refugee claimants have identified a counsel of record in their Basis of Claim (BOC) form or elsewhere in the record of the RPD, they have a right to have counsel present at an interview held in respect of their refugee claim. Counsel are to be notified of and given an opportunity to be present for any interview conducted for the purpose of gathering evidence for the refugee hearing (post-eligibility).

  Note: this is to be distinguished from IRPA interviews for other purposes. A refugee claimant does not have a right to counsel at an interview relating to their eligibility to claim refugee status.

See Appendix A: Sample call-in letter for interview - Refugee claimant

11.7 Procedure: Gathering evidence for persons not subject to examination

Where the person is no longer subject to examination, there is no legal obligation under A16 to provide information, however officers may request that the person voluntarily attend an interview in order to gather evidence and information for the purpose of determining whether an A44(1) report will be written and referred. In such cases, including cases for permanent residents, the call-in notice should state the purpose of the interview and follow the procedural fairness guidelines noted earlier in this manual.

As noted in preceding sections, permanent residents benefit from a higher degree of

participatory rights during the A44(1) process.

11.8 Procedure: In-person interview (all cases)

Where proceeding by way of an in-person interview, officers must always ensure that the person concerned understands the proceedings. For that purpose, the officer must provide the person concerned with an interpreter if required.

The person concerned must also be given the opportunity to have counsel present at the interview. This is not to be confused with an unqualified right to have counsel present, however as already set out in section 6.5, detained individuals have the right to have a counsel of their choosing present during the interview. Officers must inform persons of their right to counsel prior to commencing the interview. This right applies in all cases where a person is detained under an Act of Parliament and includes situations where the person is detained by the criminal courts while facing charges or serving a sentence. As stated in previous sections, all detained cases should be interviewed in person.

See Appendix D: Sample Call-in letter for interview- Person no longer subject to examination (includes permanent resident and protected person)

Reasonable efforts should be made to ensure that the notification letter is delivered to the most current address of the person concerned. Where appropriate, this may include a site visit and/or telephone call. This will be particularly important in cases where the loss of appeal rights under A64 may be involved. See section 11.10, 'Procedure: Failure to appear at A44(1) interview'.

11.9 Procedure for submissions where no in-person interview is held: Persons no longer subject to examination

The Federal Court affirmed in Hernandez v. Canada (Minister of Public Safety and Emergency Preparedness), 2007 FC 725, a case involving a permanent resident of Canada, that an oral interview by the officer at the A44(1) stage is not always required, as long as the affected person is given an opportunity to make submissions and to know the case against them. This principle was affirmed in Sharma v. Canada (Public Safety and Emergency Preparedness), [2017] 3 FCR 492, 2016 FCA 319. In that case, the FCA also confirmed that the duty of fairness does not require that the A44(1) report is put before the person before a decision is made by the MD to refer that report to the ID pursuant to A44(2), provided that such a report is communicated to the affected person before the hearing of the Immigration Division. In other words, officers must ensure that the report under A44(1) is provided to the person concerned before the hearing of the ID. As a matter of practice, disclosure of the report will usually occur at the time that the admissibility hearing package is served on the permanent resident by a Hearings Officer or Hearings Advisor in advance of the hearing, in accordance with the ID Rules for disclosure.

Where an officer elects not to proceed by way of an in-person interview and elects to proceed by way of written submissions, the officer must notify the person concerned in writing of the allegation and the process to be followed, and provide them with an opportunity and reasonable time to provide submissions and information related to their case.

See Appendix B: Sample letter to be sent where no interview is requested- Person no longer subject to examination (includes permanent resident and protected person)

Where proceeding by way of written submissions, an officer may also choose to provide a questionnaire to the person concerned in order to facilitate the process and provide an information guideline to assist the person concerned.

See Appendix C: Sample Questionnaire

Note: For submissions in writing, sufficient time shall be allowed for receipt by regular mail. or example, if the deadline for receipt is 15 days, an officer should not make a decision on day 15, but shall wait an additional seven days to allow for mail delays.

Where the person concerned makes a request for an **extension of time** to provide submissions, the officer shall reasonably consider such a request, having full regard to the circumstances of the person concerned and the reasons for the request. The officer's decision must be issued in writing and provided to the person concerned.

As already noted, permanent residents (and foreign nationals who are no longer subject to examination) cannot be compelled to provide submissions or otherwise be required to participate in the A44(1) process. Where reasonable efforts have been made to ensure that the person concerned has been notified of the A44 process and no submissions are received **or** the person concerned has expressly declined to participate in the A44(1) process, the officer may proceed to write an A44(1) report based on all relevant evidence available and refer the report to be reviewed by an MD under A44(2).

11.10 Procedure: Failure to appear at A44(1) interview

If the person concerned does not appear for an interview on the date specified in the call-in letter and the responsible officer and/or office where the A44(1) investigation originated has not received notice or other indication from the person concerned stating why they were unable to attend the interview, then officers should make reasonable efforts to locate the person, including reasonable efforts to determine the reasons for the no-show (e.g., letter to the last known address, site visit and/or telephone call). This will be particularly important in cases where the loss of appeal rights under A64 may be involved.

In all cases where the loss of appeal rights under A64 may be involved, where the person concerned was not originally called in for an in-person interview, and no further submissions/information have been received within the specified timeframe, it is recommended that the officer attempt to interview the person concerned, either by telephone or in person, before taking further enforcement action. This will ensure that the person concerned is aware of the fact that they may not have appeal rights in their case should a removal order be issued.

Where an interview is not possible because the person concerned refuses to meet or talk with an officer, the officer must keep a record of the efforts made to gather the information and the efforts to provide sufficient time for the person concerned to submit the information for consideration.

Where, after making reasonable efforts, the officer has been unable to locate the person concerned and no correspondence or submissions have been received on their behalf, the officer may still proceed to write the A44(1) report based on all relevant evidence available and refer the report to be reviewed by an MD under A44(2).

12 Evidence gathering: Additional considerations

12.1 Serious inadmissibilities [A34, A35, A35.1, A36(1), A37]

It is important to balance the requirement to gather information according to the considerations outlined in the preceding sections and the need to protect the safety of Canadian society. There may be cases where an officer is pursuing enforcement under the IRPA for serious inadmissibility and the person constitutes either a danger to the public or a significant flight risk. For example, criminal intelligence exists that the person is committing crimes of a violent nature, is a security risk or is involved in organized crime, etc. In such cases where an arrest and detention is necessary, it may be appropriate that the A44(1) report be written and a decision to refer the matter to the ID be made without advising the client prior to the arrest. In such exceptional cases, officers must first document their recommendation, consult with their manager regarding this proposed course of action and receive concurrence before proceeding. If an arrest takes place, the officer will then provide the individual with a copy of the A44(1) report. If the matter concerns a permanent resident or a protected person and they wish to make submissions at that point, the officers will provide them with a reasonable opportunity to do so and will forward the submission to the MD for review.

12.2 Evidence of pending or withdrawn charges

Officers must be careful about how they rely on evidence of charges which did not lead to a conviction. In McAlpin v. Canada (Public Safety and Emergency Preparedness), 2018 FC 422, Chief Justice Crampton held that in exercising discretion to refer an individual for admissibility hearing, it is reasonable for the Minister or his delegate to place significant weight on the number of interactions that a person who is the subject of an A44(1) report has had with the law. Justice Crampton also found that while the Federal Court has previously found that pending or withdrawn charges may be considered by an officer or an MD in determinations under A44(1) and A44(2) and certain other contexts that arise under the IRPA, provided that such evidence is found to be credible and trustworthy[14], officers must be mindful that there are limitations to the way such evidence is used and officers should not treat the existence of withdrawn charges on their face as evidence of a person's history of criminality.

Officers must also be careful not to rely on convictions for which rehabilitation or a record suspension has been granted as evidence of a criminal record.

12.3 Offences under the *Youth Criminal Justice Act*

Officers must ensure that they do not rely on or refer to youth offences in their determination, except where access is authorized under the *Youth Criminal Justice Act* (YCJA). Information that is not accessible under the provisions of the YCJA cannot be considered and must not be included or referenced at any point during A44 proceedings. Moreover, contravention of the provisions of the YCJA is a serious matter.

The importance of verifying whether information is protected by YCJA provisions was highlighted in Abdi v. Canada (Public Safety and Emergency Preparedness) 2017 FC 950. In

[14] Sittampalam v Canada (Minister of Citizenship and Immigration), 2006 FCA 326; Thuraisingam v Canada (Citizenship and Immigration), 2004 FC 607; Kharrat v Canada (Citizenship and Immigration), 2007 FC 842

that case, the Federal Court held that the MD did not commit an error in relying on youth crimes that the applicant was found guilty of where access to these records was not restricted by virtue of section 119(9) of the YCJA. However, the MD's reliance on youth offences that were withdrawn or dismissed was unreasonable since section 119(2)(c) of the YCJA allows access to these records for only a brief period after dismissal or withdrawal of the youth charges and the access period to such charges had expired.

Officers conducting A44(1) and A44(2) functions must ensure that they only rely on youth records to which access is not restricted under the YCJA. It is therefore important for officers to be aware of the provisions of the YCJA which relate to access to youth records.

12.4 Privacy and information sharing

While information sharing is vital to protecting the safety and security of Canadians, the sharing of information must be done in a manner which complies with Canada's laws and legal obligations. When obtaining and disclosing information obtained from a third party, including a foreign government, officers must be aware of their legal obligations under information sharing agreements and legislation. In all cases, officers are required to assess the accuracy and reliability of information received, and properly characterize this information in any further dissemination.

All information sharing activities must also comply with the *Security of Canada Information Disclosure Act* (SCIDA)[15]. The SCIDA provides the authorities for all Government of Canada institutions respecting the disclosure of information related to national security, including personal information, in order to protect Canada against activities that undermine the security of Canada.

When obtaining or assessing evidence at A44, officers must ensure that any and all information sharing activities comply with applicable information sharing legislation as well as all relevant departmental and agency information sharing policies. For further information, CBSA and IRCC officers should consult their respective Agency/Departmental information sharing guidance, policies and toolkits.

12.4.1 Evidence obtained by mistreatment or torture

In addition to ensuring that information is shared in a manner that complies with Canada's laws and legal obligations, officers must avoid knowingly contributing to mistreatment of persons by foreign entities. Bill C-59 gained Royal Assent in June 2019, thereby establishing the *Avoiding Complicity in Mistreatment by Foreign Entities Act* (ACA). Pursuant to subsection 3(2) of the ACA, a new *Order in Council* (OiC) issued to the CBSA in July 2019, which prescribes the directions for avoiding complicity in mistreatment by foreign entities. The OiC prohibits:

- the disclosure of information that would result in a substantial risk of mistreatment of an individual by a foreign entity;
- the making of requests for information that would result in a substantial risk of mistreatment of an individual by a foreign entity; and

[15] The *Security of Canada Information Sharing Act* (SCISA) was the previous legislation for national security information sharing. SCISA was amended and renamed SCIDA after Bill C-59, An Act respecting national security matters, received Royal Assent in June 2019.

- certain uses of information that was likely obtained through the mistreatment of an individual by a foreign entity.

12.4.2 Disclosure and procedural fairness considerations

Generally speaking, as a matter of procedural fairness, individuals subject to A44 proceedings have the right to know the case against them, which includes understanding what information the officer would rely on in making a decision. However, the Federal Court has recognized that each case must turn on its facts and that not every document considered by an officer must be disclosed at the A44 stage. The main question is whether the person has had the opportunity to meaningfully participate in the decision-making process [Karahroudi v Canada (Citizenship and Immigration), 2016 FC 522, [2017] 1 FCR 167; Gebremedhin v Canada (Minister of Citizenship and Immigration), 2013 FC 380; Bhagwandass v Canada (Minister of Citizenship and Immigration), 2001 FCA 49].

Officers should keep in mind that where there is relevant information before them which cannot be disclosed to the person due to privacy or information sharing legislation, and where the officer cannot obtain authorization to disclose the document with appropriate redactions, the information should not be relied upon in the officer's reasons. There are exceptions where the duty of fairness can be met without having to furnish all the documents and reports the decision-maker relied on, such as where a document is protected by privilege based on national security or on the solicitor-client relationship, however officers should be careful not to rely specifically on documents which cannot be disclosed. This position is consistent with Federal Court jurisprudence [for example, Moghaddam v. Canada (Citizenship and Immigration), 2018 FC 1063].

Where officers receive a request for disclosure of documents at the A44(1) stage, officers should turn their minds to whether the information sought is "**material and otherwise unknown and unavailable to the person concerned**". Where the information is not material (i.e., not being relied on in the offer's assessment) **or** is otherwise known or available to the person concerned (e.g., a person's criminal court records which they could access through a request), the officer is not subject to a duty to disclose and this may form the rationale for refusing to disclose it. An officer may still need to refuse to disclose on other grounds. In all cases, it is important for the officer to provide a rationale for the refusal. [for further information, see Durkin v. Canada (Public Safety and Emergency Preparedness), 2019 FC 174].

In Jeffrey v. Canada (Public Safety and Emergency Preparedness), 2019 FC 1180, the Federal Court relied on *Durkin* and concluded that the Minister does not have a duty to disclose information other than that which is "material and otherwise unknown or unavailable to the person" until after a decision has been made under A44(2) to hold an admissibility hearing. The court found that in the circumstances of the case, the officer was not subject to any duty to provide the disclosure sought by the applicant where the applicant was:

- advised of the reason why an inadmissibility report may be prepared pursuant to A44(1);
- informed of the nature of the specific allegations being considered;
- provided an opportunity to respond to those allegations;
- informed of what the relevant information in the officer's possession consisted of; and
- advised that copies of the information sought would not be provided since the applicant either provided that information or was present during the interviews where the information was obtained.

In other words, in responding to such requests for information, officers should ensure that the A44(1) procedure is fair.

12.5 Allegations of inadmissibility subsequent to a declaration under A42.1

A decision by the Minister to make a declaration under A42.1 means that the matters referred to in A34, A35(1)(b) or (c), or A37(1) do not constitute inadmissibility in respect of a foreign national, but only in respect of the facts that were reasonably available at the time the Minister made the declaration. Should a person who has been granted an exception pursuant to A42.1 subsequently engage in activities that would render them inadmissible on the same or other grounds, or should new and material facts omitted from the record considered by the Minister as a result of an error or misrepresentation on the part of the person concerned come to the attention of the CBSA, an officer may prepare a report that sets out the relevant facts pursuant to A44(1).

Before making an allegation that the person is inadmissible on the grounds of A34, A35(1)(b) or (c), or A37(1), an officer should ensure that the basis of the allegation does not include solely those facts that the Minister has already taken into consideration in granting a declaration under A42.1.

13 Writing an A44(1) report – Form and content

13.1 A44(1) report requirements

Officers should be mindful that the A44(1) report is not evidence. It sets out the allegation and the underlining facts necessary to support the allegation. The report should not contain information which is unrelated to the allegation (e.g., issues related to grounds for detention or the person's full immigration history) or opinions of the officer and should be restricted to facts which support the allegation.

Since the A44(1) report is an allegation, not evidence, any additional information obtained during an interview which an officer wishes to include in support of the report should be provided by way of a separate statutory declaration from the officer.

The authority of the MD to cause an admissibility hearing or issue a removal order cannot be exercised unless the form and content of a report under A44(1) comply with specific requirements and contain required information relating to the IRPA inadmissibility upon which the report is based.

When an officer is of the opinion that a permanent resident or foreign national in Canada is inadmissible, then that officer may prepare a report under A44(1).

The report shall then be transmitted to the MD, along with any forms containing the officer's disposition, recommendation and rationale. This may be best accomplished by preparing an A44(1) case highlights form IMM 5084B (for inland cases) or BSF516 (for port of entry cases). For more complex cases, this may also be accomplished by way of a detailed memorandum or A44(1) narrative report (e.g., for permanent residents and protected persons). See also: section 14.2, 'Referral of a report to the Minister's Delegate'.

All A44(1) reports must:

- be in writing and must indicate the place and date of issue;
- be addressed to the Minister of PS or the Minister of IRCC and be signed by the officer who conducted the examination or is otherwise making the report;
- contain the complete name (correctly spelled) of the person who is being reported;
- contain the exact subsection(s)/paragraph(s) of the IRPA (and IRPR, if applicable) upon which the officer based the opinion that the person, who is the subject of the A44(1) report, is inadmissible;
- include a narrative section that justifies the inadmissibility opinion and cites the facts upon which that opinion is based. The narrative section must indicate the exact grounds for applying the particular inadmissibility section(s): these grounds are set out below the words: "This report is based on the following information that the above-named individual:".

For example, in applying A36(2)(b), it is not sufficient to state that the person has been convicted of an offence. The report must fully specify the grounds of inadmissibility in the following manner:

> *This report is based on the following information that the above-named individual:*
>
> *Also known as (list other names used, where applicable)*
> *-Is not a Canadian citizen; is not a permanent resident of Canada; is not a registered Indian under the Indian Act;*
> *…has been convicted of an offence; namely, [Possession of Cocaine] on or about [22 November 1982] at or near [Pontiac, Michigan, USA]. This offence, if committed in Canada, would constitute an offence that may be punishable by way of indictment under paragraph 4(3)(a) of the Controlled Drugs and Substances Act and for which a maximum term of imprisonment [not exceeding seven years] may be imposed.*

See also ENF 1 Inadmissibility; and ENF 2 Evaluating inadmissibility.

13.2 Entering the A44(1) report into the Global Case Management System (GCMS)

All A44(1) reports are generated in the Global Case Management System (GCMS) under the 'Examination' process.

Officers must take care to avoid errors during the data entry process as the written report is a legal document and may be closely scrutinized not only by the MD, but also by Hearings Officers, members of the IRB, and even Federal or Supreme Court of Canada justices.

When officers enter a report into GCMS, they must ensure that the proper allegations are selected and that the dispositions of the examination process are accurately staged. Officers must review the contents of the narrative section of the report before finalizing the document. For technical instructions on GCMS processes and detailed instructions on how to enter a report into GCMS, officers should reference their IT Tools and guidelines.

For CBSA officers, step by step instructions are available in the GCMS Help Centre.

Note: Officers must also ensure that the report as well as the investigation process leading up to the report are recorded and updated in the National Case Management System (NCMS) in offices where NCMS is utilized.

13.3 A44(1) reports for non-compliance with IRPA requirements – A41

Under A41, a person is inadmissible for failing to comply with "this Act." Pursuant to A2(2), unless otherwise indicated, references in the IRPA to "this Act" include the Regulations made under it.

It is important to note that a non-compliance allegation must be coupled with a specific requirement of either the IRPA or the IRPR; it is not meant to be, nor should it be, a "stand-alone" allegation. This means that the report must cite both A41 and the specific IRPA provision that is the subject of the non-compliance (i.e., provision of the IRPA or the IRPR contravened); this structure is necessary in order to determine whether the jurisdiction to issue a removal order falls under the MD (R228) or the ID (R229).

Officers must also include the specific grounds for the non-compliance in the comments of the narrative portion of the A44(1) report, under the heading: "This report is based on the following information that the above-named individual:". In other words, the description of the particular contravention of an IRPA requirement (e.g., person's failure to leave Canada by the end of the period authorized for their stay) and any specific reference to a provision of the IRPA or the IRPR are to be incorporated in the officer's narrative justifying the inadmissibility allegation.

For further information on the elements of non-compliance under A41, see ENF 2/OP18 Evaluating Inadmissibility.

13.4 Multiple allegations

Where the person is inadmissible under multiple provisions of the IRPA, it is generally recommended that the officer writes a separate report for each allegation. The MD will then make a determination on each report during the A44(2) process.

If an officer is considering whether to write two separate inadmissibility reports on the same person, and if the objectives of the IRPA would not be further served by pursuing a removal order for an additional allegation for which the ID has jurisdiction, then the officer may use discretion and not write an A44(1) report containing the allegation for which the ID has jurisdiction [R228(1) and R229(1)]. For example, an allegation may not be worth pursuing because it will not affect the eligibility of a claim for refugee protection under A101, or because the MD may issue an exclusion order based on the other allegations and there is no concern that the person will be able to return to Canada without consent after one year. However, it is important to keep in mind the objectives of the IRPA: depending on the circumstances of the case, these objectives may be best served by writing an A44(1) report as a future record of the inadmissibility. In such cases, an officer may choose to write the A44(1) report but recommend no further action as the A44(2) disposition.

There may be instances where an officer, after preparing or reviewing an A44(1) report, finds:

- that the grounds cited in the report are not valid, but in the officer's opinion, the person falls within some other inadmissible class; or

- there is an additional ground of inadmissibility

In such cases, the officer will need to prepare a new A44(1) report and forward the accompanying documents and evidence to the MD. The officer cannot simply amend the existing A44(1) report. Whether a new A44(1) report is written to replace a previous report or to report a new inadmissibility ground, in either case the officer must ensure that the person concerned is accorded the earliest possible notice of all the grounds against them in accordance with the rules of natural justice.

If an officer, during the course of an investigation, comes across evidence to support new allegations which fall within the jurisdiction of the ID where an existing A44(1) report has already been referred to the ID, the officer should contact the Hearings Officer to determine next steps, including whether the additional grounds of inadmissibility should be dealt with at the hearing simultaneously.

There may be instances where multiple allegations are contained within the same report. This practice is generally discouraged, especially where the jurisdiction for each inadmissibility does not lie with the same decision-maker (i.e., MD or ID). It should be noted, however, that where a report contains one or more inadmissibility allegation, and if the MD has jurisdiction for all inadmissibility allegations contained within that report, the MD can determine the disposition of that report. Conversely, where there are several inadmissibility allegations in a report and the MD has jurisdiction for only some of them, the MD is not authorized to determine a disposition for that report, and all allegations must be referred to the ID.

As set out in section 8 above, discretion under A44 means that officers and MDs have some flexibility in managing cases where the person is inadmissible, and assessing whether the objectives of the IRPA may or will be achieved without the need to seek a removal order or write a formal inadmissibility report under A44(1). Officers should note, however, that where the same evidence supports multiple allegations of inadmissibility, they should consider the fact that not pursuing a particular allegation until a later date may give rise to an abuse of process argument by the person concerned. This does not mean an A44(1) report should be written in circumstances where the officer is still in the process of gathering further evidence in relation to one or more inadmissibility ground, and officers will need to balance whether the objectives of the IRPA would be served by writing a report for all possible allegations or proceeding with only certain allegations at a given point in time.

Example: A CBSA officer is investigating a permanent resident for inadmissibility for serious criminality under A36(1)(b). The CBSA officer has obtained evidence to support an A44(1) report for the allegation, but has determined that the evidence further supports an A44(1) report for A40(1)(a) based on misrepresentation on the person's application for permanent residence. It may later be seen or determined by the Courts to be an abuse of process if the officer does not pursue the A40(1)(a) report at the same time as the A36(1)(b) report. On the other hand, using this same scenario as an example, if the officer is also investigating possible inadmissibility for organized criminality under A37(1)(a) but is still in the process of gathering evidence to establish this allegation, abuse of process is less likely to arise, even if there is overlapping evidence in both allegations. In this situation, however, the officer should consider whether to wait until the investigation into the A37(1)(a) allegation is complete before proceeding to write the report for A36(1)(b)/ referring it to the MD.

14 Procedures after the A44(1) report is written

14.1 Providing the A44(1) report to the person concerned

In order to comply with natural justice, persons who are reported under A44(1) should fully understand both the case against them, and the nature and purpose of the report. Wherever possible, an officer who writes an A44(1) report must also provide a copy of that report to the person concerned.

In cases where a report is prepared as a consequence of an examination (such as at a port of entry) or in any other case where the person concerned is on site and/or otherwise available to receive a copy of the report, then a copy of the report should be given to the person concerned. In such cases, officers should also counsel a person who is the subject of an A44(1) report on the following matters, as appropriate:

- the reason why the report was prepared (or in the case of an R41 "Direct Back," may be prepared);
- the date and time the person should return if the MD was not available to consider a report prepared (or that may be prepared) if the person chooses to return and pursue their entry request with respect to that person [R41(b)];
- if the review by the MD is to be conducted at a place other than where the report was completed, appropriate instructions, such as where the office is located and how to get there;
- the purpose of the review and the options available to the MD.

Where entry seems justified in the circumstances, officers should also inform persons about the option to apply for a TRP and about the cost recovery fee. For further information, see IP 1 Temporary Resident Permits; and ENF 4 Port of entry examinations.

For inland cases, where the MD has jurisdiction to issue the removal order, disclosure of the report may occur at the time of the MD review under A44(2). Where the ID has jurisdiction, disclosure of the report may occur at the time the admissibility hearing disclosure package is served on the person concerned. As mentioned in previous sections, the Federal Court of Appeal has confirmed that the duty of fairness does not require that the A44(1) report is put before the person before a decision is made by the MD to refer that report to the ID pursuant to A44(2) as long as the affected person is given an opportunity to make submissions and to know the case against them. (See also: section 11.9, 'Procedure for submissions where no in-person interview is held: Persons no longer subject to examination').

14.2 Referral of the A44(1) report to the Minister's Delegate

All A44(1) reports concerning permanent residents and foreign nationals must be referred to the MD who will make the final decision about whether or not to issue a removal order (if within the MD's jurisdiction) or refer the matter to the ID. Where the officer has also prepared an A44(1) case highlights form (IMM 5084B for inland cases or BSF516 for port of entry cases), a detailed memorandum or an A44(1) narrative report, this must also accompany the A44(1) report. Where the officer prepares one of these documents to set out their recommendation and rationale, such a document should include:

- the person's identity, with name, aliases, date and place of birth, citizenship, marital

status, present immigration status, and details of passports and travel documents;
- the officer's opinion based on the assessment of the criteria outlined in the sections above and the recommendation(s);
- any submissions received from the person or notes taken at the interview; and, if applicable, the reasons for any delay in submitting the report.

The officer must also forward, where applicable, any other documentation relied on by the officer, including but not limited to:

- for permanent residents, proof of a search of citizenship records
- copies of all relevant immigration documents and other certificates and affidavits that can be obtained from IRCC, if applicable;
- originals or copies of other documents relevant to the case, such as a birth certificate, marriage certificate, a certificate of conviction or other evidence of a previous conviction that is acceptable in a court of law;
- police occurrence reports;
- probation, parole and psychiatric assessments;
- police records and information on other convictions not reportable under A44(1);
- details of the violations, and the first possible parole or release date if the person is serving a sentence;
- other documentary evidence pertaining to the allegation(s), including all the evidence or submissions received from the person concerned.

This means that even if the officer at A44(1) does not exercise their discretion to consider personal circumstances, all evidence and submissions received from the person concerned must still be forwarded to the MD.

Note: When submitting certificates of conviction, officers are to ensure that the conviction (as opposed to the original charge) meets the equivalency requirements of the inadmissibility allegation.

See also, ENF 1 Inadmissibility; ENF 2 Evaluating inadmissibility; and ENF 23 Loss of permanent resident status.

The importance of forwarding the officer's recommendation to the MD at the same time as the A44(1) report was highlighted in Wong v Canada (Citizenship and Immigration) 2011 FC 971. In that case, the Federal Court dealt with the legality of two removal orders issued by the MD prior to the A44 case highlights form being signed and dated. In finding that this sequence of events rendered the orders improperly issued and therefore null and void, the Court affirmed that the officer's recommendation needed to be reviewed by the MD as part of the A44 process **before** a removal order was issued.

It is in the officer's recommendation and rationale [contained in the A44(1) case highlights form, detailed memorandum or A44(1) narrative report] that the officer will set out the recommended disposition to the MD at the 44(2) proceedings, including but not limited to:

- Issuance of a removal order by the MD (cases within MD jurisdiction under R228);
- Referral to the ID for an admissibility hearing (cases within ID jurisdiction under R229)
- Allowing withdrawal of application to enter Canada (Port of entry only); see section 9.4, 'Allowing withdrawal of application to enter Canada/ Allowed to leave (Port of entry cases)';

- Issuance of a Temporary Resident Permit (TRP) (Port of entry only); for further information on TRPs, see section 9.7, 'Temporary Resident Permits (TRPs) - Port of entry and IRCC only';
- Issuance of a warning letter (inland- permanent residents and protected persons only); for further information on warning letters, see ENF 6 Review of reports under A44(2).

14.3 Procedure: Referring A44(1) reports when a Minister's Delegate is not on site

The IRPA requires that A44(1) reports be transmitted to the MD after being prepared: officers cannot prepare and then review their own A44(1) report. There may be circumstances where an MD is not physically on site and/or otherwise available to conduct a review under A44(2) in person and where deferring the MD review is not a viable option. In such circumstances, officers shall refer to ENF 6, section 10.7, ' Procedure: Reviewing A44(1) reports when a Minister's Delegate is not on site'.

14.4 Amending the A44(1) report

There is no mechanism to directly amend an existing A44(1) report in GCMS, therefore at the time the report is being created, officers must ensure that the proper allegations are selected and the contents of the narrative section of the A44(1) report are accurate before finalizing the document.

There are instances, however, where errors in an A44(1) report are identified following a review of the report after its issuance has been finalized. In such cases, it is important for officers to take appropriate steps to make necessary corrections, taking into account the nature of the error/information to be changed and the stage during which the error is identified.

Where, following the issuance of the A44(1) report, an error is identified which does not affect the substance of the report (for example, a typographical error regarding the date of a conviction) or it is determined that a change is warranted with respect to the wording in the narrative section of the report, the officer who issued the original A44(1) report may write an updated report in GCMS reflecting the appropriate corrections prior to review by the MD. Where the error is discovered by the MD, it remains open to the MD to send the matter back to the officer so that appropriate corrections may be made or for the officer to consider writing a new A44(1) report. In such cases, where a new A44(1) report is written to replace an existing report, officers must ensure the previous report is cancelled in GCMS in accordance with the procedures set out in the GCMS guidelines, including the creation of any process notes as required. In such cases, the person concerned should be provided with a copy of the amended report in accordance with the procedural fairness requirements outlined in previous sections of these guidelines at some point prior to the proceeding that may result in the issuance of a removal order (e.g., Minister's Delegate review or admissibility hearing).

Note: There is a specific process to be followed in GCMS where the MD decides to return the A44(1) to the officer. Based on errors or new information identified by the MD, the officer may create a new A44(1) report by following GCMS procedures for issuing a new A44 report after MD returns the report to an officer.

CBSA officers may consult the GCMS Help Centre for guidance on GCMS procedures where the MD returns the A44 report to an officer.

It is also important to note that there are circumstances in which amendments to an A44(1)

report may be made after the report has been referred to the ID, without the need for a new referral under A44(2). While it is generally preferred that amendments be made by way of writing a new A44(1) report containing the amended wording, there may be circumstances where amendments to the report can be made at the admissibility hearing stage, however, this is only possible where the amendment does not affect the substance of the report. For example, in Clare v. Canada (Citizenship and Immigration) 2016 FC 545, the Minister filed a Notice of Amendment to the A44(1) report, after the report had already been referred to the ID. The notice itself stated that the amendment did not represent a change in the substance of the original report. The narrative section of the revised version replaced the reference to a particular subsection of the *Controlled Drugs and Substances Act* with reference to a provision under the *Criminal Code of Canada*. The Federal Court found that the amendment to the A44(1) report did not need to be submitted to the MD for a fresh determination on a referral to the ID, so long as the amendment conformed generally to the description of the alleged illegal conduct in the original report and identified an offence that was punishable by a maximum of at least ten years imprisonment. Relying on Uppal v Canada (Minister of Citizenship and Immigration), 2006 FC 338, the Federal Court found that the question was whether the amendment was so significant that it required a fresh consideration by the MD, and held that the ID had reasonably relied on the amended report because there was no substantive change in the description of the offence on which it was based. Moreover, the person concerned and his counsel were made aware of the amendment to the report at the outset of the hearing.

On the other hand, it is important for officers to note that an A44(1) report cannot be amended at any point where further review reveals that the report contains a substantive error (e.g., wrong inadmissibility section under the IRPA). In addition, where further investigation leads to a finding that the grounds cited in the report are not valid but the person falls within some other inadmissible class, or identifies an additional ground of inadmissibility which the officer intends to pursue, the officer must write a new A44(1) report for a fresh referral to the MD. In such cases, where a new A44(1) report is written to replace an existing report, officers must ensure the previous examination case is cancelled in GCMS in accordance with required procedures, including the creation of any process notes where appropriate. Where substantive changes are made to the A44(1) report, officers must also ensure that the new report is provided to the person concerned in accordance with the procedural fairness requirements outlined in previous sections of these guidelines.

14.5 Overview: Minister's opinions/interventions

Identification of cases where an opinion under A115(2) of the Minister of IRCC for protected persons may be warranted

Information may come to the attention of an officer in the course of an investigation of a person who is a protected person under A95(2) which the officer believes may warrant flagging the case for a future request for a Minister's opinion under A115(2) that a person is a danger to the public in Canada, or should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

While such a request may not be made until the person has been found to be inadmissible under A34, A35, A35.1, A36(1) or A37 and becomes the subject of a removal order that is in force, officers at the A44(1) stage may flag the case for consideration for a future request for a Minister's opinion in their recommendation to the MD, where appropriate. If a removal order is issued, the case can then be referred for consideration of a request for a Minister's opinion in accordance with agency guidelines and local processes.

For further information, see ENF 28 Ministerial opinions on danger to the public, nature and severity of the acts committed and danger to the security of Canada.

Intervention, cessation and vacation

During the course of an A44(1) investigation, officers may have occasion to deal with information that may support a possible intervention in an outstanding claim for refugee protection, or a cessation or vacation application for a protected person or Convention refugee.

If such is the case, the information should be brought to the attention of the appropriate Hearings unit where the information and/or evidence can be reviewed with respect to a potential application to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).

In some cases, an officer may receive information about a refugee claimant that could affect the decision of the RPD. If an officer becomes aware of new information relative to any of the inadmissibility provisions under A34 through A37, or where there is information to suggest that there is a substantive contradiction of any document or statement made by a refugee claimant, officers should:

- conduct an interview and take notes (see section 11. 6, 'Procedure: End of examination for refugee claimants';
- seize any relevant documents under A140(1) that could be used as evidence;
- update the National Case Management System (NCMS) to indicate that the case is under investigation and the reason(s) for the investigation;
- contact the appropriate Hearings unit to discuss case details;
- at the request of the Hearings Officer or Hearings Advisor, conduct a further investigation to collect additional evidence;
- when the investigation is complete, transfer the file and all supporting documentation to the Hearings Officer or Hearings Advisor with a memorandum outlining the case details.

Note: following a decision of the RPD that refugee protection has ceased under A108(2), the Minister may not simply rely on a previous removal order (issued against the person before protected person status was granted) to remove that person. In other words, a new A44(1) report based on inadmissibility under A40.1(1) would need to be written and a new removal order would need to be issued by the MD in these circumstances.

For further information, see ENF 24 Ministerial interventions.

14.6 Imposition of conditions following the A44(1) report

A44(3) authorizes officers to impose any conditions, including the posting of a deposit or the posting of a guarantee for compliance with conditions, that the officer considers necessary, on a permanent resident or foreign national who is the subject of an A44(1) report, an admissibility hearing or, being in Canada, a removal order.

At the port of entry, this includes circumstances where the officer does not authorize entry to a foreign national and prepares an A44(1) report.

For further information on deposits and guarantees, see ENF 8 Deposits and guarantees.

Mandatory Circumstances (POE cases)

There are also mandatory conditions which must be imposed at the port of entry pursuant R43(1) where the Border Services Officer adjourns an examination under A23:

1. to report in person at the time and place specified for the completion of the examination or the admissibility hearing;
2. to not engage in any work in Canada;
3. to not attend any educational institution; and
4. to report in person to an officer at a POE, if the person withdraws their application to enter Canada.

Note: A person whose examination has been deferred and who fails to report as required for continuation of their examination is reportable for non-compliance under A41(a).

For further information, see ENF 4 Port of entry examinations and ENF 6 Review of reports under A44(2).

Mandatory Circumstances (Prescribed Conditions for A34 inadmissibility)

It is important for officers to note that under A44(4), the imposition of baseline conditions is mandatory by designated CBSA officials in cases of inadmissibility on security grounds under A34. For each of the circumstances outlined below, the prescribed conditions to be imposed are found in R250.1.

CBSA officers should be aware that the prescribed conditions must be imposed by the designated CBSA authority in the following circumstances:

- when an inadmissibility report on grounds of security (A34) is referred to the ID and the subject of the report is not detained;
- when the subject of either an inadmissibility report on grounds of security (A34) that has been referred to the ID or a removal order for inadmissibility on grounds of security is released from detention.

Note: If the person is already subject to conditions imposed by the ID, an officer has no authority to vary or supersede an order previously issued by the ID. Generally speaking, the ID retains jurisdiction with respect to the variation of previous terms and conditions imposed by the ID. In circumstances where an officer believes that previously imposed conditions by the ID are no longer required or are insufficient to ensure compliance, but may not necessarily require that the person be re-arrested first, officers will refer the file to the appropriate Hearings unit, articulating the need to amend the existing conditions and request that a Hearings Officer make a request to the ID to vary the order.

Appendix List

Appendix A: Sample call-in letter for interview: Refugee claimant

Appendix B: Sample letter to be sent where no interview is requested- Person no longer subject to examination (includes permanent resident and protected person)

Appendix C: Sample Questionnaire to accompany Appendix B letter to provide submissions

Appendix D: Sample Call-in letter for interview – Person no longer subject to examination (includes permanent resident and protected person)

Appendix E: Sample A44(1) Narrative report

Appendix F: Table: Immigration and Refugee Protection Act (IRPA) Inadmissible Classes

Appendix A: Sample call-in letter for interview: Refugee claimant

(Name and Address of person concerned) *Ref: UCI/File #:*

(Date)

Dear XXXX (given name and surname of person concerned) ;

A report under subsection 44(1) of the *Immigration and Refugee Protection Act* may be prepared alleging that you are inadmissible to Canada under the *Immigration and Refugee Protection Act*. If a report is prepared, the Minister's Delegate may cause an admissibility hearing to be held, which could result in a removal order being issued, or the Minister's Delegate may issue a removal order in certain cases. The next step in the process is to conduct a review of the circumstances of your case.

Pursuant to subsection 16(1.1) of the *Immigration and Refugee Protection Act*, you are required to present yourself for an interview on:

(Insert Date and time) at (CBSA office address)

The purpose of the interview will be to discuss your admissibility to Canada and/or eligibility or issues related to your claim for refugee protection and to provide you with an opportunity to respond to any concerns the Minister may have.

Please bring the following to the interview: (check applicable boxes)

☐Any passports, travel or identity documents

☐Two recent passport photographs of yourself

☐Completed Details of Military Service and Details of Police Service Tables (attached)

☐Other - specify

Please confirm your attendance upon receipt of this letter. If you require the services of an interpreter, please inform the officer and an interpreter will be arranged for you.

Please be advised that you may have counsel present with you during the interview. Please note that the CBSA is not responsible for legal fees and that you must assume all the costs of the legal counsel yourself. Additionally, the CBSA reserves the right to exclude your counsel from the interview if they are found to be disruptive or disrespectful.

Please be advised that should you fail to report for this interview, a decision will be made based on the information available on file and further enforcement action may be taken.

Regards,

XXX (Officer name)

Title

Cc: Counsel/legal representative (if specified on file)

Appendix B: Sample letter to be sent where no interview is requested – Person no longer subject to examination (includes permanent resident and protected person)

(Name and Address of person concerned) *Ref: UCI/File #:*

(Date)

Dear XXXX (given name and surname of person concerned);

This is to advise you that a report under subsection 44(1) of the *Immigration and Refugee Protection Act* may be prepared alleging that you are inadmissible to Canada under paragraph XXX of the *Immigration and Refugee Protection Act*.

(Insert IRPA wording here)

If a report is prepared, the Minister's Delegate may cause an admissibility hearing to be held, which could result in a removal order being issued, or the Minister's Delegate may issue a removal order in certain cases.

A decision to allow you to remain in Canada or to seek to have a removal order issued against you will be made in the near future. The next step in the process is to conduct a review of the circumstances surrounding your alleged inadmissibility.

You may provide relevant evidence or submissions that you wish to be considered in relation to this matter of your admissibility to Canada. You should be aware that this office may obtain additional information pertaining to the alleged inadmissibility from other sources, such as reports prepared by other enforcement agencies.

Please note that any documentation that you choose to submit must be in English or French.

If you wish to provide submissions and/or documentation for consideration in this matter, you must ensure that all documents and relevant information, including the enclosed form, are sent to this officer by **(insert date and time).**

Submissions can be mailed to our office or dropped off at our front counter reception without an appointment (at applicable offices).

Depending on the circumstances of your case, you may or may not have the right to appeal to the Immigration Division should a removal order be issued against you. Subsection 64(1) of the *Immigration and Refugee Protection Act* states that:

> 64(1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.
>
> 64(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(b) or (c).

If you choose not to provide submissions, an admissibility report against you may be prepared and referred to the Minister's Delegate without the benefit of your comments or submissions. The Minister's Delegate may, based upon the available evidence, issue a removal order if the allegation is within their jurisdiction, or refer your case to an admissibility hearing where a removal order may be issued against you by a member of the Immigration Division of the Immigration and Refugee Board.

Please quote your file number on all correspondence with this office.

Regards,

XXX (Officer name)

Title

Cc: Counsel/legal representative (if specified on file)

Appendix C: Sample Questionnaire to accompany Appendix A letter to provide submissions

Instructions to Officers:

This is a sample questionnaire with suggested wording. Preference as to final wording is left to the discretion of local managers provided the content remains consistent with the intent.

Permanent residents, protected persons and foreign nationals who are not subject to examination cannot be compelled to provide information for the purpose of the A44 process. The burden of proof is on the Minister to establish inadmissibility. However, individuals must be given an opportunity to provide relevant information and make submissions in relation to their case. Should the person elect not to respond or provide information/submissions, the officer may proceed by relying on the information available on file in to determine inadmissibility and whether to write and refer a report under A44(1).

Please complete and sign this form and return one signed copy with your completed package and keep one copy for your records.

This is your opportunity to have an officer consider any relevant information that you choose to submit at the time your case is reviewed, however, you may also provide other submissions and documentation instead of or in addition to this form.
Please complete this form legibly. If you require more space, please use additional sheets of paper the same size as this form and return them with this form. On each additional sheet, write your name and Unique Client Identifier (UCI) number in the top right-hand corner, and write the page number at the bottom. Please also indicate which question you are answering.

PROTECTED B WHEN COMPLETED
UCI: _____

A44(1) INADMISSIBILITY REPORT BACKGROUND AND PERSONAL INFORMATION FORM

PLEASE COMPLETE FULLY

PERSONAL DETAILS

Full Name Family name(s) (exactly as shown on your passport or travel document)	Given name(s) (exactly as shown on your passport or travel document)	
a) **Have you ever used any other name (e.g. former names, nicknames, maiden name, aliases, etc.)?** ☐ Yes ☐ No b) **If you answered "yes" to question a**), please provide the name(s) and specify (e.g. former legal name, nickname, maiden name, alias, etc.)		
Date of Birth (YYYY/MM/DD)	**Country of Birth**	**Place of Birth** City/Town/Province
Citizenship(s) – include current and former 1)	2)	
Sex ☐ Female ☐ Male ☐ Other _____ (please specify)	If you do not identify with the sex/gender on your passport, you may self identify your sex/gender:	
Current Marital Status ☐ Single ☐ Married ☐ Separated ☐ Divorced ☐ Common Law Partner ☐ Widowed		
Native Language/Mother Tongue	**Are you able to communicate in:** **English** ☐ Yes ☐ No **French** ☐ Yes ☐ No	
Date and place of your last entry to Canada (YYYY/MM/DD)	**Status Granted**	
Current Immigration Status in Canada		**Date Status Granted** (YYYY/MM/DD)
Height *cm	**Eye Colour**	**Hair Colour**
Marks/Scars/Tattoos/Identifying Features		
a) Do You Own a Motorized Vehicle in Canada? ☐ Yes ☐ No	**b) If you answered "yes" to question a),** please list make, model, year, and license plate number	

ENF 5 Writing 44(1) Reports

PROTECTED B WHEN COMPLETED
UCI: _____

CONTACT INFORMATION

Present Residential Address in Canada					
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

I Have Resided at This Address Since (MM/YYYY) ▶

Mailing Address (If different from above)

P.O. Box	Apt/Unit	Street No.	Street Name

City/Town	*Country	Province/State	Postal Code	District

Daytime Telephone Number	**Evening Telephone Number**
[ ] [ ] [ ] Country Code No. Ext.	[ ] [ ] [ ] Country Code No. Ext.
Cell Phone Number	**Email Address**
[ ] [ ] [ ] Country Code No. Ext.	

Social Media Accounts (Please list all applicable – e.g. Facebook, Instagram, Twitter, LinkedIn

Previous Addresses in Canada (last 3 years) **[☐ No Previous Addresses]**

Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

DOCUMENTARY IDENTIFICATION

Passport/Travel Document Number	**Country of Issue**	**Issue Date** (YYYY/MM/DD) **Expiry Date** (YYYY/MM/DD)

If you do not have a valid passport or travel document, please list any other identity documents in your possession (e.g., national identity card, birth certificate)

Document Number	**Place of Issue** (city/country – include parish/province if applicable)	**Issue Date** (YYYY/MM/DD)	**Expiry Date** (YYYY/MM/DD)

***Please attact a copy of the identity document(s) to this form**

PROTECTED B WHEN COMPLETED
UCI: _____

CIRCUMSTANCES OF THE ALLEGATION

Provide a detailed description of the circumstances surrounding the immigration allegation listed in the cover letter. For example, if the alleged inadmissibility is based on a criminal conviction in Canada, you may speak to the details regarding that conviction.

(Attach a separate sheet of paper if necessary)

PROTECTED B WHEN COMPLETED
UCI: _____

OTHER INFORMATION

Please provide any other information that you feel is important to your case. Please use additional paper if required for your submissions.

Signature of Person Concerned: _____ Date: _____

Appendix D: Sample Call-in letter for interview- Person no longer subject to examination (includes permanent resident and protected person)

(Name and Address of person concerned) *Ref: UCI/File #:*

(Date)

Dear XXXX (given name and surname of person concerned;

This is to advise you that a report under subsection 44(1) of the *Immigration and Refugee Protection Act* may be prepared alleging that you are inadmissible to Canada under paragraph XXX of the *Immigration and Refugee Protection Act*.

(Insert IRPA wording here)

If a report is prepared, the Minister's Delegate may cause an admissibility hearing to be held, which could result in a removal order being issued, or the Minister's Delegate may issue a removal order in certain cases. A decision on whether you are inadmissible to Canada or not and whether the officer will seek to have a removal order issued against you will be made in the near future. The next step in the process is to conduct a complete review of the circumstances surrounding your alleged inadmissibility. In order to fully assess the circumstances of your case and provide you with an opportunity to respond to any concerns the Minister may have, you are requested to attend an interview on:

(Insert Date and time) at (CBSA office address)

The purpose of the interview will be to discuss your alleged inadmissibility to Canada and to provide you with an opportunity to respond to any concerns the officer may have. As part of this process, you may make submissions and present any relevant information and documentation related to your admissibility to Canada.

You should be aware that this office may obtain information from other sources, such as reports prepared by other enforcement agencies. You may wish to address your history with other agencies at the interview.

Any relevant information that you choose to submit will be considered at the time your case is reviewed. Please note that any documentation that you submit must be in English or French.

Depending on the circumstances of your case, you may or may not have the right to appeal to the Immigration Division should a removal order be issued against you. Subsection 64(1) of *the Immigration and Refugee Protection Act* states that:

ENF 5 Writing 44(1) Reports

64(1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

64(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(b) or (c).

Please confirm your attendance upon receipt of this letter. If you require the services of an interpreter, please inform the officer and an interpreter will be arranged for you.

Please be advised that you may have counsel present with you during the interview. Please note that the Agency is not responsible for legal fees and that you must assume all the costs of the legal counsel yourself. Additionally, the Agency reserves the right to exclude your counsel from the interview if they are found to be disruptive or disrespectful.

Please be advised that should you fail to report for this interview, a decision will be made based on the information available on file and an admissibility report may be referred to the Minister's Delegate without the benefit of your comments and submissions.

Please quote your file number on all correspondence with this office.

Regards,

XXX (Officer name)

Title

Cc: Counsel/legal representative (if specified on file)

Appendix E: Sample A44(1) Narrative Report

Officer Instructions:

Note: This is a sample officer narrative report with suggested wording. Preference as to final wording is left to the discretion of local managers provided the content remains consistent with the intent.

This form is generally intended to be used in cases of permanent residents and protected persons. Persons such as permanent residents and protected persons who are not subject to examination cannot be compelled to provide information for the purpose of the A44 process. The burden of proof is on the Minister to establish inadmissibility. However, they may be given an opportunity to provide relevant information and make submissions in relation to their case. Should the person elect not to respond or provide information/submissions, the officer may proceed by relying on the information available on file in to determine inadmissibility and whether to write and refer a report under A44(1).

A44(1) NARRATIVE REPORT		
To: Minister's Delegate	From: (Name of reporting officer, office)	Date: UCI #: IRPA Allegation(s):

SECTION 1	BACKGROUND INFORMATION	
Surname/Family Name(s): **Given Name(s):**	**Alias(es) or Former Name(s)** (Specify Which):	
Date of Birth (YYYY/MM/DD):	**Country of Birth:**	**Place of Birth:** (City/Town/Parrish)
Gender/Sex: Female ☐ Male ☐ Other ☐_____	**Current Marital Status:** Single ☐ Separated ☐ Married ☐ Divorced ☐ Common Law Partner ☐ Widowed ☐	
Citizenship:	Permanent Resident ☐ Foreign National ☐	
Native Language/Mother Tongue:	**Able to Communicate In:** **English** ☐ Yes ☐ No **French** ☐ Yes ☐ No	
Date/Place of Last Entry to Canada:	**Status Granted:**	
Current Immigration Status in Canada:	**Date Status Granted** (YYYY/MM/DD):	

Physical Description:			
Height *cm	Eye Colour	Hair Colour	Marks/Scars/Tattoos/Identifying Features

Passport/Travel Document Number:	**Country of Issue:**	**Issue Date** (YYYY/MM/DD) **Expiry Date** (YYYY/MM/DD)

Copy on File? ☐ **Yes** ☐ **No**

Other Identity Documents (e.g., national identity card, birth certificate)			
Document Number	Place of Issue (include parish/province)	Issue Date (YYYY/MM/DD)	Expiry Date (YYYY/MM/DD)

FOR INDIVIDUALS SERVING SENTENCE (FEDERAL OR PROVINCIAL INSTITUTION)	
Correctional Institution Information:	
Place of Detention:	Name of Parole Officer:
Tel. Number of Parole Officer: ( )	Statutory Release Date(YYYY/MM/DD):
Full Parole Eligibility Date(YYYY/MM/DD):	Warrant Expiry Date(YYYY/MM/DD):

SECTION 2 **CONTACT INFORMATION**					
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

Person Has Resided at This Address Since (MM/YYYY):

Mailing Address (If different from above)

P.O. Box	Apt/Unit	Street No.	Street Name

City/Town	Country	Province/State	Postal Code	District

Telephone Number: (with area code)	**Evening Telephone Number**: (with area code)
Cell Phone Number: (with area code)	**Email Address:**

Social Media Accounts (Please list all applicable – e.g. Facebook, Instagram, Twitter, LinkedIn)

Previous Addresses in Canada (last 3 years) **[☐ No Previous Addresses]**

Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code
Apt/Unit	Street no.	Street Name	City/Town	Province	Postal Code

SECTION 3 CIRCUMSTANCES OF ALLEGATION(S):

Include as much detail as possible:

SECTION 4 FOR CRIMINALITY CASES ONLY

Is the person currently on supervision or conditions ordered by the courts (e.g., probation or parole)?
Please provide details:

Has the person breached supervisory orders or conditions in the past? Please provide details:

A. REPORTABLE CONVICTIONS

Offence:	Conviction Date:	Place of Conviction(s):	Sentence Received:

B. NON-REPORTABLE CONVICTIONS (Group counts of like offences e.g. assault X 4 counts; fail to appear X 3 counts, etc.)

Offence:	Conviction Date:	Place of Conviction(s):	Sentence Received:

SECTION 4 OFFICER'S RECOMMENDATION AND RATIONALE

Has a warning letter been issue to the person concerned in the past? ☐ Yes ☐ No If yes, provide details:
☐ Person concerned was notified regarding allegation(s) Date: ☐ Submissions received from persons concerned Date: ☐ Person concerned was interviewed in person Date:

Counsel/Lawyer:	**Address:**
Interpreter (if applicable):	**Language of Interview:**

If no interview and no submissions received, attempts to contact persons concerned (provide details):
Officer's Decision: ☐ No report written ☐ A44(1) report for (list IRPA allegation(s)) **Officer's Recommendation:** ☐ Referral to Immigration Division for Admissibility Hearing ☐ Issuance of removal order by Minister's Delegate ☐ Other (e.g. warning letter) (specify) _____ Name of reporting officer: Date (YYYY/MM/DD): Signature:

SECTION 5	LIST OF ATTACHMENTS
☐ A44(1) Report ☐ Certified true copy of IMM 1000 or Confirmation of Permanent Resident Status (IMM 5509) ☐ Citizenship search ☐ QRC Certificates ☐ Warrant(s) of committal ☐ Certificate(s) of conviction ☐ Probation/parole reports ☐ Judge's reasons for sentence ☐ Presentence report ☐ Other (please specify) ☐ Other (please specify) ☐ Other (please specify)	

SECTION 6	REVIEW BY MINISTER'S DELEGATE
Decision: ☐ Refer to admissibility hearing ☐ Issue removal order ☐ Other (e.g. warning letter) (specify) _____ ☐ **I have reviewed all the facts of the case and the recommendation of the officer above** **Reasons:** Right of appeal ☐ Yes ☐ No	
Name of Minister's Delegate:	**Title** (per D&D Instruments, e.g. Supervisor, Inland Enforcement):
Signature:	**Date** (YYYY/MM/DD):

Appendix F: Table: Immigration and Refugee Protection Act (IRPA) Inadmissible Classes

IRPA Section/ subsection	Inadmissibility	Paragraph	IRPA Text	IRPR reference	Jurisdiction to Issue Removal Order	Applicable Removal Order
A34	Security (PR and FN)	34(1)(a)	act of espionage against Canada or that is contrary to Canada's interests		ID	Deportation Order R229(1)(a)
		34(1)(b)	subversion by force of any government			
		34(1)(b.1)	subversion against democratic government, institution or process			
		34(1)(c)	terrorism	R14		
		34(1)(d)	danger to security of Canada			
		34(1)(e)	violence/endanger lives or safety of persons in Canada			
		34(1)(f)	membership in an organization described in (a)(b)(b.1) or (c)			
A35	Human or International Rights Violations (PR and FN)	35(1)(a)	Crimes against Humanity and *War Crimes Act*	R15	ID	Deportation Order R229(1)(b)
		35(1)(b)	prescribed senior official	R16		
		35(1)(c.1)	organ trafficking			
A35.1	Sanctions (FN only)	35.1(1)(a)	entry into or stay in Canada restricted due to international sanctions		MD	Deportation Order R228(1)(f)
		35.1(1)(b)	subject of an order made under *Special Economic Measures Act*			
		35.1(1)(c)	subject of an order made under *Justice for Victims of Corrupt Foreign Officials Act*			
A36(1)	Serious Criminality (PR and FN)	36(1)(a)	convicted in Canada- FN		MD	Deportation Order R228(1)(a)
			convicted in Canada- PR		ID	Deportation Order R229(1)(c)
		36(1)(b)	convicted outside Canada	R17	ID	
		36(1)(c)	committed an act outside Canada	R17	ID	
A36(2)	Criminality (FN only)	36(2)(a)	convicted in Canada (= by way of indictment or 2 offences)	R18.1	MD	Deportation Order R228(1)(a)
		36(2)(b)	convicted outside Canada (=indictment or 2 offences)	R17 R18	ID	Deportation Order R229(1)(d)
		36(2)(c)	committed an act outside Canada (=indictment)	R17 R18	ID	

ENF 5 Writing 44(1) Reports

A36(2.1)	Transborder Criminality (FN only)		committing, on entering Canada, a prescribed offence under an Act of Parliament	R19	ID	Deportation Order R229(1)(d.1)
					MD (specific offences only)	Deportation Order R228(1)(a.01)
A37	Organized Criminality (PR and FN)	37(1)(a)	member of an organization engaged in criminal activity/ engaging in pattern of activity	R16.1	ID	Deportation Order R229(1)(e)
		37(1)(b)	engaging in transnational crime (people smuggling/ trafficking, laundering money or other proceeds of crime)			
A38	Health Grounds (FN only)	38(1)(a)	danger to public health	R20	ID	Exclusion Order*° R229(1)(f)
		38(1)(b)	health condition danger to public safety	R20		
		38(1)(c)	excessive demand on health or social services	R24(3)		
A39	Financial Grounds (FN only)		unable or unwilling to support themself or dependents	R21	ID	Exclusion Order*° R229(1)(g)
A40	Misrep-resentation (PR or FN)	40(1)(a)	misrepresentation/ withholding material facts	R22	ID (exception: R228(1)(a.1)	Exclusion Order° R229(1)(h)
					MD (Misrep on eTA re: TRV-exempt status)	Exclusion Order R228(1)(a.1)
		40(1)(b)	being or having been sponsored by a person inadmissible for misrepresentation		ID	Exclusion Order R229(1)(h)
		40(1)(c)	final determination to vacate refugee claim or application for protection		MD	Deportation Order R228(1)(b)
		40(1)(d)	ceasing to be a Canadian citizen		ID	Deportation Order R229(1)(i)
A40.1	Cessation of refugee protection (PR and FN)	A40.1(1)	FN under A108(2)	A46(1)(c.1)	MD	Departure Order R228(1)(b.1)
		A40.1(2)	PR under A108(1)(a) to (d) [person becomes a FN under A46(1)(c.1)]			
A41(a)	Non-compliance with Act (FN only)	Foreign national — non-compliance Examples: A41(a) + A52(1) Obligation to obtain the authorization to return to Canada A41(a) + A20(1)(a) Does not hold the PR visa or other document required under the Regulations and have come to Canada in order to establish permanent residence		R6	MD MD	Deportation Order R228(c)(ii) Exclusion Order** R228(1)(c)(iii)

ENF 5 Writing 44(1) Reports

		A41(a) + A29(2) Failure to leave Canada by the end of the period authorized for their stay A41(a) + 30(1) Work or study without authorization		R183(1)(a) R183(1)(b), (c)	MD ID	Exclusion Order** R228(1)(c)(iv) Exclusion Order** R229(1)(n)
A41(b)	Non-compliance with residency obligation (PR only)	Permanent resident & non-compliance with residency obligation		A28	MD	Departure Order R228(2)
A42	Inadmissible Family Member (FN only)	A42(1)(a)	accompanying family member is inadmissible	R23	MD	Same removal order as inadmissible family member R228(1)(d)
		A42(1)(b)	FN is accompanying family member of person inadmissible under A34, A35, A35.1 or A37		MD	Deportation Order R228(1)(e)

ID: Immigration Division MD: Minister's Delegate

MD may not issue a removal order where R228(4) applies (unaccompanied minors and persons unable to appreciate nature of proceedings)

*Departure order for refugee claimants R229(2)
° Deportation order where R229(3) exceptions apply
**Departure Order for refugee claimants R228(3); Subject to R228(4)

Note: Only s. 34 deals with future events. Sections 35-37 are limited to past or present events

This chart is a quick reference tool reflecting the IRPA inadmissibility classes and corresponding removal orders in effect as of the most recent date of publication of ENF 5. Officers should reference full Act and Regulations on Justice.gc.ca website for complete information on IRPA inadmissibilities and jurisdiction to issue removal orders.

"H"

Canada Border Services Agency | Agence des services frontaliers du Canada

ENF 6
Review of reports under subsection A44(2)

Canada

Contents

ENF 6 Review of reports under subsection 44(2)

Updates to chapter

Listing by date:

2025-02-20

Substantive and minor changes, as well as clarifications, have been provided throughout the chapter to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Content added to reflect new inadmissibility for sanctions under section 35.1 and transborder criminality under subsection 36(2.1) of the IRPA.
Section 15: re-written for clarity re-organized for more logical flow of information. Content updated to reflect jurisprudence on officer scope of discretion under subsections 44(1) and 44(2) of the IRPA.
Clarification added to section 21 regarding multiple allegations.
Appendices A and E were removed.

2023-05-08

Minor corrections and clarifications have been made throughout chapter. Updates made to reflect changes to other manual chapters.
New content has been added to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Section 6.6: New section added to provide guidance and resources on dealing with vulnerable persons, including victims of gender-based violence (GBV).
Section 10.6: Content on restoration of status updated to reflect change in terminology from "implied" status to "maintained" status.
Section 19: Amended to reflect regulatory changes to include new ground for directing persons back to the United States under section 41 of the IRPR where the foreign national is prohibited from entering Canada by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.
Section 23: New section added on key aspects of assessing inadmissibility under section 36 of the IRPA, including determining criminal equivalency between foreign and Canadian jurisdictions, record suspensions and criminal rehabilitation.

2020-02-12

Substantive and minor changes, as well as clarifications, have been provided throughout the chapter.
New content has been added to reflect legislative and regulatory amendments and to ensure consistent application of IRPA provisions as clarified through new court decisions.
Sections have been re-written for clarity and/or moved and re-organized for more logical flow of information.
Section 3.1: Amended to include several new or updated forms.
Section 9: New section added to provide guidance on Charter considerations.
Section 10.9: Content added to reflect amendments to IRPA provisions regarding inadmissible family members under section A42.
Section 10.10: Content added to reflect new inadmissibility section A40.1 Cessation of refugee protection: under R228(1)(b.1) the MD has the authority to issue removal orders to foreign

nationals who are found inadmissible under A40.1(1) on a final determination by the RPD under A108(2) that the refugee protection of the foreign national has ceased.
Section 18: New section added to reflect changes to IRPA and IRPR requiring that decision-makers impose prescribed conditions on security (A34) inadmissibility cases.

Date: 2007-04-12

Section 5.1: Substantial changes were made throughout that section.
Section 5.7: Minor changes were made to the first paragraph. As well, two paragraphs were added.
Section 7: The entire section was re-written.
Section 9: Minor changes were made.
Section 19.2: The section on non-criminal cases involving permanent residents was re-written.
Section 20.1: The entire section was re-written.
2005-10-31

Changes were made to reflect the transition from CIC to the CBSA. The term "delegated officer" was replaced with "Minister's delegate" throughout text; references to "departmental policy" were eliminated; references to CIC and CBSA officers and to the C&I Minister and the PSEP Minister were made where appropriate, as were other minor changes.

- Appendix A was removed since no countries are listed under A102(1);
- Appendix B, C & D were renamed A, B & C;
- Other minor changes to correct mistakes or relating to terminology were also made.

2004-08-11

ENF 6 - Review of Reports under A44(1) has been updated to reflect an amendment to paragraph R228. The amendment prescribes that inadmissibility reports with respect to unaccompanied minors and persons unable to appreciate the nature of proceedings who are unaccompanied must be referred to the Immigration Division if the Minister's delegate determines that a removal order should be sought.

2004-01-26

The title for section 23 of chapter ENF 6 in French has been amended and now reads as follows:
Statut de citoyenneté/Citoyens canadiens qui présentent une demande d'asile
2003-09-02
A minor change was made to section 3.8 and section 24 of ENF 6.

2003-06-19

Changes to section 3.3 and the addition of section 24 relate to the procedures to follow when issuing administrative removal orders on grounds of misrepresentation pursuant to R228(1)(b).

1 What this chapter is about

This chapter provides guidance to Canada Border Services Agency (CBSA) and Immigration, Refugees and Citizenship Canada (IRCC) officials performing the function of the Minister's Delegate (MD) and exercising their authority to review reports prepared under A44(1) of the *Immigration and Refugee Protection Act* (IRPA).

2 Program objectives

The objectives of Canadian immigration legislation with regard to the inadmissibility provisions are:

- to protect the health and safety of Canadians and to maintain the security of Canadian society;
- to promote international justice and security by fostering respect for human rights and denying access to Canadian territory to persons, including refugee claimants, who are criminals or security risks.

3 The Act and Regulations

Under A44(1), an officer may prepare and transmit a report if that officer is of the opinion that a permanent resident or foreign national in Canada is inadmissible. Under A44(2), all A44(1) reports must be referred to the MD to determine the accuracy and validity of the report and to decide whether to:

- issue a removal order, where the MD has jurisdiction to do so; or
- refer the matter to the Immigration Division (ID) of the Immigration and Refugee Board (IRB) for an admissibility hearing.

The IRPA provides authority both to members of the ID and to the MD to issue removal orders, depending on the type of allegation contained in the A44(1) report, and pursuant to the authority prescribed in the IRPA and the *Immigration and Refugee Protection Regulations* (IRPR) .

In order to streamline the enforcement process in cases involving straightforward allegations, and to maintain the principle that the MD may make determinations in cases where there is little need to weigh evidence, the scheme of the Act and Regulations empowers the MD to issue removal orders under the circumstances prescribed in R228. Generally speaking, the more discretion and analysis required in assessing the allegation, the more likely the jurisdiction rests with a member of the ID.

It is important to note that where the MD is authorized to make removal orders under R228, this authority applies at both ports of entry and at inland offices.

The following table includes some of the most relevant provisions that may apply during the A44(2) process. Some of the authorities listed below pertain specifically to CBSA Border Services Officers (BSOs) at the port of entry or IRCC officers assessing applications; others are more relevant to CBSA Inland Enforcement Officers (IOEs).

ENF 6 Review of reports under subsection 44(2)

Table 1: Sections of the IRPA and the IRPR applying to determinations under A44(2)

Provision	Act and Regulations
Delegation of powers	A6(2)
Permanent Resident	A21(1)
Temporary resident dual intent	A22
Entry to complete examination or hearing	A23
Residency obligation	A28
Security Human or international rights violations Sanctions Serious criminality Criminality Transborder criminality Organized criminality Health grounds Financial reasons Misrepresentation Cessation of refugee protection Non-compliance with the IRPA or IRPA — foreign national Non-compliance with IRPA or IRPR — permanent resident Inadmissible family member	A34 A35 A35.1 A36(1) A36(2) A36(2.1) A37 A38 A39 A40 A40.1 A41(a) A41(b) A42
Preparation of report	A44(1)
Referral or removal order	A44(2)
Imposition of Conditions	A44(3)
Mandatory imposition of conditions — inadmissibility on grounds of security	A44(4),(5)
Applicable removal order — Immigration Division	A45(d)
No return without prescribed authorization	A52(1)
Right of appeal to Immigration Appeal Division (IAD)	A63
Loss of appeal rights	A64
Application for judicial review	A72(1)
Protected person	A95
Referral to Refugee Protection Division	A100(1)
Suspension of consideration of eligibility of claim	A100(2)
Deemed referral to Refugee Protection Division	A100(3)
Ineligibility to refer refugee claim	A101
Cessation of refugee protection	A108

Vacation of refugee protection	A109
Non-refoulement — protected person	A115(1)
Ministerial Opinion for protected person	A115(2)
Rehabilitation	R18, R18.1
Direct back to the United States	R41(b)
Withdrawing application/Allow to leave	R42
Conditions A23	R43(1)
Applicable removal order — Minister Serious criminality/Criminality in Canada (foreign nationals) Misrepresentation (vacation of refugee/protected person status) Cessation of refugee protection Failure to comply Inadmissible family members Inadmissible under A35.1(1) (foreign nationals) Permanent residents and their residency obligation Claim for refugee protection Unaccompanied minors Persons unable to appreciate the nature of proceedings	R228 R228(1)(a) R228(1)(b) R228(1)(b.1) R228(1)(c) R228(1)(d) or (e) R228(f) R228(2) R228(3) R228(4)(a) R228(4)(b)
Applicable removal order— Immigration Division (ID)	R229

For further information regarding the division of jurisdiction to issue removal orders, see **Appendix A, 'Table: *Immigration and Refugee Protection Act* (IRPA) Inadmissible Classes'**

3.1 Forms

The following table includes some common forms used in the 44(2) process. This is a non-exhaustive list and some may only apply to officers carrying out the administration of IRPA at the port of entry.

Table 2: Forms

Form title	Form number
Referral under subsection 44(2) of the Immigration and Refugee Protection Act for an admissibility hearing	BSF506
Denial of Authorization to Return to Canada Pursuant to Subsection 52(1) of the *Immigration and Refugee Protection Act*	IMM 1202B
Authorization to Return to Canada Pursuant to Section 52(1) of the *Immigration and Refugee Protection Act*	IMM 1203B
Departure Order	IMM 5238B

Exclusion Order	IMM 1214B
Deportation Order	BSF581
Notice to Appear for a Proceeding under Subsection 44(2)	IMM 1234B BSF504
Subsection A44(1) Highlights – Port of Entry Cases	BSF516
Subsection 44(1) and A55 Highlights – Inland Cases	IMM 5084B
Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules	BSF524
Entry for Further Examination or Admissibility Hearing	BSF536
Direction to Leave Canada	BSF503
Direction to return to the United States	BSF505
Notification to the Refugee Protection Division and the Refugee Appeal Division and the Person Concerned by an Immigration Officer Pursuant to Subsection 103(1) of the Immigration and Refugee Protection Act of the Suspension of Consideration of Claim	BSF528
Notification to the Refugee Protection Division and the Person Concerned by an Officer Pursuant to Paragraph 103(2) of the Immigration and Refugee Protection Act	BSF527
Notification to the Person Concerned by an Immigration Officer Pursuant to Paragraph 104(1)(A), (B), (C), OR (D) of the Immigration and Refugee Protection Act & Notification to the Refugee Protection Division pursuant to Paragraph 104(1) of the same Act	BSF529
Acknowledgement of Conditions	BSF 821
Acknowledgement of Conditions for IRPA Section 34 Cases	BSF798
Notes to File	BSF788

4 Instruments and delegations

A4 sets out which Minister is responsible for the administration of the IRPA. The Minister of Citizenship and Immigration [also known as Immigration, Refugees and Citizenship Canada (IRCC)] and the Minister of Public Safety and Emergency Preparedness (PS) are jointly responsible for the administration and enforcement of the IRPA, however there are some differences. The IRCC Minister is responsible for the overall administration of the IRPA, unless otherwise specified. The Minister of PS has the primary responsibility for the administration of the IRPA as it relates to the following:

- port of entry examinations;

- policy lead relating to enforcement of the IRPA including arrest, detention and removal;
- establishment of policies respecting the enforcement of the IRPA and inadmissibility under A34/35/37; and
- declarations referred to under A42.1 (Ministerial Relief provision)

Pursuant to A6(1), the responsible Minister has the authority to designate specific persons or classes of persons to carry out any purpose of any provision of the IRPA with respect to their individual mandates as described in A4, and to specify the powers and duties of the officers so designated. This is referred to as the **designation of authority**. In addition, A6(2) authorizes that anything that may be done by the **Minister** under the Act may be done by a person that the Minister authorizes in writing. This is referred to as **delegation of authority**.

Each Minister who has responsibilities under the IRPA has written an instrument of delegation and designation that is periodically updated. The Delegation of Authority and Designations of Officers (D & D) instruments stipulate who has the authority to perform specific immigration-related functions. CBSA and IRCC personnel are designated by position to perform all delegated or designated authorities, including those associated with A44(1)/A44(2) functions. It is to be noted that the IRPA D & D instruments have a hierarchical link which means only the lowest level of authority is included in the D & D instruments as every position above this one (with a direct hierarchical link) has the same authority to perform specific immigration-related functions.

CBSA and IRCC officials acting in the capacity of the MD in A44(2) proceedings should always review both the CBSA and the IRCC D & D instruments as they have authorities delegated and designated under both instruments, which can be found on the IL 3- Designation of Officers and Delegation of Authority.

The authority to review A44(1) reports has been delegated to certain CBSA and IRCC officials. It is important to note that while IRCC officers have been delegated the authority to review reports for most inadmissibility sections, A44(1) reports for inadmissibility under A34 (security grounds), A35 (grounds of violating human or international rights), A35.1 (sanctions) and A37 (grounds of organized criminality) may only be prepared and reviewed by CBSA.

All reports written by CBSA or IRCC officers will be reviewed by the MD who has been delegated the authority under the D & D instruments. If the MD is of the opinion that the report is well-founded, the MD will make the appropriate decision based on the evidence and determine whether to:

- issue a removal order, if the allegation is within the MD's authority pursuant to R228; or
- refer the report to the ID pursuant to the R229.

For additional information, see Appendix A — 'Table: Immigration and Refugee Protection Act (IRPA) Inadmissible Classes'

Note: Policy requires that even where officers and officials acting in the capacity of the Minister's Delegate (including chiefs and directors) have the delegated authority under the D & D instruments, they should not perform Minister's Delegate functions and reviews until they have successfully completed the necessary training to perform the A44(2) function. This policy is consistent with the Federal Court's decision in Zhang v. Canada

(Citizenship and Immigration), 2014 FC 362 where judicial review was granted based on a finding that there was an inadequate record before the court to conclude that the MD had received the required Minister's Delegate Review training and was therefore authorized to issue a removal order.

5 Definitions

Adult legally responsible
An adult legally responsible for a minor or suspected incompetent person may be their parent or legal guardian. If the accompanying adult is not a parent or guardian, reasonable efforts must be made to contact a parent or guardian. For more information on accompanying adults, please refer to ENF 21 Recovering Missing, Abducted and Exploited Children.

Foreign national
A person who is not a Canadian citizen or a permanent resident; includes a stateless person [A2(1)].

Indian
A person who is registered as an Indian under the Indian Act [R2].

Minor
A minor is a person under 18 years of age. Persons claiming to be less than 18 years of age are to be treated as minors unless there is conclusive evidence that they are 18 years old or older.

Permanent resident
A person who has acquired permanent residence status and has not subsequently lost that status under A46 [A2(1)].

Persons unable to appreciate the nature of proceedings
This phrase refers to persons who are unable to understand the reason for the proceedings or why they are important, or cannot give meaningful instructions to counsel about their case. An opinion regarding competency may be based on the person's own admission, the person's observable behaviour at the proceeding, or an expert opinion on the person's mental health or intellectual or physical faculties. Pursuant to R228(4)(b) and R229(4)(b), the authority to issue any removal order for persons unable to appreciate the nature of the proceedings shall be the Immigration Division.

Protected person
A person on whom refugee protection is conferred in Canada and whose claim or application has not subsequently been deemed to be rejected because of cessation or vacation proceedings [A95(2)].

6 Departmental policy

6.1 Procedural fairness

Actions and decisions made under the IRPA must be made in accordance with the principles of procedural fairness and natural justice. These principles apply to the exercise of the powers of the Minister's delegate. In general terms, this means the MD must:

- Allow the person concerned the opportunity to know the case to be met and present all relevant facts of the case;
- Inform the person concerned about the purpose and possible outcomes of the MD proceedings;
- Provide the person concerned with a reasonable opportunity to respond;
- Allow the person to respond to facts or new information that will be considered by the decision-maker;
- Fully and fairly consider the evidence;
- Render decisions that are impartial and free from bias;
- Provide the notice of decision and reasons for the decision to the person concerned;
- Inform the person concerned of a right to counsel if an A44(2) MD proceeding is caused where the person is detained and the Minister has the authority to issue a removal order;
- Ensure that an interpreter is provided where necessary

It is important to differentiate those cases where the MD may issue a removal order and those cases where the jurisdiction to issue a removal order lies with the ID, as different procedural requirements and considerations will apply in order to ensure that procedural fairness and natural justice are met.

The content of procedural fairness will also depend on the status of the person concerned and additional considerations will apply for permanent residents and protected persons.

For additional information, see ENF 5 Writing 44(1) reports: section 6.1, 'Procedural fairness'; section 8, 'Considerations before reviewing an A44(1) report- Scope of officer discretion'; section 9.2, 'Special considerations for protected persons'; section 10, 'A44(1) reports concerning permanent residents of Canada'.

In reaching a decision, the MD must take into account representations made by persons or by their counsel, and make particular note of the nature and content of these representations. All decisions of the MD are subject to judicial review, with leave, by the Federal Court of Canada. Certain decisions that the MD makes may be subject to appeal before the Immigration Appeal Division (IAD), where a statutory right of appeal exists under the IRPA.

Individuals subject to A44 proceedings have the right to know the case against them, which generally includes understanding what information the MD would rely on in making a decision. Each case, however, must turn on its facts and the level of disclosure required at the A44 stage may vary depending on the circumstances of the case.

If an MD relies on new information [i.e., information that was not already provided at the A44(1) stage] that is material and that the person concerned would not otherwise be aware of or have

access to, the MD should ensure that it is provided to the person concerned [for further details, see Durkin v. Canada (Public Safety and Emergency Preparedness), 2019 FC 174]. This is particularly important where the MD has jurisdiction to issue the removal order, as a higher level of procedural fairness will apply. Conversely, in cases where the ID has the jurisdiction to issue the removal order, there is no duty to disclose other than information which is "material and otherwise unknown or unavailable" at A44(1) or A44(2) since the person will be entitled to receive disclosure in the context of an admissibility hearing [Jeffrey v. Canada (Public Safety and Emergency Preparedness), 2019 FC 1180]. With respect to all requests for disclosure, MDs should always be cognizant of the legal rules and restrictions on the general disclosure of documents (e.g., *Privacy Act*, information sharing agreements, etc.). For further details, MDs should refer to ENF 5 Writing 44(1) reports, section 12.5, 'Disclosure of documents'.

6.2 Procedures for persons less than 18 years old or persons unable to appreciate the nature of the proceedings

R228(4) provides for specific safeguards for certain vulnerable persons by requiring that where the person:

- is under 18 years of age and not accompanied by a parent or an adult legally responsible for them; or
- is unable, in the opinion of the Minister, to appreciate the nature of the proceedings and is not accompanied by a parent or an adult legally responsible for them;

the matter must be referred to the ID for an admissibility hearing**. In these cases, the MD does not have jurisdiction to issue a removal order.**

Such cases will call for a higher degree of procedural fairness at the A44 stage and officers and MDs must take extra care to ensure that the person's interests are represented and that the evidence has been fully and fairly considered.

During the ID proceedings, a designated representative will be appointed pursuant to A167(2) to represent the person's interests and ensure that procedural fairness requirements are met with respect to presenting evidence relevant to the case and providing a response to facts or new information that will be considered by the decision-maker. In these hearings, parties will also be governed by the Immigration and Refugee Board of Canada Chairperson Guideline 8: 'Procedures With Respect to Vulnerable Persons Appearing Before the IRB'

Where a person appears to be unable to appreciate the nature of the proceedings, it is important for the MD to identify this as soon as possible during the A44(2) proceedings. Where the MD, in the course of their interactions with a person, has identified that a person has a suspected or known mental illness and does not appreciate the nature of the proceedings, this should be clearly documented in the MD's decision so that in cases where the case is being referred for an admissibility hearing, the need for a designated representative is flagged for the ID.

In such cases, the MD should also ensure that other departmental and agency guidelines with respect to dealing with vulnerable persons are followed. See section 6.6, 'Dealing with vulnerable persons'; ENF 20 Detention; and ENF 34 Alternatives to Detention.

For additional guidance on how to identify a vulnerable person, see IRCC Program delivery instructions on Processing in-Canada claims for refugee protection of minors and vulnerable persons.

6.3 Official languages

Both the *Official Languages Act* and the *Canadian Charter of Rights and Freedoms* establish the right of individuals who are subject to administrative proceedings in Canada to communicate with employees of IRCC and CBSA in the official language of their choice, either French or English. Officials carrying out the administration of the IRPA must respect the right of the individual to proceed in French or English. In order to ensure that procedural fairness is maintained, MDs should ensure that all the Minister's documents are provided in the language of the proceedings and, where necessary, obtain translations (e.g., a certificate of conviction from another country that is not in French or English that the Minister is relying on as evidence).

6.4 Interpreters

The MD must be satisfied that the person concerned is able to understand and communicate in either of the official languages in which the proceeding is being held. If necessary, an interpreter is to be provided to enable the persons to understand and communicate fully.

Note: Travellers arriving at a port of entry into Canada do not have an automatic right to an interpreter upon request during routine port of entry examinations, however there are situations where officers at the port of entry are required to suspend the proceedings until a qualified interpreter is available. This may include circumstances where the officer is considering denying entry to the traveller. For further information, see Nere v. Canada (Citizenship and Immigration), 2018 FC 672.

CBSA officers should consult guidelines on the use of interpreters contained in ENF 4 Port of entry examinations (section 8.5 'Use of interpreters').

For further information see IRCC Program delivery instructions (PDI) on interpreters.

6.5 Counsel

Persons do not have a right to counsel at MD review proceedings, **unless they are detained**. In all detained cases, persons must be given the opportunity to obtain and instruct counsel at their own expense. Counsel includes a barrister, solicitor, family member, consultant or friend.

In detained cases: The MD must inform persons of their right to counsel prior to commencing the MD review. This right applies in all cases (port of entry and inland) where a person is detained under an Act of Parliament and includes situations where the person is detained by the criminal courts while facing charges or serving a sentence and subject to IRPA proceedings.

Port of entry: Generally, CBSA's policy is not to permit counsel at MD review proceedings unless arrest/detention has occurred. However if the MD is dealing with an individual who does have counsel present, the officer should allow the counsel to remain present as long as counsel does not interfere with the examination process.

Note: In Dehghani v. Canada (Minister of Employment and Immigration), [1993] 1 S.C.R. 1053], the Supreme Court of Canada (SCC) determined that the principles of fundamental justice do not include the right to counsel for routine information-gathering, such as that gathered at port of entry examination interviews. The SCC further held that an Immigration Secondary examination at a port of entry does not constitute a detention within the meaning of paragraph 10(b) of the Canadian Charter of Rights and Freedoms.[1]

[1] Although the SCC held that secondary examination does not constitute detention, this decision also highlighted that detention within the meaning of section 10(b) of the Charter would result where restraints on the person's liberty by state authorities have gone beyond those required for the routine processing or

For further information regarding right to counsel at POE examinations, officers should refer to ENF 4 Port of entry examinations.

In non-detained inland cases (CBSA/IRCC): A non-detained person does not have the right to have counsel present during the MD review, however in the spirit of procedural fairness, the MD shall inform the person of the possibility of obtaining counsel for the MD review prior to commencing the proceeding. Call-in notices for MD reviews should advise the person that they may have counsel present for the MD review. MDs are not obligated to postpone MD review proceedings in non-detained cases due to counsel unavailability, however, may consider such requests on case-by-case basis.

Where counsel is representing the person concerned at the proceeding, the MD should ensure that counsel's identity, the fact of counsel's presence at the proceeding and statements made by counsel on behalf of the person concerned are documented in the their notes, and that counsel's representations have been considered in their decision. The MD may also need the person's representative to complete a Use of a Representative form (IMM 5476). For further information, see IRCC Program delivery instructions on Use of Representatives.

Participation by counsel involves speaking on the client's behalf, presenting evidence and making submissions on the issues. Allowing counsel to participate does not mean that the MD is required to tolerate disruptive or discourteous behaviour by counsel. Where such conduct is encountered, the MD may require counsel to leave and/or the proceeding may be adjourned to another time. In such cases, the MD should ensure to document their reasons for taking such action.

6.6 Dealing with vulnerable persons in the context of A44

6.6.1 Considerations for vulnerable persons in the context of A44

It is an overall goal of Canada's immigration program to treat all persons with dignity and respect. In exercising their IRPA authorities, officials must approach all cases in a nonjudgmental manner, remain sensitive to the potential needs and limitations of vulnerable persons, and recognize that a person they are dealing with may have experienced some form of violence, abuse or trauma.

In the context of A44, vulnerable persons may face particular challenges, including an impaired ability to answer questions/provide information to officials respecting a potential IRPA inadmissibility, due to a physical or psychological frailty or for other reasons. Such persons may include, but would not be limited to:

- minors (under 18 years of age), including unaccompanied minors;
- elderly persons;
- individuals with severe medical conditions or physical disabilities;
- persons with a suspected or known mental illness;
- persons who have suffered traumatic experiences that resulted in some degree of vulnerability, including:

---

screening of their application to enter Canada. Further, while the SCC's decision affirmed that delays in routine examinations due to operational necessity do not mean the person is "detained", officers should be cognizant that unreasonably lengthy delays in the examination could lead to the conclusion that the person is detained within the meaning of section 10(b) of the Charter.

- victims[2] of gender-based violence (GBV) (see section 6.6.3);
- victims/suspected victims of trafficking in persons (VTIPs) or family violence.

In the context of A44 procedures, officers/MDs should:

- Identify vulnerable persons at the earliest opportunity in order to ensure that appropriate accommodations are made and any relevant considerations are factored into decisions and actions taken. In some instances, officers/MDs will need to use their observational skills, discretion and sound judgement in identifying a person as vulnerable.

- Recognize that a vulnerable individual's ability to respond to questions or provide information may be severely impaired, and remain sensitive to the impact of a perceived vulnerability during the A44 process, including during interviews.

- To the extent possible, prevent vulnerable persons from becoming traumatized or re-traumatized during the A44 process.

Where an individual who is subject to IRPA enforcement action is identified as a victim of violence, trauma or abuse, including victims of GBV, family violence or trafficking in persons, or other forms of abuse such as sexual abuse or labour abuse, officers/MDs must take a victim-centered and trauma-informed approach in order to avoid re-victimizing people who report violence or abuse.

A **victim-centred** approach focuses on the needs and concerns of victims to ensure a compassionate and sensitive delivery of services in a nonjudgmental manner.

A **trauma-informed** approach is one that avoids triggering trauma that may have placed the individual in their current situation.

The guidelines in sections 6.6.2 to 6.6.5 are aimed at assisting MDs in identifying vulnerable persons and applying a victim-centred and trauma-informed approach when dealing with vulnerable persons at A44.

In addition to the guidelines set out in this manual chapter, MDs should always ensure that other Departmental and Agency guidelines with respect to dealing with vulnerable persons and minors are followed, including IRCC's Program delivery instructions on Identifying sensitive cases and on Processing in-Canada claims for refugee protection of minors and vulnerable persons, where applicable.

6.6.2 Sexual orientation and gender identity and expression and sex characteristics[3]

Some IRPA enforcement cases may involve individuals with, or who are perceived to have,

[2] It is important to recognize wherever the term "victim" is used, that some persons who have experienced violence, trauma or abuse may prefer to be referred to as "survivors" rather than "victims".

[3] Please note that terminology in this section may have further evolved following the publication date of this manual. Consult most recent GoC publications for most up to date terminology.

sexual orientations, gender identities and expressions (SOGIE)[4] that may not conform to socially accepted norms in a particular cultural environment. Such individuals include, but are not limited to: Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex and additional sexually and gender diverse (2SLGBTQI+) individuals. Depending on factors such as race, ethnicity, religion, faith or belief system, age, disability, health status, social class and education, individuals with diverse sexual orientations and identities may recognize and express their identity differently.

Individuals may conceal their SOGIE out of mistrust or fear of repercussion by state and non-state actors, or due to previous experiences of discrimination, stigmatization, bullying, ostracism, violence or sexual assault. These circumstances may manifest themselves as an individual being reluctant to discuss, or having difficulty discussing, their SOGIE with an officer based on a fear or general mistrust of authority figures, particularly where intolerance or punishment of individuals with diverse SOGIE are sanctioned by state officials in an individual's country of origin.

Officials need to be sensitive to the possibility that SOGIE issues may exist in any case they encounter when executing their IRPA authorities. Officials must follow all relevant guidelines and procedures pertaining to handling SOGIE cases during the A44 process, remain sensitive to gender-related considerations when interacting with the person and be careful to use gender-neutral or inclusive terms or terms that reflect the person's gender identification in documentation/notes and when completing Departmental and Agency forms.

Officials should consult the Internationally recognized sexual orientation or gender identity or expression (SOGIE) definitions on IRCC's Connexion for further information.

6.6.3 Victims of gender-based violence (GBV)

When considering enforcement under A44, officers and MDs need to be sensitive to the fact that a person they encounter may have been subjected to specific violence, trauma or abuse based solely on their **gender, perceived gender, gender identity or gender expression**, as well as **sexual orientation**. This is referred to as gender-based violence (GBV), which is a human rights violation.

It is important to note that GBV is not limited to physical violence and can also include emotional/psychological abuse, harassment, threats, sexual violence, coercive control, humiliation, financial abuse, discrimination or neglect. It is important to note that these may also occur online through "cyberviolence"[5].

Officers and MDs should be aware that certain individuals face a greater risk of experiencing GBV, including: women, girls, 2SLGBTQI+ people and people living with disabilities. Moreover, the risk of GBV may be increased with the intersection of any two or more of these

[4] Also includes individuals with, or who are perceived to have diverse sex characteristics and may also be referred to as SOGIESC. For example, see the Immigration and Refugee Board of Canada's Chairperson's Guidelines on Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics: https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx.

[5] "Use of technologies to facilitate virtual or in-person harm including observing and listening to a person, tracking their location, to scare, intimidate or humiliate a person" (Government of Canada, Fact sheet: Intimate partner violence (Canada.ca).

characteristics. Other groups that may experience high levels of GBV may also include Black women and newcomer women to Canada[6].

Intimate partner violence (IPV), also referred to as domestic violence or spousal violence, is a widespread form of GBV that encompasses multiple forms of harm perpetrated by a current or former intimate partner or spouse. IPV can occur in many types of relationships, including between married or common-law spouses as well as within dating relationships, regardless of gender and sexual orientation and whether or not the partners co-habit.

For further information respecting IPV, see the Government of Canada's Fact sheet on Intimate partner violence.

Depending on their cultural background, victims of GBV may be reluctant to disclose their experiences in order to not "shame" their families or communities. Similarly, women who have been subjected to IPV/domestic violence or abuse may also be reluctant to provide information, especially against the alleged perpetrator. MDs should be alert to such cases and will ensure to the extent possible that specific accommodations are made during interviews as set out (e.g., have a female officer either conduct or be present during an interview, and arrange, if possible, for a female interpreter). See section 6.6.4 below for additional guidance on conducting interviews.

Victims and survivors of GBV may be encountered both at the port of entry or inland. In such cases, officers/MDs should:

- Consider the factors that led to the individual's breach of IRPA requirements or conditions, including the possibility that the person was placed in their situation as part of abuse or through coercion or threats;
- Be aware that perpetrators of GBV are known to use threats of denunciation to immigration authorities as a tool to control and oppress victims through fear of deportation and/or detention. For example, MDs shall consider any such factors that may lead them to believe that a foreign national overstayed their status as a result of being placed in that situation by an abuser;
- Within the confines of an MD's limited discretion at A44(2), be sensitive to personal circumstances as well as the consequences of immigration enforcement;
- Where appropriate and within an MD's scope of discretion, consider other options where there are IRPA inadmissibility concerns. At the port of entry, this may include allowing the person to withdraw their application to enter Canada (i.e. Allowed to leave) or issuing a Temporary resident permit (TRP) to overcome an inadmissibility that may have resulted from GBV. In the inland and port of entry context, this may include a referral to IRCC for TRP consideration and/or to community-based service organizations experienced in providing services to GBV victims and survivors in accordance with existing policy and regional procedures or allowing the person to make arrangements to leave Canada if they plan to do so.

For further resources on GBV, please refer to the Government of Canada's Gender-Based Violence Knowledge Centre (Canada.ca).

[6] Government of Canada, What is gender-based violence? (Canada.ca)

6.6.4 Interviewing vulnerable persons

Officers and MDs must be alert to situations where a person's ability to answer questions and present information during A44 proceedings may be impacted by one or more factors listed in section 6.6.1 above. Officers/MDs may find that vulnerable persons may have issues affecting their memory, behaviour, or ability to recount relevant events including symptoms that have an impact on the consistency and coherence of their statements.

Officers/MDs should be cognizant that individuals react to violence, trauma and abuse in different ways and not all victims will exhibit identical or even similar signs and/or symptoms. While some individuals may show signs of distress, including anxiety, irritability, nervousness, agitation, anger and aggressiveness, others may be easily intimidated and have difficulty communicating.

In order to conduct A44 interviews in a way that avoids traumatizing vulnerable persons or re-victimizing persons who have experienced violence, trauma or abuse, officers/MDs should:

- Recognize that some vulnerable persons may display less obvious symptoms of a vulnerability, which may not become apparent until the person is interviewed/examined. Officers/MDs may need to rely on observational skills and sound judgement in identifying signs and symptoms of a vulnerability.
- Be aware that some vulnerable persons may require special accommodations during the interview. Remain sensitive to the fact that victims of severe trauma may have difficulties coping with the interview process because they are confined to a closed room with the interviewer.
- Create optimum conditions to minimize stress. Allow for frequent breaks, if necessary and to the extent possible.
- Be conscious of cultural and gender considerations which may affect communication such as the person and officer being the same gender, where possible.
- Recognize that victims of violence or abuse may fear people in authority and may be intimidated by the many questions that are being asked by officials.
- Recognize that victims of GBV or other forms of violence or abuse may become distressed at the prospect of being interviewed by an official of the opposite sex.
- Where appropriate, speak to the person alone first in a confidential setting and ask if they are comfortable speaking in front of family members (particularly parents, children or relatives of a particular gender).
- Provide the person with a fair opportunity to tell the story.
- Be cognizant that there may only be one opportunity for an individual to reach out to authorities, and for authorities to refer a victim of violence or abuse to victim support services.
- Be courteous, respectful, sensitive and aware of own biases.
- Be aware that some questions may cause a victim to recall painful events.
- Treat the person with sensitivity and with empathy and with full respect of their human rights.
- Avoid an authoritarian approach.
- Avoid over-familiarity through eye contact or body language.
- Ask simple questions and use encouragement.
- Use active listening.
- Allow free speech and avoid interruption.
- Remember that if the vulnerable person is under 18 years of age or unable to appreciate the nature of the proceedings, procedural safeguards set out in section 6.2 will apply.

6.6.5 TRPs for victims or suspected victims of trafficking in persons (VTIP) or family violence

Officials should keep in mind that there are specific policy guidelines in place respecting suspected or known victims of trafficking in persons (VTIP) and victims of family violence. While only IRCC officials may issue TRPs to VTIPs or victims of family violence, CBSA officials should follow the guidelines set out in the IRCC Program delivery instructions for handling these cases. For example, cases in which a foreign national is identified by the CBSA as a VTIP or victim of family violence should be referred to the responsible IRCC local office on an urgent basis. There are also instructions pertaining to IRCC procedures for contacting CBSA with respect to individuals who are subject to a removal order that are applying for a VTIP or victim of family violence TRP.

When dealing with victims or suspected victims, officials must continue to apply existing policy guidance respecting VTIPs and victims of family violence. For example, MDs will take a victim-centred and trauma-informed approach when a permanent resident or foreign national is identified as a possible VTIP and follow existing guidelines and procedures specific to identifying and interviewing suspected VTIPs, as well as identifying and conducting interviews for suspected human traffickers who are encountered at the port of entry or inland.

Officers and MDs should always be alert to any information that raises concerns that a minor child has been trafficked, smuggled or abducted. In such situations, officers/MDs should refer to the procedures set out in the following guidance:

- ENF 21 Recovering missing, abducted and exploited children
- Temporary resident permits (TRPs): Considerations specific to victims of trafficking in persons

7 Procedure: Review of the A44(1) report by the Minister's Delegate

7.1 Transmission of an A44(1) report to the Minister's Delegate

Under A44(1), an officer may prepare a report if that officer is of the opinion that a permanent resident or foreign national in Canada is inadmissible.

All A44(1) reports concerning permanent residents and foreign nationals must be referred to the MD making the final decision about whether or not to issue a removal order or refer the matter to the Immigration Division.

Where the officer transmitting the report to the MD has also prepared an A44(1) case highlights form (IMM 5084B for inland cases or BSF516 for port of entry cases), a detailed memorandum or an A44(1) narrative report, this must also accompany the A44(1) report.

The officer transmitting the report must also forward to the MD, all documentation and evidence relied on by the officer in forming their opinion, including but not limited to:

- for permanent residents, proof of a search of citizenship records;
- copies of all relevant immigration documents and other certificates and affidavits that can be obtained from IRCC, if applicable;

- originals or copies of other documents relevant to the case, such as a birth certificate, marriage certificate, a certificate of conviction or other evidence of a previous conviction that is acceptable in a court of law;
- police occurrence reports;
- probation, parole and psychiatric assessments;
- police records and information on other convictions not reportable under A44(1);
- other documentary evidence that supports the allegation(s), including statutory declarations;
- evidence filed by the person concerned.

See also, ENF 1 Inadmissibility; ENF 2 Evaluating inadmissibility; and ENF 23 Loss of permanent resident status.

The importance of forwarding the officer's recommendation to the MD at the same time as the A44(1) report is transmitted was highlighted in Wong v Canada (Citizenship and Immigration) 2011 FC 971. In that case, the Federal Court dealt with the legality of two removal orders issued by the MD prior to the A44(1) case highlights form being signed and dated. In finding that this sequence of events rendered the orders improperly issued and therefore null and void, the Court affirmed that the officer's recommendation needed to be reviewed by the MD as part of the A44 process **before** a removal order was issued.

7.2 Reviewing the A44(1) report

Once the A44(1) report is transmitted by the officer to the MD, the MD will then review the report to determine its **accuracy** and **validity**.

Accuracy refers to the determination of the correctness of details contained in the report.

Prior to any substantive review by the MD, it is important for the MD to conduct an initial review of the A44(1) report to ensure that:

- the biographical data is correctly cited [name(s), date of birth];
- the status of person concerned is correctly identified in the A44(1) report;
- the inadmissibility section has been properly cited; and
- the A44(1) report has been signed and dated.

Any report containing such errors should be sent back to the officer who wrote the A44(1) report so that it can be corrected accordingly.

Validity refers to the determination of whether the report is well-founded, based on the MD's review of all of the evidence.

If the report is found to be valid, then the MD upholds the report and decides on the disposition of the case.

The disposition of the MD review under A44(2) will depend on the allegations and circumstances of each case and may include:

- referring the case to an admissibility hearing;
- issuing a removal order;

- allowing the person to leave Canada (POE cases only);
- issuing a Temporary resident permit (TRP); or
- issuing a warning letter (permanent residents/protected persons).

If the MD finds that the report is not valid, the MD may authorize the person to enter or remain in Canada; in certain circumstances, the MD may also decide to send the report back to an officer to for consideration of preparing a new report with the accurate allegation.

7.3 Procedure: Evidentiary requirements

To form the opinion that an A44(1) report is well-founded, the MD must have knowledge of the evidentiary rules and requirements for immigration matters. Knowledge of what may be required to substantiate an allegation of inadmissibility is an important consideration in all cases.

Each allegation has specific requirements for evidence and officers are to be guided by the content of ENF 1 Inadmissibility; ENF 2 Evaluating Inadmissibility; and ENF 18 Human or international rights violations.

In order to make a decision on the validity of an A44(1) report, the MD must be satisfied that the applicable burden and standard of proof may be met and that sufficient evidence has been or may be gathered to ensure that each element of an inadmissibility allegation may be satisfied.

7.4 Burden of proof

The burden of proof, in the context of immigration legislation, refers to who is responsible for establishing admissibility under the IRPA.

Under A45(d), the burden of establishing admissibility depends on whether or not the person has been authorized to enter Canada.

In cases of foreign nationals who are seeking entry (primarily applicable to port of entry cases) or those who entered Canada illegally, the onus is on the individual to establish that they are not inadmissible. Where the person has been authorized to enter Canada the burden to establish inadmissibility is on the Minister.

Table 3: Burden of proof

Persons authorized/not authorized to enter	Details	Burden of proof
Permanent residents and foreign nationals authorized to enter	A45(d) requires the Immigration Division to make a removal order against a permanent resident or a foreign national who has been authorized to enter Canada, if it is satisfied that they are inadmissible. Consequently, in cases involving persons who were granted entry into Canada, including permanent residents, the onus rests on the Minister to establish that the person is inadmissible.	Minister

Foreign nationals not authorized to enter	A45(d) requires the Immigration Division to make a removal order if it is not satisfied that a foreign national who has not been authorized to enter Canada is not inadmissible. A21(1) states that a foreign national becomes a permanent resident and A22(1) states that a foreign national becomes a temporary resident if an officer is satisfied that, inter alia, the foreign national is not inadmissible. This applies to persons seeking entry into Canada or those persons who have entered illegally. Consequently, the onus is on these persons to establish that they are not inadmissible.	Foreign national

7.5 Standard of Proof

The term “standard of proof” refers to the degree to which the decision-maker must be satisfied. Immigration proceedings are civil in nature and therefore the general standard of proof is the one applicable to civil matters: balance of probabilities. However A33 provides that, unless otherwise provided, the standard of proof for allegations listed under sections A34 to A37, is a lower standard of proof: reasonable grounds to believe that the facts have occurred, are occurring or may occur, applies.

“Balance of Probabilities” is a civil standard of proof used in administrative tribunals. It means that the evidence presented must show that the facts as alleged are more probable than not. The party having the burden of proof must demonstrate that the evidence presented outweighs any opposing evidence or arguments. It is a higher standard of proof than “reasonable grounds to believe”, but is lower than the criminal standard of “beyond a reasonable doubt” used in criminal proceedings.

“Reasonable grounds to believe” is a bona fide belief in a serious possibility that fact has been established based on credible evidence. Reasonable grounds to believe is more than suspicion. Some objective basis for the belief has to exist. Put another way, the fact itself need not be proven; it is enough to show reasonable grounds for believing the allegation true. Information used to establish reasonable grounds should be specific, compelling, credible and be received from a reliable source.

The following table summarizes the standard of proof for sections A34 to A42:

Table 4: Standard of proof

Reasonable grounds to believe	Balance of probabilities
• Security (A34) • Violation of human or international rights (A35) • Sanctions (A35.1) • Criminality (A36) – except for A36(1)(c) for permanent residents • Transborder criminality [A36(2.1)] • Organized crime (A37)	• Act or omission committed outside Canada – for permanent residents only [A36(1)(c)] • Health reasons (A38) • Financial reasons (A39) • Misrepresentation (A40) • Cessation (A40.1) • Non-compliance with the Act or the Regulations (A41) • Inadmissible family member (A42)

7.6 Duty to provide information

A person who seeks to enter Canada at a port of entry or who makes an application at an inland office that they should be authorized to enter or remain in Canada, as the case may be, must truthfully provide such information as an officer may require for the purpose of the examination. As such persons are subject to examination, there is a legal obligation under A16(1) to answer truthfully all questions put to them by an officer for the purpose of the examination, and produce all documents or other evidence reasonably required.

R37 specifies the point at which the examination of a person who seeks to enter Canada, or makes an application to transit through Canada, ends. Generally, examinations will end when an officer makes a decision on the application before them or, in cases referred to the MD, when a determination has been made. For refugee claimants, however, R37(2) provides designated officers the authority to examine a refugee claimant until the refugee claim has been determined by the Refugee Protection Division (RPD) of the IRB. The same obligation to answer truthfully applies to persons claiming to be refugees who are referred for a determination of eligibility pursuant to A100(1.1).

While there is no way of compelling persons to comply with the legal obligation to provide truthful information, under the IRPA it is an offence to knowingly provide false or misleading information under A127 (Misrepresentation).

It should be noted by officers at the port of entry that while permanent residents are subject to examination when seeking entry, the IRPA gives permanent residents of Canada the right to enter Canada at a port of entry pursuant to A19(2) once the officer is satisfied that the person holds permanent resident status. The obligation to answer truthfully under A16(1) for permanent

residents is linked to A18(1) and must be related to examination for the purpose of establishing that the person holds permanent resident status in Canada.

While an officer who is satisfied at examination that a person holds permanent resident status must admit that person, the officer may also form an opinion during examination that the permanent resident is inadmissible for other reasons under the IRPA. In such cases, the officer should advise the person that while it has been established that they have a right to enter Canada, there are reasons to believe that they could become the subject of a report under the IRPA which could lead to the issuance of a removal order. If the person wishes to continue answering questions or providing information/submissions pertaining to the allegation, they should be given an opportunity but are not required to do so. Even if a permanent resident becomes the subject of an A44(1) report, they continue to have a right to enter until a final determination has been made regarding their loss of status.

For further details on examination, see ENF 5 Writing 44(1) reports and ENF 4 Port of entry examinations.

8 Scope of Discretion of the Minister's Delegate

8.1 Minister's Delegate Options— Limited discretion of the MD at A44(2)

Where the MD reviews the A44(1) report and finds that it is well-founded, there are circumstances in which the objectives of the IRPA may be achieved without the issuance of a removal order. The MD has the discretion to take other action within the exercise of their delegated authority as set out in the IRPA and the IRPR. However, as will be seen in this section, the scope of discretion of the MD is limited.

The use of the word "may" in the IRPA suggests that Parliament intended to provide the officer and the MD with some discretion on decisions made under A44(1) and A44(2). While the body of case law respecting this scope of discretion varies, Canadian jurisprudence does affirm that an MD's discretion under A44 is limited.

The discretion under A44(1) and A44(2) does not mean that officers and MDs can disregard the fact that someone is, or may be, inadmissible. The discretion under A44 is meant to give officers and MDs some flexibility in managing cases where circumstances warrant that no removal order will be sought and where the objectives of the IRPA may or will be achieved without the need to write an inadmissibility report under A44(1) or issue a removal order/refer the case to the ID under A44(2).

The courts have also found that this scope of discretion varies depending on the inadmissibility grounds alleged, whether the person concerned is a permanent resident or a foreign national, and whether the MD or the ID has the authority to issue a removal order. In other words, the scope of discretion has been viewed as "variable and flexible".[7]

For example, in the case of Canada (Minister of Public Safety and Emergency Preparedness) v. Cha, 2006 FCA 126, a case involving a foreign national inadmissible under paragraph 36(2)(a)

[7] Sharma v. Canada (Public Safety and Emergency Preparedness), 2016 FCA 319

of the IRPA, the FCA held that in spite of the use of the word "may" in the wording of subsection A44(2), there are limits to the discretion afforded to officers and MDs. The FCA held that with respect to foreign nationals inadmissible for criminality or serious criminality, officers and MDs have limited discretion under A44(1) and A44(2). The Court further outlined that the particular circumstances of the foreign national, the nature of the offence, the conviction, and the sentence are beyond the scope of the discretionary power of the officer when considering whether or not to write an A44(1) report for criminality or serious criminality against a foreign national. The FCA also concluded that permanent residents have more rights and therefore benefit from more discretion by decision-makers than foreign nationals do.

More recent jurisprudence[8] confirms that officers and MDs making decisions under A44 have very limited discretion on whether to refer a case for an admissibility hearing, particularly in matters concerning serious criminality and organized criminality, and that there is no obligation for officers or MDs to consider factors related to H&C or 'personal circumstances'. These decisions also confirm that at this the 44 stage, officers and MDs are conducting a fact-finding mission into "readily and objectively ascertainable facts" and that this administrative screening function applies to both foreign nationals and permanent residents.

In general, discretion under A44 means that officers and MDs have some flexibility in managing cases where the person is inadmissible, however the objectives of the IRPA may or will be achieved without the need to write a report under A44(1) or, at the MD level, issue a removal order or A44(2) referral, for example:

- where an MD allows a withdrawal of an application to enter Canada (Allowed to Leave) option at a port of entry after an A44(1) report has been written;
- where a person is already subject to an enforceable removal order and the MD determines that the objectives of the IRPA would not be served by the issuance of an additional removal order and determines that a disposition of "no further action" on the A44(2) report would be appropriate;
- where an MD decides to issue a Temporary Resident Permit (TRP) to a foreign national taking into account the relevant assessment risk factors set out in agency and departmental guidance (e.g., foreign national who is seeking entry to work in Canada and who was convicted of a non-violent offence many years ago);
- where the MD holds the A44(2) review in abeyance pending the decision on an application to IRCC for restoration of status by a foreign national who has remained in Canada beyond the period authorized; or
- where the MD decides that the issuance of a warning letter for a permanent resident or protected person reported under A36(1) is warranted, in consideration of all of the circumstances of the case, including the objectives under paragraphs A3(1)(h) and (i) of the IRPA.

[8] Obazughanmwen v. Canada (Public Safety and Emergency Preparedness), 2023 FCA 151; Sidhu v. Canada (Public Safety and Emergency Preparedness), 2023 FC 1681; Matharu v. Canada (Public Safety and Emergency Preparedness), 2024 FC 902

8.2 Priority Cases: Inadmissibility under A34, A35, A35.1, A36 and A37 of the IRPA

It was affirmed by the FCA in Sharma v. Canada (Public Safety and Emergency Preparedness), 2016 FCA 319, that within the context of A44, officers and the MD must always be mindful of Parliament's intention in drafting the IRPA to make security of Canadians a top priority. In Sharma, the FCA also concluded that the FCA's rationale in Cha in support of a limited discretion under A44 would appear to apply equally to both foreign nationals and permanent residents.

Although the factors contained in these guidelines may be considered at the A44(2) stage, officers and MDs must always be mindful of the various objectives of the IRPA, in particular A3(1)(h) and (i). As suggested by Federal Court jurisprudence, in cases of inadmissibility under A34 to A37, the scope of discretion enjoyed by officers and MDs making a decision under A44 will be very narrow and generally it is reasonably open to officers and MDs to prioritize public safety and security.

8.3 Special considerations for protected persons

Under the IRPA, protected persons are provided with certain protections, including the right of non-refoulement under A115(1) and, subject to A64, the right under A63(3) to appeal to the IAD against a decision to make a removal order against them. This was recognized by Justice Décary in Cha, who noted that the Act and the Regulations treat permanent residents differently than Convention Refugees who are, in turn, treated differently than other foreign nationals.

It should be noted that the Federal Court jurisprudence would support that protected persons are not entitled to a higher degree of procedural fairness or participatory rights with respect to the operation of A44 than other foreign nationals or permanent residents [see Awed v. Canada (Citizenship and Immigration) 2006 FC 469]. Officers and MDs should also keep in mind that the Federal Court has made findings to support the principle that officials carrying out A44(1) and (2) assessments are not obliged to speculate about how and when future deportation might take place [Faci v. Canada (Public Safety and Emergency Preparedness), 2011 FC 693].

In cases of protected persons, the MD may also consider as an additional factor in their assessment, whether the facts of the case would support a referral for a Ministerial opinion ('Danger Opinion') under A115(2). For further information, see ENF 5, section 14.5, 'Overview: Minister's opinions/interventions'.

9 Charter considerations

The purpose of this section is to provide guidance to officials performing MD functions under A44(2) in handling Charter and/or constitutional arguments made in the course of A44(2) proceedings.

The jurisprudence respecting the application of the Canadian Charter of Rights and Freedoms [9] (Charter) at the A44(2) stage is in a state of flux.[10] Therefore, current guidance to MDs is constrained by the evolving state of the law in this area.

[9] Constitution Act, 1982, Part I Canadian Charter of Rights and Freedoms

[10] For example, see Revell v. Canada (Citizenship and Immigration), 2019 FCA 262;

Existing case law establishes that all administrative decision-making must be consistent with the Charter.[11] Under the IRPA, this requirement has been incorporated into the objectives of the Act under A3(3)(d).

Where a person specifically alleges that a provision of IRPA or its application (i.e., decision of the MD to issue a removal order or refer the report to the Immigration Division ID for an admissibility hearing) breaches one or more enumerated Charter right, the MD must address these Charter concerns in their written decision. This was affirmed by the Federal Court in its decision in Abdi v. Canada (Public Safety and Emergency Preparedness), 2018 FC 733. In other words, the MD cannot ignore Charter arguments. This does not mean, however, that MDs are expected to engage in a complex Charter analysis within the context of A44(2) decisions.

In most cases, the courts have found that the specific Charter rights being raised do not apply at the A44(2) admissibility stage, that is, it is premature to say at the A44 stage that the MD's decision will impact these enumerated Charter rights. For example, in Brar v. Canada, 2016 FC 1214, the Federal Court expressed doubts that section 7 rights could be engaged by the A44(2) referral decision, and, in a related case, reiterated that section 7 rights are not engaged at the referral stage (Brar v. Canada, 2017 FC 820).

- MDs should keep in mind that the courts have found that the objectives of the IRPA indicate Parliament's intent to prioritize the security of Canadians. [12]
- MDs should note that the Federal Court has found that the MD is not obliged to speculate about how and when a future deportation might take place or engage in a section A25 (H&C considerations) or a section A112 (Pre-Removal Risk Assessment) analysis.[13]
- **Where a person specifically mentions a breach of their Charter rights in either verbal or written submissions**, the MD should record this in their notes and address it in their reasons, even if only to say that they do not find that specific Charter rights are engaged at this stage and provide supporting reasons.

Constitutional arguments about legislation:

In cases where the person concerned is challenging the constitutionality of a provision of the IRPA itself:

- CBSA and IRCC officials do not have jurisdiction to grant Charter remedies under section 52 of the *Constitution Act* or under section 24 of the Charter.[14]

Moretto v. Canada (Citizenship and Immigration), 2019 FCA 261; Surgeon v. Canada (Public Safety and Emergency Preparedness), 2019 FC 1314

[11] Doré v. Barreau du Québec, 2012 SCC 12

[12] Medovarski v. Canada (Minister of Citizenship and Immigration), [2005] 2 S.C.R. 39

[13] Faci v. Canada (Public Safety and Emergency Preparedness), 2011 FC 693

[14] Under subsection 24. (1) of the Charter, a person whose rights or freedoms guaranteed by the Charter, "have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances". Pursuant to subsection 52(1) of the Constitution Act, a court may also strike down a legislated provision which is found to infringe a person's Charter rights as invalid. Subsection 24(1) of the Charter relates to personal remedies for a government

- Where the MD is specifically asked to rule on the constitutionality of A44(2) or another provision under the IRPA, the MD should indicate in their decision that they do not have the authority to do so and such a remedy should be sought in a court of competent jurisdiction.
- If the MD is requested to delay A44(2) procedures so that the person concerned may make an application to the Federal Court on the constitutionality of a provision under the IRPA, the MD should, in deciding the request, consider that the legal process permits an application to the Federal Court to be made following the decision on eligibility or admissibility. Consequently, there is no reason, based on a constitutional argument, for the MD to permit a delay of procedures for the purpose of pursuing a Federal Court application.

10 Cases where the MD has jurisdiction to issue a removal order

10.1 Procedural fairness considerations

The purpose of A44(2) proceedings is for the MD to review the A44(1) report to determine whether the report is well-founded. In prescribed circumstances set out in the Regulations, where the MD determines that the A44(1) report is well-founded, the MD has the authority to issue a removal order.

In cases where the MD has the authority to issue a removal order, the MD will need to ensure that certain steps are completed to ensure that procedural fairness has been met.

During in-person proceedings before the MD, the person concerned must be informed of the purpose of the A44(2) interview/proceeding and the possible outcomes of it. Prior to a substantive review, the MD must also give the person concerned the opportunity to obtain the services of an interpreter where one is necessary and the MD must ensure that the person concerned understands the proceedings. In certain circumstances, such as where the person concerned is detained, the officer must also explain the right to counsel and ensure that an opportunity to be represented by counsel has been provided.

Persons must be informed of the nature of the allegations regarding their inadmissibility contained in the A44(1) report(s) at the earliest opportunity, and must be given a reasonable opportunity to respond to those allegations before a removal order is issued.

It is important for the MD to make notes detailing the process followed in exercising their decision-making powers. Where the MD is utilizing the case highlights form (BSF516 or IMM5084B) to record their decision, the form should be completed in as much detail as possible).

For further detail on procedures during in-person proceedings, see **Appendix C: Steps to be completed during in-person A44(2) proceedings where the MD has jurisdiction to issue a removal order.**

---

action which breaches Charter rights, whereas subsection 52(1) would apply where legislation is found to be invalid. MDs are not considered a court of competent jurisdiction and therefore cannot grant a remedy under section 24 of the Charter.

10.2 Types of administrative removal orders

The IRPA and IRPR contain provisions regarding the issuance of removal orders for persons who are found to be inadmissible on one of the grounds listed in the IRPA.

R223 provides for three types of removal orders that may be issued:

- departure order;
- exclusion order; and
- deportation order.

R228 specifies the type of removal order that the MD is authorized to make in prescribed circumstances for certain inadmissibility provisions. It is important to note that the Regulations do not distinguish between removal orders that are in force under the IRPA and those that are not (conditional) and it is A49 which specifies when removal orders come into force.

Table 5: Types of removal orders

Departure Order R224(2)	• Requires the person to leave Canada within 30 days after the order becomes enforceable. • Becomes a deportation order by operation of law when the person does not meet the requirements set out under R240(1)(a) to (c) within 30 days after the order becomes enforceable.
Exclusion Order R225	• A person who has been removed on an exclusion order cannot return to Canada for one (1) year* unless the person obtains the required written authorization to return *If the exclusion order issued as a result of the application of A40(2)(a) (misrepresentation), the exclusion period is five (5) years
Deportation Order R226	• Permanently bars the person from returning to Canada, unless the person obtains the required written authorization to return

10.3 Permanent residents and their residency obligation— R228(2)

Pursuant to the IRPR, the MD has the authority to issue removal orders against permanent residents only in cases where the inadmissibility is based on a failure to comply with the residency obligations under A28. The authority of the MD does not include the issuance of removal orders for permanent residents on other grounds of inadmissibility.

ENF 6 Review of reports under subsection 44(2)

Before the MD issues a departure order against a permanent resident, paragraph A28(2)(c) specifically requires the MD to determine whether humanitarian and compassionate considerations, including the best interests of any child affected by the decision, overcome any breach of the residency obligation.

The MD is required to consider all information presented by the permanent resident on a case-by-case basis. The following are examples of considerations the MD may consider in determining whether humanitarian and compassionate grounds justify the retention of permanent resident status. The MD is to consider circumstances and events that occurred in the last five-year period which led to the permanent resident's non-compliance with the residency obligation.

Examples of factors to weigh under A28(2)(c)

i. Extent of non-compliance:

- What is the number of days of physical presence in Canada within the five-year period under examination?
- Was any period of time outside of Canada due to a medical condition or the medical condition of a close family member? Could alternative arrangements for the care of the family member have been made?

ii. Circumstances beyond the person's control:

- Are the circumstances for remaining outside of Canada compelling?
- Were there circumstances which prevented the permanent resident from returning to Canada?
- Has the permanent resident returned to Canada at the earliest opportunity?
- Did the permanent resident leave as a child accompanying a dependent? If so, is the permanent resident returning at the earliest possible opportunity? Did the permanent resident accompany a parent because of a mental or physical disability?

iii. Establishment in and outside Canada:

- Is the permanent resident a citizen or permanent resident of another country?
- Has the permanent resident taken steps to establish permanence in a country other than Canada?
- To what degree is the permanent resident established in Canada?
- What ties to Canada has the permanent resident maintained?

iv. Presence and degree of consequential hardship:

- What is the degree of hardship caused by the loss of permanent resident status in relation to the permanent resident's personal circumstances? What is the impact on family members, especially children?

10.4 Removal order for refugee claimants— R228(3)

R228(3) provides that where a removal order issued with respect to a person who has made a claim for refugee protection which has been determined to be eligible to be referred to the Refugee Protection Division (RPD) or no eligibility determination has been made, a departure order is the applicable removal order in prescribed circumstances.

A49(2) provides that a removal order made against a refugee protection claimant is conditional and prescribes the circumstances under which the removal order will come into force.

Note: MDs should keep in mind that there are special procedures for vulnerable persons and refer to the IRCC Program delivery instructions on Processing in-Canada claims for refugee protection of minors and vulnerable persons.

10.5 Dual intent

A22(2) states that the intention of a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that the person will leave Canada by the end of the period authorized for their stay.

Dual intent is present when a foreign national who has applied for permanent residence in Canada (or is entitled to apply for permanent residence within Canada) also seeks to enter Canada for a temporary period as a visitor, worker or student. If an officer has concerns/doubts about the foreign national's bona fides, the foreign national must be made aware of these concerns and given an opportunity to respond to them.

Some examples of dual intent could include:

- a foreign national frequently visiting a Canadian spouse who has complied with previous conditions of entry and is otherwise not inadmissible, even if an application for permanent residence has not yet been submitted;
- a foreign national who has applied or intends to apply for permanent residence, but is visiting Canada to assess employment opportunities, setting up household, etc.

The Federal Court in Rebmann v. Canada (Solicitor General), 2005 FC 301 held that an officer is required to take into account the foreign national's dual intent in entering/remaining in Canada as a temporary resident and provide analysis of the relevant evidence with regards to the foreign national's intention to establish permanent residence in Canada to show that the foreign national will not leave Canada by the end of the period authorized for their stay as a temporary resident.

Officers and MDs should distinguish between a foreign national whose intentions are bona fide and a foreign national who has no intention of leaving Canada at the end of their authorized stay if the application for permanent residence is refused.

The possibility that a foreign national may, at some point in the future, be approved for permanent residence does not absolve the individual from meeting the requirements of a temporary resident, specifically, to leave Canada at the end of the period authorized for their stay, in accordance with section R179.

In assessing the foreign national's intentions, officers and MDs should weigh all the factors relevant to the case, including the length of time the applicant has spent in Canada, the means of support; obligations and ties in the home country, previous compliance with requirements of the IRPA and any compassionate circumstances of the person concerned. These factors should be considered before proceeding with administrative enforcement action under A44(1) or A44(2).

Officers are reminded to use their own judgment and the flexibility afforded to them by subsection A22(2) when making decisions on cases where the foreign national also has the intention to become a permanent resident.

For further guidance on assessing dual intent considerations, see IRCC Program delivery instructions on Dual intent. See also: ENF 4 Port of entry examinations.

10.6 Restoration of status

R182 describes a mechanism by which a visitor, worker or student who has lost temporary resident status for having failed to comply with any of the conditions imposed under R185(a), R185(b)(i) to (iii) or R185(c), may nevertheless submit an application within the 90-day period of the loss of their status, and if eligible have that status restored.

It is important to note that under the D & D instruments, only IRCC officials have the authority to consider an application for restoration of status.

The application submitted to IRCC shall be approved if the processing officer is satisfied that the foreign national continues to meet the initial requirements of their stay, and has not failed to comply with any other conditions imposed and is not the subject of a declaration made under A22.1. It is to be noted that an officer shall not restore the status of a student if the student is not in compliance with a condition set out in R220.1(1).

Note: If a temporary resident has applied for an extension of their authorized status before the status expires, they are considered to have **maintained status** (formerly referred to as "implied status") until a decision is made on their application. Maintained status works by operation of law [R183(5)], and the temporary resident cannot be reported for non-compliance until a decision is made on their application for an extension, unless other IRPA inadmissibilities are present. For further details regarding procedures for persons with maintained status, see IRCC Program delivery instructions on Temporary residents: Maintained status during processing (previously called implied status).

The following guidelines must be taken into account by Inland Enforcement Officers and MDs prior to taking enforcement action in such cases:

Scenario 1: Foreign national is out of status, but has applied for restoration of status within the 90-day period and is otherwise admissible – decision pending

Foreign nationals who have submitted an application to have their status restored within the 90-day period, and who are not inadmissible under any other section of the Act or Regulations, should not be subject to an A44(1) report. In such circumstances, officers and MDs must allow for a decision to be rendered by IRCC before taking enforcement action, an approach which is consistent with the Federal Court's findings in Sui v. Canada (Minister of Public Safety and Emergency Preparedness), 2006 FC 1314.

Scenario 2: Foreign national is out of status and has not applied for restoration of status but is still within 90-day eligibility period

While there is nothing in the IRPA or the Regulations that prohibits an officer from writing an A44(1) report or an MD from issuing an exclusion order during the 90-day restoration period where no application for restoration has yet been made, officers and MDs should consider whether or not to pursue enforcement action in such cases. After taking appropriate steps to ensure that a restoration application has not been made, should an officer decide to write an A44(1) report and refer it to the MD for review, the officer should articulate their reasoning in pursuing enforcement action in the decision, if such action is pursued prior to the expiration of the 90-day eligibility period.

Where the MD receives an A44(1) report for non-compliance within the 90-day restoration period where the foreign national has not filed an application but is otherwise admissible, the MD must then consider R182 and has the discretion to hold the report in abeyance until the 90-day eligibility period has lapsed. If the MD decides to proceed with the A44(2) review, the MD should verify whether a restoration application has been or will be filed, and must consider all the circumstances of the case, including the fact that the foreign national is within the 90-day restoration period.

This approach is consistent with the Federal Court's decision in Ouedraogo v. Canada (Public Safety and Emergency Preparedness), 2016 FC 810 where the Court noted that the discretion of a MD to issue an exclusion order and the ability of a foreign national to apply for restoration of status are not mutually exclusive – both can occur at the same time. The Court found that the simple existence of an application for restoration does not in and of itself shield a foreign national against enforcement action. In short, where an application for restoration is made, although the existence of the application should be taken into consideration by the MD when they are exercising their discretion, there is nothing prohibiting the MD from nonetheless making an inadmissibility finding where the foreign national is found to be non-compliant with the requirements set out in R185.

In order to adhere to the principles of procedural fairness and natural justice, officers and MDs must consider each case on its own merits and may consider the following:

- Does the foreign national state that they wish to remain in Canada and for what purpose?
- Has the foreign national already made arrangements to depart Canada in the immediate future?
- Is the foreign national evasive about their departure plans or the intent to remain in Canada?
- Has the foreign national otherwise been in compliance with the terms and conditions of their temporary resident status?
- If the foreign national has not applied for a restoration of status, is the officer/MD satisfied that the foreign national will appear for future immigration interviews and/or depart Canada voluntarily?
- If the officer/MD is satisfied that the foreign national will seek to remedy lapsed status within the 90-day period, then the officer/MD may wish to allow the 90-day application period to lapse before reviewing the case again in consideration of enforcement action.

Scenario 3: Foreign national is out of status beyond the 90-day restoration of status eligibility period, or is otherwise inadmissible under the IRPA or Regulations

If an officer encounters a foreign national who has overstayed their authorized period of stay beyond the 90-day eligibility period for applying for restoration of status, or where the foreign national is otherwise inadmissible under the IRPA or Regulations, the officer may pursue appropriate enforcement action, which includes writing an A44(1) report and referring it to the MD for a review under A44(2).

10.7 Procedure: Reviewing A44(1) reports when a Minister's Delegate is not on site

Officers cannot prepare and then review their own A44(1) report under the IRPA. In those circumstances where a MD is not physically on-site and/or otherwise available to conduct a review under A44(2) in person and deferring the proceeding is not a viable option, officers must contact an off-site MD for the purpose of reviewing the A44(1) report and conducting a determination under A44(2) by telephone or videoconference.

In all A44(2) reviews not conducted in person, the MD will need to review the A44(1) report in GCMS as well as any case notes or accompanying documents that the officer has uploaded into GCMS. The officer who contacts the MD must also ensure that their recommendation and any supporting evidence has also been provided to the MD prior to the commencement of the A44(2) proceeding. The officer must also make notes during the MD review and fully document the procedural steps taken throughout all stages of the proceedings.

The MD is required to follow all steps for conducting the MD review and enter detailed examination or application notes into the GCMS that fully support the decision being made. MDs may refer to section 22 of this manual chapter, 'Entering MD decisions into GCMS'. Where the MD also makes handwritten notes during the proceedings, these should be forwarded to the officer holding the file and/or uploaded into GCMS.

In those cases where the MD has jurisdiction to issue a removal order, officers and MDs must be particularly diligent in ensuring that all matters relating to natural justice and procedural fairness are satisfied and documented in notes.

In cases where the MD has jurisdiction to issue a removal order and if, for any reason, the opportunity does not exist for the person concerned to communicate directly with the MD, or if the MD is of the opinion that the person concerned does not truly appreciate the nature of the proceedings, then the A44(2) proceeding must be postponed until a MD is physically on site to conduct the A44(2) review in person.

If the MD makes a decision to issue a removal order pursuant to R228, the MD will enter the decision into GCMS and the officer who has the person concerned before them can print the removal order and provide it to the person concerned.

Note: If, for any reason, the MD has made a decision not to proceed with or otherwise continue the MD review under A44(2), the officer is not to contact other MDs.

10.8 Procedure: Issuing removal orders to persons in absentia

In absentia is Latin for "in the absence of".

In the context of A44(2), the practical application of an in absentia proceeding will be in those exceptional circumstances when persons who are subject to an A44(2) Minister's proceeding have a removal order made against them without being present at the time the removal order is issued.

A55(1) allows for the issuance of a warrant for the arrest and detention of a foreign national or permanent resident where there are reasonable grounds to believe the person is inadmissible and unlikely to appear "at a proceeding **that could lead to the making of a removal order by the Minister under subsection 44(2)**".

As officers have the authority to issue a warrant for a person unlikely to appear at A44(2) proceedings in cases where the MD has jurisdiction to issue the removal order, removal orders should not be issued in absentia, unless under **exceptional circumstances**. These cases will be rare, and each will need to be assessed on an individual basis taking into consideration all relevant information before proceeding with an in absentia proceeding.

The following scenario illustrates an example of exceptional circumstances where an in absentia proceeding may be reasonable.

Scenario:

> A foreign national entered Canada as a member of a crew and shortly after deserted their vessel. The crew member did not report to CBSA or IRCC within the specified time frames under the Regulations and was reported under A44(1). In an attempt to locate the person in Canada, all investigative leads were exhausted. The A44(2) proceeding was held in absentia and after reviewing all the evidence, the report was determined to be well-founded and the person was issued a removal order and a warrant for removal.

This approach is consistent with the FCA's findings in Canada (Citizenship and Immigration) v. Jayamaha Mudalige Don, 2014 FCA 4. While the FCA concluded that it was open to the MD to issue the removal order, the court's finding that procedural fairness was not breached was based on the specific facts of the case (i.e., immigration officials had NO contact information for the person, more than 72 hours had elapsed from the time when the person deserted his ship and subparagraph 228(1)(c)(v) of the Regulations expressly provided for the issuance of a removal order). It is important to note that the FCA placed great weight on the fact that the person concerned had an obligation to report to CBSA or IRCC and failed to do so and the coordinates of the person concerned in that case were NOT known to CBSA/IRCC and therefore the person was incapable of being notified.

Notification when scheduling A44(2) proceedings

Not all A44(2) proceedings will take place on the same day that the A44(1) report is written, for number of reasons. In some cases, a person may be reported pursuant to A44(1), and the review of that report by a MD will not take place until a MD is available. In these situations, reasonable efforts shall be made to notify the person to appear and provide an opportunity to be heard at the A44(2) proceeding. 'Reasonable efforts' will vary from case to case depending on

the nature of the case, type of information available and the level of engagement with the person concerned.

- Where the person's address is known, officers shall provide written notice in-person or mail, depending on the circumstances, by completing a Notice to Appear for a Proceeding under A44(2) [IMM 1234B or BSF504]. This form will provide notice of the location, date and time of the A44(2) Minister's proceeding; legal authority to conduct the proceeding; and consequences of failing to appear at the proceeding. Other relevant information such as a copy of the A44(1) report which sets out the allegation(s) and contact information should also be provided.
- If the notice is being mailed, reasonable efforts shall be made to verify the accuracy of the person's address; this includes querying and updating databases. Reasonable time and opportunity shall be provided to the person to allow for attendance at the A44(2) proceeding.

Failure to Appear at 44(2) Proceedings

- If the person fails to attend on the date specified, the MD conducting the review shall adjourn the proceeding. Reasonable efforts shall be made to determine the reasons for the no-show (e.g. letter to the last known address, site visit and/or telephone call).
- In some circumstances, there will be valid excuses as to why the person failed to appear. The onus will be on the person to show cause for not appearing at the proceeding. Officers shall make a determination as to whether the explanation is reasonable and attempt to communicate the results of that determination to the person.
- If satisfied of the explanation for not attending the proceeding, a second written notice [IMM 1234B or BSF504] will be delivered in-person or by mail, depending on the circumstances. Officers must clearly write or otherwise indicate "second notice" on the form.
- If, following the second call-in notice there is no communication from the person concerned and/or their legal representative explaining their absence and if the inadmissibility allegation falls within the MD's jurisdiction to issue a removal order (R228), the MD may pursue the issuance of an arrest warrant for being unlikely to appear for an A44(2) proceeding that could lead to the making of a removal order.
- For allegations where the jurisdiction to issue a removal order rests with the ID, it is open to the MD to refer the A44(1) report to ID for an admissibility hearing and consider issuing a warrant for admissibility hearing pursuant to A55(1) (see ENF 7 Immigration Investigations and IRPA s.55 Arrests/Detention for further details).
- Note: IRCC officers may refer cases for warrant issuance to CBSA for review. All such referrals must include all details of attempts made to contact the person concerned and copies of all call-in notices sent and case notes.
- In exceptional cases where there is detailed information on file that the person concerned was aware of the A44(2) proceeding (e.g., person was served with the call-in notice in-person and understood the consequences, the A44(2) proceeding was initiated by the MD but had to be postponed due to unavailability of the person's counsel and the person concerned was fully aware of the new date, etc.) the MD may proceed to conduct a review under A44(2) in absentia.

- In those **exceptional cases** where the MD proceeds with the A44(2) review in absentia, the MD will be required to conduct a paper review of the A44(1) report with all relevant evidence available at the time of the A44(2) review. If, after such review, the MD determines the A44(1) report to be well-founded, and if all grounds of inadmissibility are those for which the MD has jurisdiction, a removal order may be made against the person concerned even though the person is not present at the time the removal order is issued.

10.9 A44(1) reports for inadmissible family members

Under A42, accompanying and non-accompanying family members may be inadmissible to Canada under prescribed circumstances. This provision may only apply to family members who are foreign nationals, other than protected persons.

Where an officer writes an A44(1) report against a family member for inadmissibility under A42, the MD has jurisdiction under R228 to issue the applicable removal order. Officers and MDs should note, however, that for the purposes of A52(1), the making of a removal order against a foreign national on the basis of inadmissibility under A42 is a prescribed circumstance that does not oblige the foreign national to obtain the authorization of an officer in order to return to Canada.

It is important to note that A42 may only form the basis of an A44(1) report when the person is inadmissible under sections **A34, A35, A35.1, or A37**.

Procedure to include family members on ID removal order

R227 sets out that, for the purposes of section 42 of the Act, a report prepared under A44(1) against a foreign national is also a report against the foreign national's family members in Canada.

R227(2) provides that, in the case of a removal order made by the ID against a foreign national who has family members in Canada, the removal order issued by the ID against a foreign national may also be made effective against the family members without the need for a separate inadmissibility report provided that an officer informed the family member(s):

- of the report;

- that they are the subject of an admissibility hearing and, consequently, have the right to make submissions and be represented, at their own expense, at the admissibility hearing; and

- that they are inadmissible under A42 on grounds of being an inadmissible family member.

While this procedural avenue may be available under the Regulations, it is generally recommended that where an officer decides to pursue enforcement action against inadmissible family members of a foreign national under A42, the officer should proceed by way of writing a separate A44(1) inadmissibility report for each family member after the removal order has been made against the foreign national. It is also to be noted that this avenue is not available in cases involving allegations within the jurisdiction of the MD.

Note: the MD only has the authority to issue removal orders against persons against whom an A44(1) report has been written. The MD cannot include family members in an administrative removal order relating to another member of the family.

10.10 Procedure: Removal orders following vacation or cessation of refugee/protected person status by RPD

R228(1)(b) allows the MD to issue removal orders to foreign nationals who are inadmissible for misrepresentation under A40(1)(c) on a final determination by the RPD to vacate a decision to allow the person's claim for refugee protection or application for protection pursuant to A109.

Under A109(1), the RPD may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

R228(1)(b.1) allows the MD to issue removal orders to foreign nationals who are inadmissible under A40.1(1) on a final determination by the RPD under A108(2) that the refugee protection of the foreign national has ceased (i.e., cessation of refugee protection).

Pursuant to A46 a person loses permanent resident status on a final determination by the RPD:

- to vacate a decision to allow a claim for refugee protection or application for protection [A46(1)(d)]; or
- that their refugee protection has ceased under A108(2) for any of the reasons described in paragraphs A108(1)(a) to (d) [A46(1)(c.1)].

The MD should only issue the applicable removal order once all court challenges to the decision by the RPD to vacate the refugee protection claim or cease refugee protection have been exhausted and are resolved.

Note: following a decision of the RPD that refugee protection has ceased under A108(2), the Minister may not simply rely on a previous removal order (issued against the person before protected person status was granted) to remove that person. In other words, a new A44(1) report based on inadmissibility under A40.1(1) would need to be written and a new removal order would need to be issued by the MD in these circumstances.

Following a decision by the RPD to vacate a decision to allow a claim for refugee protection or cease refugee protection, the foreign national has 15 days to apply for leave to the Federal Court for a judicial review as stipulated in A72(2). Therefore, the MD shall wait a minimum of 22 days (seven days for receipt of a decision sent by mail and 15 days for the application under A72(2)) before issuing the removal order following the writing of an A44(1) report for inadmissibility under A40(1)(c) or A40.1(1).

Where an application for leave to the Federal Court has been filed, the MD shall wait until the final decision is rendered and all legal means of challenging the decision have been exhausted and resolved. Prior to issuing the removal order, the MD shall ensure that no litigation regarding the RPD decision remains outstanding and that the minimum period of time to file an extension of time has elapsed without an application. The MD should seek the assistance of the regional

Justice Liaison officer with respect to the status of litigation and any issues regarding extensions of time.

11 Temporary resident permits (TRPs)

In some cases, a designated officer may exercise their authority under A24(1) to issue a TRP to allow a foreign national who is inadmissible or does not meet the requirements of the IRPA to enter or remain in Canada where it is justified in the circumstances. TRPs are always issued at the discretion of the designated authority and may be cancelled at any time.

The authority to issue a TRP is determined by the IRCC Designation and Delegation (D & D) Instrument and depends on the nature of the allegation.

Note: For CBSA, TRPs may only be issued by designated officials at the port of entry
There are instances where the person who has the delegated authority to review the A44 report (the MD) does not have the designated authority to issue a TRP. In such cases, the official with authority to review the report (i.e., the MD) may make a recommendation to the person with the designated authority to issue a TRP.

Officers and MDs may recommend or issue TRPs only in accordance with the Act and Regulations, and must follow the IRCC Program delivery instructions on Temporary resident permits. In all cases, officers and MDs must leave a record, which includes detailed notes entries in GCMS, of their decision or recommendation. For further information, see ENF 4 Port of entry examinations.

TRPs should only be issued after careful consideration of **all assessment factors** as the document carries privileges greater than those accorded to other visitors, students and workers with temporary resident status. Before issuing a TRP, officials must consult the departmental and agency guidelines on risk assessment factors and procedures for issuing TRPs. This applies to both initial and subsequent TRPs.

Where an officer does not have the authority to issue a TRP but has reviewed the case and is recommending the issuance of a TRP, the officer must prepare a written a case summary that includes a recommendation for a final decision. The officer will refer the case file to the decision-maker with the designated authority to issue a TRP for a final determination. If the decision is made to issue a TRP, the decision-maker will determine the period of validity of the TRP.

For further instructions and procedures for TRPs, officers must refer to the IRCC Program delivery Instructions on Temporary resident permits and ENF 4 Port of entry examinations.

Additional considerations for TRP issuance:

- A person is **not eligible for a TRP if less than 12 months have passed since their claim for refugee protection was last rejected** [or determined to be withdrawn or abandoned as described under subsection A24(4)].

  Exception: The one-year ban on accessing a TRP under A24(4) does not bar an IRCC officer, on their own initiative, from considering a TRP for a victim of human trafficking.

- There are specific IRCC policy guidelines respecting certain **vulnerable persons including suspected or known victims of human trafficking and victims of family violence.** Only IRCC officials may issue TRPs to victims of human trafficking or victims of family violence, however CBSA officials should follow the procedures set out in the Program delivery instructions above for handling these cases.
- If a **student, worker or visitor with valid temporary resident status is reported under subsection A44(1)** but a decision is made not to hold an admissibility hearing or issue a removal order, that person remains a temporary resident, and a TRP is not required.

12 Allowing withdrawal of application to enter Canada/ Allowed to leave (Port of entry cases)

Under R42, the officer who examines a foreign national who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada shall allow the foreign national to withdraw their application, unless R42(2) applies.

R42(2) provides that a foreign national shall not be allowed to withdraw their application to enter Canada where a report under A44(1) is being prepared or has been prepared, **unless the MD does not make a removal order or refer the report to the ID for an admissibility hearing.** In other words, once an officer writes an A44(1) report, the allowed to leave option may only be exercised at the MD level.

In exercising their discretion, the MD should consider whether the objectives of the IRPA are better served by allowing the person to voluntarily withdraw their application to enter Canada pursuant to R42 in the circumstances of the case.

R42(3) provides that foreign nationals who are allowed to withdraw their application to enter Canada must appear without delay at a port of entry to verify their departure from Canada. If a person is allowed to leave Canada voluntarily, the officer or MD must give the person an Allowed to Leave Canada form (IMM 1282B).

For further details regarding allowing persons to leave/withdraw their application to enter Canada: see ENF 5, section 9. 4, ‘Allowing withdrawal of application to enter Canada/ Allowed to leave (Port of entry cases)’ and ENF 4 Port of entry examinations.

13 Procedure: Handling possible claims for refugee protection

Although there is no requirement in the IRPA for the MD to ask whether the subject of a determination wishes to make a claim for refugee protection, the MD should be aware of Canada's obligations under the United Nations Convention relating to the Status of Refugees, and under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

A99(3) excludes persons under a removal order from making a claim for refugee protection. Therefore, the MD must ensure, before issuing a removal order under A44(2), that this would

not be contrary to the spirit of Canada's obligations, even when the individual does not explicitly request access to the refugee determination process.

It must also be recognized that some people who may have a legitimate need of Canada's protection are unaware of the provision for claiming refugee status.
Handling a possible claim for refugee protection:

- Where the subject of a determination for an administrative removal order has not made a claim, the MD should ask them how long they intend to remain in Canada (port of entry cases) or when they intend to return to their home country (inland cases) or if there are any reasons why they are unable or unwilling to return to their home country.
- If the person indicates that their intention is or was to remain temporarily, the MD should proceed with the removal order decision and issue the removal order, if appropriate.
- If the person indicates that their intention is or was to remain in Canada indefinitely, the MD is to inquire about their motives for leaving their country of nationality/home country and the consequences of returning there before making a decision on issuing a removal order.
- Where the responses indicate a fear of returning to the country that may relate to refugee protection, the MD is to inform the person of the definition of a "Convention refugee" or "person in need of protection" as found in A96 and A97, and ask whether they wish to make a claim.
- Where the person indicates an intention not to make a claim, the MD should proceed with the decision and issue a removal order, if appropriate.
- Where the person is uncertain, the MD should inform them that they will not be able to make a claim for refugee protection after a removal order has been issued [A99(3)], and provide them with an opportunity to make the claim before proceeding with a removal order decision.
- If the person does not express an intent to make a claim, despite the explanation that this is their last opportunity, the MD should proceed with the decision and issue the removal order, if appropriate.
- Whenever the person indicates a fear of returning to their home country, the MD is to refrain from evaluating whether the fear is well-founded. As well, the MD must not speculate on eligibility before the claim is made or speculate on the processing time or eventual outcome of a claim.

These procedures do not preclude any person from making a claim for refugee protection at any time before a removal order is issued, regardless of the responses provided to the officer.

In order to address concerns that may arise subsequent to the issuance of a removal order, it is important that the notes accurately reflect—in detail—the questions asked and the information provided by the person during the A44 proceedings.

For further information on processing refugee claims, see ENF 4 Port of entry examinations.

See also: PPI In-Canada claims for refugee protection; IRCC Program delivery instructions on Processing in-Canada claims for refugee protection: Post-interview processing and final decision.

14 Persons claiming to be Canadian citizens or registered Indians under the *Indian Act*

Under the IRPA, Canadian citizens and persons registered as Indians under the *Indian Act* have an unqualified right to enter and remain in Canada and are not subject to the inadmissibility provisions of IRPA. Therefore, before writing an A44(1) report, an officer should have evidence to confirm that the person does not hold such status.

In cases of permanent residents, officers must confirm through the appropriate queries that the person has not obtained Canadian citizenship and ensure that due diligence has been exercised before proceeding with further enforcement action.

Should the MD detect the possibility of Canadian citizenship or registered Indian status during the A44(2) proceedings, the MD shall cause an investigation of the matter to be initiated before making any removal order or referring the case to the ID for an admissibility hearing.

15 Cases where the jurisdiction to issue a removal order rests with the Immigration Division

In cases where the MD does not have jurisdiction to issue a removal order, the MD must determine whether to refer the A44(1) report to the ID if satisfied that the report is well-founded. At the end of the admissibility hearing, if satisfied that the person is inadmissible, the member of the ID shall, pursuant to A45(d), make the applicable removal order against the foreign national or permanent resident pursuant to R229.

Before forming an opinion that a report is well-founded and referring it to the ID for an admissibility hearing, the MD must assess the case on its own merits. At the time of the MD's assessment, the MD should have before them all submissions and documents filed by the person concerned as well as any evidence relied on by the reporting officer in their recommendation under A44(1).

This section is intended to assist officers in making decisions that are consistent with the objectives of the IRPA; it is not intended to restrict the MD in the lawful exercise of their discretion. What follows are guidelines only.

15.1 A44(1) reports for criminality cases

In Medovarski v. Canada (Minister of Citizenship and Immigration); Esteban v. Canada (Minister of Citizenship and Immigration), 2005 SCC 51, the Supreme Court of Canada (SCC) stated that the objectives in the IRPA reflect an intent to prioritize security and that this objective is given effect by removing persons with criminal records from Canada. The SCC noted that in drafting the IRPA, Parliament demonstrated a strong desire to treat criminals less leniently than under the former Immigration Act. This was noted in Sharma, where the FCA affirmed that officers and MDs, when dealing with matters under A44(1) and A44(2), must always be mindful of the various objectives of the IRPA, in particular A3(1)(h) and (i). The FCA also concluded that the Court's rationale in *Cha* in support of a limited discretion under A44 would appear to apply equally to both foreign nationals and permanent residents.

The MD should also be cognizant of how evidence of pending or existing charges was relied on by the reporting officer during the A44(1) assessment; the MD should be careful about how such

evidence is relied on in the A44(2) decision. The MD must also be careful not to rely on convictions for which an application for rehabilitation or a record suspension has been granted as evidence of a criminal record. For further information, see ENF 5 Writing 44(1) reports, section 12.2, 'Evidence of pending or withdrawn charges'.

15.2 A44(1) reports concerning permanent residents of Canada

As mentioned in section 8 above, the courts[15] have confirmed that officers and MD's making decisions under A44 have **no obligation** to consider H&C-like factors or 'personal circumstances' once inadmissibility is established by the evidence.

Note: this section does not apply to PR residency obligation cases reported under A41(b). Before the MD issues a departure order against a permanent resident under R228(2), paragraph A28(2)(c) specifically requires the MD to determine whether humanitarian and compassionate considerations, including the best interests of any child affected by the decision, overcome any breach of the residency obligation [refer to section 10.3 *Permanent residents and their residency obligation— R228(2)*"].

During the course of A44 proceedings, however, an officer or MD may receive evidence or submissions relating to a permanent resident or protected person's personal circumstances and why a removal order should not be sought.

While the courts have affirmed that an MD is not required to consider personal circumstances, but if the MD does, such an assessment must be reasonable in the circumstances of the case. This means that if an MD exercises their discretion to consider personal factors, the assessment must be reasonable and the reasoning articulated. Where these factors are considered and rejected, an explanation of how these factors were assessed should be provided, even if only very brief in nature.[16] An MD must ensure that the decision as a whole is "justifiable, transparent, and intelligible"[17].

Where the officer at A44(1) has exercised their discretion to consider personal circumstances in their recommendation, the MD must consider this information and explain in their decision whether or not they concur with the officer's recommendation. To clarify, the MD is not bound by the A44(1) officer's recommendation. For example, if the officer at A44(1) did NOT exercise their discretion to consider personal circumstances, this does not prevent the MD from exercising that discretion to consider such factors in the A44(2) decision.

MDs should also provide reasons for giving more weight to certain documents over others where there is conflicting or inconsistent information before them. For example, where there are conflicting versions of events pertaining to a criminal offence, an explanation as to why one version is being relied on over the other should be provided.

---

[15] Obazughanmwen v. Canada (Public Safety and Emergency Preparedness), 2023 FCA 151; Sidhu v. Canada (Public Safety and Emergency Preparedness), 2023 FC 1681; Matharu v. Canada (Public Safety and Emergency Preparedness), 2024 FC 902

[16] McAlpin v. Canada (Public Safety and Emergency Preparedness), 2018 FC 422

[17] Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65, [2019] 4 SCR 653 [Vavilov] wherein the SCC further affirmed at para. 85 that a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker".

Whether to consider personal circumstances for permanent residents and protected persons

As confirmed by the courts[18], MDs are not obligated to consider personal circumstances during the A44 process. However, the courts have also affirmed that MDs retain the discretion to consider these circumstances, and if they exercise their discretion to do so, the decision must be reasonable. The discretion is tempered by their limited role at A44.[19] The guidance in this section is intended to assist MDs determine when and how to exercise such discretion.

MDs must always keep in mind the principles set out in section 8.2 and 15.1 above when rendering decisions under A44, including Parliament's intention in drafting the IRPA to make security of Canadians a top priority.

In consideration of the various objectives of the IRPA and the limited discretion at A44 as confirmed by the courts, the CBSA's policy is that MDs must consider the factors below when deciding whether or not to exercise their limited discretion to consider evidence or submissions filed by the person concerned regarding personal circumstances.

Generally speaking, the following factors would weigh **against** consideration of personal circumstances by the MD:

- the inadmissibility falls under section A34, A35, A35.1 or A37;

- A36(1) serious criminality cases in the following circumstances:
  - the permanent resident or protected person was previously issued a warning letter by CBSA or had a previous removal order stayed or quashed by the IAD on humanitarian and compassionate grounds;
  - the reportable offence: involved violence that resulted in bodily or psychological harm to another person, the use of a firearm or is a sexual offence; was committed against a vulnerable person (e.g. minor child or intellectually or physically challenged persons, or senior citizen), was a racially motivated crime, a crime of gender-based violence, including domestic violence, a hate crime or a crime involving trafficking or smuggling in large quantities of a controlled substance or weapons;
  - the criminal record of the permanent resident or protected person demonstrates a pattern of escalating seriousness

If the decision is **not** to consider personal circumstances, the MD should state this in their A44(2) decision. For example, the MD may state in their decision: "I am not exercising my discretion to consider evidence and/or submissions filed on behalf of (*name of person concerned*) pertaining to their personal circumstances given the seriousness of the reportable offence".

[18] Obazughanmwen v. Canada (Public Safety and Emergency Preparedness), 2023 FCA 151; Sidhu v. Canada (Public Safety and Emergency Preparedness), 2023 FC 1681; Matharu v. Canada (Public Safety and Emergency Preparedness), 2024 FC 902

[19] Dass v. Canada (Public Safety and Emergency Preparedness), 2024 FC 624

If the MD exercises discretion to consider personal circumstances

If the MD decides to consider the personal circumstances of the person concerned, the CBSA's policy is that the MD must balance these with the objectives of the IRPA to protect public health and safety, and maintain the security of Canadian society by denying access to Canadian territory to persons who are criminals or security risks.

Examples of personal circumstances the MD may consider, if they decide to exercise their discretion to do so:

- Age at time of landing—Has the person been a permanent resident of Canada since childhood?
- Was the permanent resident an adult at the time of admission to Canada?
- Was the person granted protected person status in Canada?
- Length of residence—How long has the person resided in Canada after the date of admission?
- Location of family support and responsibilities—Are family members in Canada emotionally or financially dependent on the permanent resident? Are all extended family members in Canada?
- Degree of establishment—Is the permanent resident financially self-supporting? Are they employed? Do they have a marketable trade or skill? Has the permanent resident made efforts to establish themselves in Canada through language training or skills upgrading? Is there any evidence of community involvement? Has the permanent resident received social assistance (frequency/duration)?
- Criminality—Has the permanent resident been convicted of any prior criminal offence? Based on reliable information, is the permanent resident involved in criminal or organized crime activities? What is the nature and frequency of the person's interactions with the law? (for further details please refer to ENF 5 Writing 44(1) reports, section 10.1, 'A44(1) reports for criminality cases').
- What is the potential for rehabilitation? How much time has passed since the last conviction? Has the permanent resident already been released? For how long? Has the permanent resident accepted culpability, expressed remorse, enrolled in or completed educational, skills upgrading or rehabilitation programs (for example, Alcoholics Anonymous, Narconon/narcotics rehabilitation programs, anger management programs, life skills)? Are family members willing and able to support/assist?
- History of non-compliance and current attitude—Has the permanent resident been cooperative and forthcoming with information? Has a warning letter been previously issued? Does the permanent resident accept responsibility for their actions? Are they remorseful?
- Best interests of any children directly affected by the decision.
- Right of Appeal—Does the person have a right of appeal to the IAD under A63 if a removal order is issued? (see section 20.1 of this chapter, 'Appeals to the Immigration Appeal Division').

Regardless of the factors being considered, the MD should be aware that there are limitations to the scope of their assessment. For example, the Federal Court has made findings to support the principle that officials carrying out A44(1) and (2) assessments are not obliged to speculate about how and when future deportation might take place, nor is the expectation that a person's rehabilitation be analyzed in considerable detail.

15.3 Loss of appeal right cases

For inadmissibility under A36(1)(a) for permanent residents, it is important for reporting officers to obtain the most accurate evidence of the sentence imposed during the A44(1) process in order to determine whether the person retains a right of appeal. Under A64, a loss of appeal rights for serious criminality under A36(1)(a) must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months. Where it is not clear from the evidence whether the sentence meets the six month threshold under A64(2), before making any assessment under A44(1), the officer should obtain evidence demonstrating how the judge calculated the total sentence imposed as reflected in the court documents, taking into account the imposition of further credits for time served. Regardless of what assessment is made by the reporting officer, and especially in cases where the right of appeal is in doubt, the officer and/or the MD should clearly articulate in the recommendation and/or decision that the determination as to whether the person concerned retains a right of appeal ultimately rests with the IAD.

15.4 Preparation of warning letter

Where the MD finds that the A44(1) report is well-founded, but that there are other compelling reasons, taking into account the objectives of the IRPA, not to refer the A44(1) report to the ID for an admissibility hearing, the MD may exercise their discretion to issue a warning letter. In such a case, the decision to issue a warning letter constitutes a disposition of the A44(2) proceedings on the existing A44(1) report.

Based on the limited scope of discretion of the MD, this option to the MD is intended only to be available in cases of permanent residents and, in some circumstances, protected persons who remain foreign nationals. Such discretion should not be exercised lightly by the MD and must take into account all of the circumstances of the case, the limited scope of discretion of the MD, the objectives of the IRPA and Agency priorities regarding inadmissibility under A34, A35, A35.1, A36(1) and A37.

In addition to the list of factors provided in section 15.2, in cases involving inadmissibility under A36(1), MDs should closely examine the nature of the criminal offence when reviewing the A44(1) report before issuing a warning letter.

While balancing IRPA objectives regarding public safety and security, the MD may also consider, in cases where the person is a protected person, whether the severity of the acts committed is such that the CBSA officer will be seeking a Danger Opinion under A115.

The purpose of a warning letter is twofold: it conveys the decision and it is intended to act as a deterrent.

A warning letter sometimes has a third critical role: if, at some point in the future, the person becomes reportable again (i.e., new circumstances of inadmissibility arise following the issuance of the warning letter), the record of the warning letter will be an important factor to consider in an officer's determination of whether to write a new A44(1) report and/or in the MD's decision to issue a removal order or refer the new report to the ID, should the person engage in further unlawful conduct. Officers also rely on the warning letter to demonstrate to the IAD that the person concerned was duly cautioned as to the negative repercussions if another violation occurred.

It should be noted, however, that following the issuance of a warning letter, any new A44(1) report must be based on new facts/circumstances. In other words, a new report for the same allegation must not arise solely based on the same facts underlying the allegation of the previous report on which the warning letter was issued and the MD cannot re-open the previous

A44(2) proceedings. For example, if a permanent resident receives a warning letter based on an A44(1) report for A36(1)(a) (e.g., based on a robbery conviction), the permanent resident cannot be re-reported under A44(1) for A36(1)(a) and/or referred for admissibility hearing based on the same conviction should the permanent resident be subsequently convicted of a non-reportable offence (e.g., theft under).

- The warning letter should always be printed on letterhead. The fields should never be handwritten. This cannot be a standard form letter, as it needs to be tailored to the individual circumstances of the person concerned.
- Every effort should be made to hand-deliver the warning letter. The person concerned should be asked to sign the file copy acknowledging receipt of the original. This is especially important in criminal cases in the event of a subsequent violation.
- If the letter cannot be hand-delivered because the person concerned is outside of the local office's jurisdiction, the letter should be forwarded to the responsible office with a request to hand-deliver the letter. If this is not feasible or practical, the letter should be sent by registered mail.
- Once the letter is completed and signed, it must be uploaded into GCMS and the MD disposition under the A44(2) examination process must be updated accordingly. The MD is also required to enter detailed examination or application notes into GCMS fully supporting the decision being made (see section 22, 'Entering MD decisions into GCMS'). The issuance of the warning letter must also be recorded in the National Case Management System (NCMS) in offices where NCMS is utilized.

For an example of the warning letter, see **Appendix B: Sample warning letter.**

16 Adjourning Proceedings

Circumstances may warrant the adjournment of a proceeding under A44(2). In some cases, the MD may have to consider a request for an adjournment to ensure that a person has a reasonable opportunity to provide more evidence or to obtain counsel.

The MD may also have to adjourn proceedings based on operational reasons, such as the lack of an interpreter, however adjournments should not be a tool of administrative convenience.

In all cases, the MD will need to ensure that any decision regarding a request to adjourn is reasonable and meets the procedural fairness requirements set out in previous sections.

17 Procedure: Entry for the purpose of further examination or an admissibility hearing (Port of entry officers)

Under A23, an officer may authorize a person to enter Canada for the purpose of further examination or an admissibility hearing. It is important to note that, pursuant to R43(2), a foreign national authorized to enter Canada under A23 does not, by reason of that authorization, become a temporary resident or a permanent resident. The MD may have to initiate entry under A23 following an adjournment of the A44(2) proceeding or for operational reasons, such as the lack of an interpreter, however this procedure should not be used as a tool of administrative convenience.

The MD should not consider a request for entry under A23 to provide additional information unless all of the following conditions have been met:

- there are strong indications that the person can easily produce additional documents relevant to the inadmissibility report determination;
- the MD believes the person's indications to be credible; and
- the person has not yet been given a reasonable chance to present additional documents.

MDs should be cautious when considering entry for the purpose of an admissibility hearing since the ID may not schedule an admissibility hearing for weeks or months, which could lead to the foreign national remaining in Canada for a prolonged period without any legal status or a means of financial support. MDs may also consider other options such as directing persons back to the United States under R41 (see section 19, 'Procedure: Directing persons back to the United States under R41').

Note: Pursuant to **R43(1)** the imposition of certain prescribed conditions for persons authorized to enter Canada under A23 is **mandatory**.

The MD should also keep in mind the provisions of A44(3), A55(3) and A56, which provide authority to detain and release persons, and impose further conditions—including the payment of a deposit or the posting of a guarantee—following the furthering of an examination of a person who is the subject of an A44(1) report. For further guidance see ENF 8 Deposits and Guarantees. For further details regarding detention and release authorities, see ENF 20 Detention and ENF 34 Alternatives to detention.

18 Imposition of Conditions following the A44(1) report for A34: Mandatory circumstances

A44(3) authorizes officers to impose any conditions, including the posting of a deposit or the posting of a guarantee for compliance with conditions, that the officer considers necessary, on a permanent resident or foreign national who is the subject of a subsection A44(1) report, an admissibility hearing or, being in Canada, a removal order.

Whenever officers write an A44(1) report, consideration should be given to imposing conditions on the foreign national or permanent resident. The MD also has the authority to impose conditions during the A44(2) process (e.g., following an adjournment of the proceedings or following the decision to issue a removal order or refer the A44(1) report to the ID for an admissibility hearing). Officers and MDs should always consult the D & D instruments regarding the authority to impose conditions as this authority may vary depending on whether the person concerned is a foreign national or a permanent resident.

The MD must be aware that in cases of inadmissibility on security grounds under A34, the imposition of conditions is mandatory once the report has been referred to the ID. Under the IRPA, decision-makers specified in the relevant legislative authority are required to impose the baseline prescribed conditions in prescribed circumstances: CBSA officers are required in A44(4) and A56(3); ID is required in A58(5); Minister is required in A58.1(4) and A77.1(1); Federal Court is required in A82(6).

The prescribed conditions must be imposed in the following circumstances:

- when an inadmissibility report on grounds of security (A34) is referred to the ID and the subject of the report is not detained (designated CBSA officers);
- when the subject of either an inadmissibility report on grounds of security (A34) that has been referred to the ID or a removal order for inadmissibility on grounds of security is released from detention; [designated CBSA officers under A56(3); ID under A58(5) and the Minister under A58.1(4)].

For each of the circumstances outlined above, the prescribed conditions to be imposed are found in R250.1.

See Acknowledgement of Conditions for IRPA Section 34 Cases [BSF798].

19 Procedure: Directing persons back to the United States under R41

R41 authorizes an officer to direct a foreign national seeking to enter Canada from the United States (U.S.) to return to the U.S. if:

- no officer is able to complete an examination [R41(a)];
- the MD is not available to consider, under A44(2), a report made with respect to the person [R41(b)];
- an admissibility hearing cannot be held by the ID [R41(c)]; or
- the foreign national is prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act*.

In such cases, the person concerned may be given a Direction to Return to the United States form (BSF505) in appropriate circumstances. Officers and MDs should be aware that there is a specific policy for refugee claimants at the land port of entry.

A person who has been directed to return to the U.S. pending an admissibility hearing by the ID and who seeks to come into Canada for reasons other than to appear at that hearing is considered to be seeking entry. If such a person remains inadmissible for the same reason(s), and if a member of the ID is not reasonably available, the person may be directed again to return to the U.S. to wait until a member of the ID is available. In these circumstances it is not necessary to write a new A44(1) report.

Note: Generally, persons directed back to the U.S. who choose not to return to Canada will not be subject to enforcement action, as they have no desire to continue with their application to enter Canada. Such persons will simply be deemed to have withdrawn their application. Officers should therefore not counsel the person that failure to return in these instances will automatically result in enforcement action while the person is not in Canada.

In exceptional cases, it may be appropriate to pursue enforcement action for persons seeking entry who have failed to comply with R44(3). Officers and MDs should consider all information and individual circumstances of each case before they elect to proceed with enforcement action

under A44(1)/ A44(2), including the circumstances surrounding the failure to comply and the intent of the person concerned.

See also: ENF 4 Port of entry examinations.

20 Appeals and Judicial Review— Removal Order

There are two levels of review of decisions made under the IRPA. Sponsors, permanent resident visa holders, permanent residents and protected persons have a statutory right to appeal adverse decisions to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board. In all other cases, where no statutory right of appeal exists under the IRPA or those rights have been exhausted, there is a right to seek judicial review at the Federal Court of Canada.

20.1 Appeals to the Immigration Appeal Division

The MD will encounter three circumstances in which a person against whom they have made a removal order may have a right of appeal to the IAD. Those circumstances involve a person who is:

- a foreign national who holds a permanent resident visa;
- a permanent resident (inside or outside Canada); and
- a protected person.

Where a person has a right to appeal, removal orders are stayed until the end of the appeal period expires (30 days) if no appeal is made and until the day of final determination of the appeal, if an appeal is made. Pursuant to A50(c), if the IAD grants a stay of removal, the removal order is stayed under A66(b) and A68 until the stay is no longer in force.

Table 6: Right to Appeal— Removal Order

Who has right to appeal	Legislation	Period in which appeal must be made	Who is excluded
Foreign national holding a permanent resident visa	A63(2)*	30 days after receiving the decision	A64(1), A64)(2)
Permanent resident (in Canada)	A63(3)*	30 days after receiving the decision	A64(1), A64(2)
Permanent resident (outside Canada)	A63(4)	60 days to appeal	
Protected person	A63(3)*	30 days after receiving the decision	A64(1)

*A64(1)— No Right to Appeal

No appeal may be made to the IAD by a foreign national or their sponsor or by a permanent resident or protected person if they have been found to be inadmissible on grounds of:

- security, violating human or international rights (A34)
- violating human or international rights (A35)
- sanctions (A35.1)
- serious criminality (A36)**
- organized criminality (A37)

**must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(b) or (c)

When the MD makes a removal order against a person who may have a right to appeal that decision to the IAD, officers must advise the persons of that right. This is easily accomplished by giving them a notification of appeal form and informing them of their right to appeal.

The MD is also to provide the persons with the address and telephone number of the IAD registry office so that the persons may file a notice of appeal with the Registrar if they so choose.

The MD should also obtain a written acknowledgement from the persons that they have been advised of their right to appeal to the IAD and place it in the case file.

See **Appendix G: Sample letter— IAD Appeal Acknowledgement Letter**

20.2 Right to file an application for leave and judicial review— Where no statutory right of appeal exists

When an MD makes a removal order against a person who does not have the right to appeal to the IAD, the MD is to advise the person of their right to file an application for leave and judicial review with the Federal Court pursuant to A72(1).

For example, foreign nationals who are not protected persons or who do not hold a permanent resident visa have no statutory right of appeal to the IAD against a removal order issued by the MD. However, they may challenge a removal order made by the MD at the Federal Court.

If a statutory appeal, as may be provided for by the IRPA, has not been resolved, neither the Minister nor the person concerned may appeal to the Federal Court.

The MD should obtain a written acknowledgment from the persons concerned, stating that they have been advised of their right to file an application for leave and judicial review, and place it in the case file. Applications for leave and judicial review must be filed within 15 days of the date of the removal order.

See **Appendix H: Sample letter— Judicial Review Acknowledgement Letter**

For further information regarding Judicial reviews, see ENF 9 Judicial Reviews and ENF 10 Removals.

21 Multiple allegations

Where the person is inadmissible under multiple provisions of the IRPA, it is generally recommended that the officer writes a separate report for each allegation. The MD will then make a determination on each report during the A44(2) process.

There may be instances where multiple allegations are contained within the same report. This practice is generally discouraged, especially where the jurisdiction for each inadmissibility does not lie with the same decision-maker (i.e., MD or ID). It should be noted, however, that where a report contains one or more inadmissibility allegation, and if the MD has jurisdiction for all inadmissibility allegations contained within that report, the MD can determine the disposition of that report; conversely, where there are several inadmissibility allegations in a report and the MD has jurisdiction for only some of them, the MD is not authorized to determine a disposition for that report, and all allegations must be referred to the ID.

In cases where multiple A44(1) reports have been prepared against an individual concurrently and the MD is of the opinion that each of the inadmissibility allegations is well-founded, the MD should consider the potential consequences of not referring all reports for an admissibility hearing (where the jurisdiction to the issue the removal order rests with the ID) at the same time, including the following:

- in cases where multiple reports have been written for A36(1)(a) serious criminality based on separate convictions in Canada, the fact that having a separate removal order on each report may be critical in ensuring that IRPA objectives are met in the event that one or more of the underlining convictions and/or sentences are later overturned on appeal by the criminal courts;
- abuse of process arguments may be raised at a later time if all A44(1) reports before the MD are not referred for an admissibility hearing at the same time.

22 Entering MD decisions into GCMS

When processing or issuing an immigration document, completing an MD review, or conducting an examination, the MD is required to enter detailed examination or application notes into GCMS fully supporting the decision being made, regardless of whether the decision was positive or negative.

- Notes are to be factual and should not contain personal opinions which are not supported by elements collected during the examination or review. The notes may consist of such items as: questions and answers asked during the examination or review, admissibility concerns the officer or MD may have, a synopsis of any documentation reviewed or requested, and any other pertinent details related to the examination/application or MD review. The notes are to include the decision made and rationale supporting the decision. Notes should provide sufficient detail to allow another GCMS user to understand what transpired and why an action was taken. Notes entered

on the Client screen should be general information on the client, and should not be used for Examination/Application Notes.

- Officers are to continue to record user remarks on facilitation documents and narratives in the inadmissibility sub-tab supporting the inadmissibility allegations.
- MDs should be uploading examination notes that clearly show that procedural fairness has been met, and what factors were considered as part of the decision.
- It is important to note that A44(2) decision notes in GCMS are also reviewed by officials processing applications, and therefore may directly impact future decisions (e.g. applications for TRPs, temporary residence or permanent residence).

CBSA officers may consult the GCMS Help Centre for additional information on how to enter notes and upload documents into GCMS.

23 Key aspects of assessing inadmissibility under A36

23.1 Criminal equivalency between foreign and Canadian jurisdictions

As part of the inadmissibility determination for A36(1)(b) or (c) and A36(2)(b) or (c) as well as considerations related to criminal rehabilitation under the IRPA, it is necessary for the MD to determine if a conviction or offence committed outside of Canada has an equivalent in Canadian law. This means that in A44(2) proceedings, all necessary evidence for determining criminal equivalency will also need to accompany the A44(1) report.

In other words, the MD must have the evidence required to determine whether the acts committed abroad and punished there would be punishable in Canada. This analysis is a necessary part of the MD's decision in order to refer the report to the ID for an admissibility hearing, even though the MD does not have jurisdiction to issue the removal order.

It is important to note that A36(1)(b) or (c) and A36(2)(b) or (c) cannot be used where the person has been acquitted or a court has made a finding of not guilty.

For further details, see ENF 2 Evaluating Inadmissibility and ENF 3 Admissibility Hearings and Detention Reviews.

23.2 Record suspensions for convictions in Canada

MDs must also be careful not to rely on convictions for which a record suspension has been granted as evidence of a criminal record.

In the case of convictions in Canada, the Parole Board of Canada has the authority to grant and issue record suspensions (formerly known as "pardons") to persons described in A36(1)(a), and A36(2)(a), who have been convicted in Canada of an offence under an Act of Parliament.

Record suspension for in-Canada offences is the responsibility of the Parole Board of Canada, so neither deemed rehabilitation nor rehabilitation can be granted for such offences.

For more information about record suspensions, see ENF2, Evaluating inadmissibility.

23.3 Criminal Rehabilitation

Pursuant to A36(3)(c), in prescribed circumstances, an inadmissibility under A36(2)(b) or (c) may be overcome through rehabilitation.

There are two types of Rehabilitation: Deemed Rehabilitation and Individual Rehabilitation. The effect of both is that they remove specific grounds of inadmissibility if certain conditions exist or prescribed requirements are met.

Under the D&D instruments, only certain MDs have been delegated to assess and render a decision on applications for individual rehabilitation.

For further guidance on criminal rehabilitation, see ENF2 Evaluating inadmissibility.

23.4 Offences under the *Youth Criminal Justice Act*

A36(3)(e) exempts permanent residents and foreign nationals found guilty under the *Young Offenders Act* (YOA) or the *Youth Criminal Justice Act* (YCJA) from the inadmissibility provisions in A36(1) and A36(2).

Canadian legislation (YOA and YCJA) defines a young offender/young person as someone who is at least 12, but under 18 years of age. A child under the age of 12, cannot be charged with an offence under the *Criminal Code of Canada* and a person 18 years old and over would be charged as an adult.

The MD must ensure that they do not rely on or refer to youth offences in any determinations under A44(2), except where access is authorized under the YCJA. Information that is not accessible under the provisions of the YCJA cannot be considered and must not be included or referenced at any point during A44(1) or (2) proceedings. Moreover, contravention of the provisions of the YCJA is a serious matter.

The importance of verifying whether information is protected by YCJA provisions was highlighted in Abdi v. Canada (Public Safety and Emergency Preparedness) 2017 FC 950. In that case, the Federal Court held that while the MD did not commit an error in relying on youth crimes that the applicant was found guilty of where access to these records was not restricted by virtue of section 119(9) of the YCJA, the MD's reliance on youth offences that were withdrawn or dismissed was unreasonable since section 119(2)(c) of the YCJA allows access to these records for only a brief period after dismissal or withdrawal of the youth charges and the access period to such charges had expired.

Officials conducting A44(1) and A44(2) functions must ensure that they only rely on youth records to which access is not restricted under the provisions of the YCJA. It is therefore important for reporting officers and the MD to be aware of the provisions of the YCJA which relate to access to youth records.

Appendix A: Table: *Immigration and Refugee Protection Act* (IRPA) Inadmissible Classes

IRPA Section/ subsection	Inadmissibility	Paragraph	IRPA Text	IRPR reference	Jurisdiction to Issue Removal Order	Applicable Removal Order
A34	Security (PR and FN)	34(1)(a)	act of espionage against Canada or that is contrary to Canada's interests		ID	Deportation Order R229(1)(a)
		34(1)(b)	subversion by force of any government			
		34(1)(b.1)	subversion against democratic government, institution or process			
		34(1)(c)	terrorism	R14		
		34(1)(d)	danger to security of Canada			
		34(1)(e)	violence/endanger lives or safety of persons in Canada			
		34(1)(f)	membership in an organization described in (a)(b)(b.1) or (c)			
A35	Human or International Rights Violations (PR and FN)	35(1)(a)	Crimes against Humanity and *War Crimes Act*	R15	ID	Deportation Order R229(1)(b)
		35(1)(b)	prescribed senior official	R16		
		35(1)(c.1)	organ trafficking			
A35.1	Sanctions (FN only)	35.1(1)(a)	entry into or stay in Canada restricted due to international sanctions		MD	Deportation Order R228(1)(f)
		35.1(1)(b)	subject of an order made under *Special Economic Measures Act*			
		35.1(1)(c)	subject of an order made under *Justice for Victims of Corrupt Foreign Officials Act*			
A36(1)	Serious Criminality (PR and FN)	36(1)(a)	convicted in Canada- FN		MD	Deportation Order R228(1)(a)
			convicted in Canada- PR		ID	Deportation Order R229(1)(c)
		36(1)(b)	convicted outside Canada	R17	ID	
		36(1)(c)	committed an act outside Canada	R17	ID	
A36(2)	Criminality (FN only)	36(2)(a)	convicted in Canada (= by way of indictment or 2 offences)	R18.1	MD	Deportation Order R228(1)(a)
		36(2)(b)	convicted outside Canada (=indictment or 2 offences)	R17 R18	ID	Deportation Order R229(1)(d)
		36(2)(c)	committed an act outside Canada (=indictment)	R17 R18	ID	
A36(2.1)	Transborder Criminality (FN only)		committing, on entering Canada, a prescribed offence under an Act of Parliament	R19	ID	Deportation Order R229(1)(d.1)
					MD (specific offences only)	Deportation Order R228(1)(a.01)
A37	Organized Criminality	37(1)(a)	member of an organization engaged in criminal activity/ engaging in pattern of activity			Deportation Order R229(1)(e)

ENF 6 Review of reports under subsection 44(2)

	(PR and FN)	37(1)(b)	engaging in transnational crime (people smuggling/ trafficking, laundering money or other proceeds of crime)	R16.1	ID	
A38	Health Grounds (FN only)	38(1)(a)	danger to public health	R20	ID	Exclusion Order*º R229(1)(f)
		38(1)(b)	health condition danger to public safety	R20		
		38(1)(c)	excessive demand on health or social services	R24(3)		
A39	Financial Grounds (FN only)		unable or unwilling to support themself or dependents	R21	ID	Exclusion Order*º R229(1)(g)
A40	Misrep-resentation (PR or FN)	40(1)(a)	misrepresentation/ withholding material facts	R22	ID (exception: R228(1)(a.1)	Exclusion Orderº R229(1)(h)
					MD (Misrep on eTA re: TRV-exempt status)	Exclusion Order R228(1)(a.1)
		40(1)(b)	being or having been sponsored by a person inadmissible for misrepresentation		ID	Exclusion Order R229(1)(h)
		40(1)(c)	final determination to vacate refugee claim or application for protection		MD	Deportation Order R228(1)(b)
		40(1)(d)	ceasing to be a Canadian citizen		ID	Deportation Order R229(1)(i)
A40.1	Cessation of refugee protection (PR and FN)	A40.1(1)	FN under A108(2)	A46(1)(c.1)	MD	Departure Order R228(1)(b.1)
		A40.1(2)	PR under A108(1)(a) to (d) [however, person becomes a FN as per A46(1)(c.1) so A40.1(1) will apply]			
A41(a)	Non-compliance with Act (FN only)	Foreign national — non-compliance Examples: A41(a) + A52(1) Obligation to obtain the authorization to return to Canada			MD	Deportation Order R228(c)(ii)
		A41(a) + A20(1)(a) Does not hold the PR visa or other document required under the Regulations and have come to Canada in order to establish permanent residence		R6	MD	Exclusion Order** R228(1)(c)(iii)
		A41(a) + A29(2) Failure to leave Canada by the end of the period authorized for their stay		R183(1)(a)	MD	Exclusion Order** R228(1)(c)(iv)
		A41(a) + 30(1) Work or study without authorization		R183(1)(b), (c)	ID	Exclusion Order** R229(1)(n)

ENF 6 Review of reports under subsection 44(2)

A41(b)	Non-compliance with residency obligation (PR only)	Permanent resident & non-compliance with residency obligation		A28	MD	Departure Order R228(2)
A42	Inadmissible Family Member (FN only)	A42(1)(a)	accompanying family member is inadmissible	R23	MD	Same removal order as inadmissible family member R228(1)(d)
		A42(1)(b)	FN is accompanying family member of person inadmissible under A34, A35, A35.1 or A37		MD	Deportation Order R228(1)(e)

ID: Immigration Division MD: Minister's Delegate

MD may not issue a removal order where R228(4) applies (unaccompanied minors and persons unable to appreciate nature of proceedings)

*Departure order for refugee claimants R229(2)
º Deportation order where R229(3) exceptions apply
**Departure Order for refugee claimants R228(3); Subject to R228(4)

Note: Only s. 34 deals with future events. Sections 35-37 are limited to past or present events

This chart is a quick reference tool reflecting the IRPA inadmissibility classes and corresponding removal orders in effect as of the most recent date of publication of ENF 6. Officers should reference full Act and Regulations on Justice.gc.ca website for complete information on IRPA inadmissibilities and jurisdiction to issue removal orders.

Appendix B: Sample Warning letter

(Name and Address of person concerned) Client ID #:

(Date)

Dear XXXX;

This letter is in reference to your criminal conviction(s) and status in Canada. Enclosed, you will find a report written under subsection 44(1) of the *Immigration and Refugee Protection Act.*

Permanent residents of Canada may be reported to the Minister when they have engaged in criminal activity of a serious nature. Your conviction for xxxxxxxxxxxxxxxxxxxx is reportable under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act.*

This report is now a permanent part of your immigration record. The circumstances of your case have been considered carefully and it has been decided that your case will not be referred to the Immigration Division for an admissibility hearing at this time.

You must understand however, that this decision may be reviewed in the future should new adverse information come to our attention or any further criminal convictions be registered against you. If such a review occurs, a decision to pursue enforcement action may result in referring you to the Immigration Division of the Immigration and Refugee Board for an admissibility hearing. The outcome of this hearing could result in a deportation order and your permanent removal from Canada.

We trust that you understand the gravity of this matter and that we will not be required to contact you again as the result of any further criminal activity.

Yours truly,

(signature)

Name of Minister's Delegate and title

Note: This is a sample letter with suggested wording. Preference as to final wording, or the use of pre-printed as opposed to micro-produced "originals" is left to the discretion of local managers provided the content remains consistent with the intent.

Appendix C: Steps for in-person A44(2) proceeding where MD has jurisdiction to issue a removal order

Prior to the A44(2) proceedings, MDs should review A44(1) report and accompanying evidence to ensure:

- person concerned is not a Canadian citizen
- person is not a Permanent Resident of Canada (except for residency obligation files)
- person concerned is not an Indian registered under the Indian Act
- person's biographical data is correctly cited (name(s), date of birth)
- status of person concerned is correctly identified in A44(1) report
- inadmissibility section has been properly cited
- A44(1) report has been signed and dated
- ensure MD has jurisdiction to issue the removal order under R228

During the A44(2) proceedings, MD should:

Step 1 Notate the date/time of proceedings
- Introduce themselves as the MD

Step 2 Confirm person before the MD is the subject of the A44(1) report

Step 3 Determine whether person concerned requires an accredited interpreter
- Where an interpreter is required, confirm person understands the interpreter and that MD may continue with the proceedings. Advise the person that they should advise MD at any time if they do not understand the interpreter.
- If necessary, adjourn proceedings to obtain interpreter.

Step 4 Confirm person concerned has a copy of the report and the evidence being used to support the allegation and has had the opportunity to review it.
- Read the allegations contained in the A44(1) to the person concerned.
- State the purpose of the proceedings and refer to the A44(1) report.
- Advise the person that they must answer questions completely and truthfully.

Step 5 Explain the process MD will be following, evidence to be considered and the consequences of finding the report well-founded. Ensure the person concerned understands that this process may result in a removal order being issued, the type of removal order, and the consequence of this order.

Step 6 **In detained cases:** Prior to commencing the proceeding, advise the person concerned of their right to have a counsel of their choosing present at their own expense. This right applies in all cases where a person is detained under an Act of Parliament and includes situations where the person is detained by the criminal courts while facing charges or serving a sentence and subject to IRPA proceedings. Should the person express an intention to communicate with counsel, the MD should adjourn the proceeding and allow a reasonable period of time for the person to retain counsel.

In released cases: The person does not have the right to have counsel present during the MD review, however the MD should consider permitting counsel's attendance should

the person concerned have a counsel present, as long as counsel's presence will not interfere with the process. MDs are not obligated to postpone MD review proceedings due to counsel unavailability, however, may consider such requests on case-by-case basis.

Step 7 Verify each of the case elements of the allegation contained in the A44(1) report by questioning the person to confirm that each of these elements has been proven by the evidence, either verbally or in writing.

- Verify person concerned has no other evidence/information to provide and if so, determine whether an adjournment is warranted.
- Allow the person the opportunity to respond and acknowledge their evidence and document this either by notes or making copies of what is presented, particularly if there is any inconsistency between the allegation in the A44(1) report and the person's declaration. MD must ensure that all the evidence presented has been considered.

Step 8 The MD should ask the person how long they intend to remain in Canada and follow the steps in ENF 6, section 13, 'Procedure: Handling possible claims for refugee protection'.

- Where the person does not express a fear of returning to their country or indicate an intention to make a claim, the MD should proceed with the decision and issue a removal order, if appropriate.
- Where the person's statements indicate a fear of returning to the country that may relate to refugee protection, the MD is to inform the person of the definition of a "Convention refugee" or "person in need of protection" as found in A96 and A97, and ask whether they wish to make a claim before proceeding with the issuance of a removal order.

Step 9 Advise the person of the decision and the reasons for the decision.

Step 10 If issuing a removal order, provide the person concerned with a copy of the removal order and its legal effect.

- Where applicable, explain the Certificate of Departure process and that a Departure Order will turn into a Deportation Order should they fail to properly follow the process for verifying departure (for further information, see ENF 10 Removals).
- Advise person concerned of their right to appeal (as applicable) or right to seek judicial review and the relevant time limits and document this. Provide relevant appeal forms and have the person sign the relevant acknowledgement letter, where appropriate. For further information, see ENF 6, section 20 'Appeals and Judicial Review- Removal Order'.

Step 11 At the conclusion of the review, notate the time and sign the record of decision, including the completion of the MD portion of forms [e.g., BSF516, IMM5084 or A44(1) narrative report]. Complete appropriate system updates/data entry.

Appendix G: Sample letter— IAD appeal acknowledgement letter

Office Address _____

Date: _____

I acknowledge being informed that I have a right to appeal the removal order issued against me to the Immigration Appeal Division of the Immigration and Refugee Board and that I have 30 days from the date of the removal order to file such notice of appeal with the Immigration Appeal Division.

I also acknowledge having received a notice of appeal form, which I understand is the form to be used to file an appeal with the Immigration Appeal Division.

_____

Signature Date

_____

Print name Client ID

_____

Minister's Delegate Name/Badge number

Interpreter Declaration:

I, _____, solemnly declare
(Name of interpreter)

that I have faithfully and accurately interpreted in the _____ language.

I make this solemn declaration conscientiously believing it to be true knowing that it is of the same force and effect as if made under oath.

_____

(Signature of interpreter)

Appendix H: Sample letter— Judicial Review Acknowledgement letter

Office Address _____

Date: _____

I acknowledge being informed on this date that I have a right to file an application for leave and judicial review with the Federal Court of Canada and that if I wish to file such an application, it must be filed within 15 days of the date of the issuance of the removal order.

I have been provided with the following link with instructions:

http://www.cic.gc.ca/english/refugees/inside/appeals-review.asp

_____

Signature Date

Print name Client ID

_____

Minister's Delegate Name/Badge number

Interpreter Declaration:

I, _____, solemnly declare
(Name of interpreter)

that I have faithfully and accurately interpreted in the _____ language.

I make this solemn declaration conscientiously believing it to be true knowing that it is of the same force and effect as if made under oath.

_____

(Signature of interpreter)

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

AFFIDAVIT OF JOHN BAUER

I, **John Bauer**, of the City of Niagara Falls, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I make this affidavit based on my professional expertise and experience, except where otherwise stated.

Qualifications and Expertise

2. I completed an Honours Bachelor of Arts degree in Psychology at Brock University, St. Catharines, Ontario, in 1989.

3. Since 2016, I have been a Professor of Justice Studies at Niagara College. I teach students in the Police Foundations and Protection, Security, and Investigation (Customs, Border Services, and Private Security) diploma programs, and in the Advanced Law Enforcement and Investigations Graduate Certificate Program.

4. I offer courses on immigration, refugee, and citizenship law, the intersection of psychology and the law, comparative criminal justice systems, and ethics in law enforcement, among other topics.

5. Prior to my employment with Niagara College, I spent over 20 years as a federal civil servant. I held a number of positions in the (former) Department of Citizenship and Immigration (**"CIC"**), Global Affairs Canada, and the Canada Border Services Agency (**"CBSA"**). Through these roles, I gained professional experience in administering and enforcing immigration and refugee law.

6. For example, while employed by the federal government, I conducted inspections at ports of entry in the Niagara area, intelligence analyses, and policy and regulatory research. I also served as a security screening analyst for the Consulate General of Canada in Buffalo, NY. My work as an immigration officer with CIC and as an officer with the CBSA is principally relevant to the issues in this affidavit.

7. In 2005, I began working as a post-recruitment trainer for the CBSA in the Southern Ontario Region alongside my main responsibilities. In that role, I provided instruction on matters that included the determination of admissibility, refugee eligibility, arrest and detention, and search and seizure. I held that position until 2016.

8. I attach my resume as **Exhibit "A"** to my affidavit.

Mandate

9. I have been asked to offer expert evidence on two issues related to the role of counsel in the immigration and refugee protection system (which I sometimes refer to simply as the **"system"**): (a) resistance by immigration officers to participation by counsel in port of entry (**"POE"**) interviews and examinations; and (b) how participation by counsel can enhance both the efficiency and effectiveness of POE interviews and examinations.

10. I am qualified to address these topics, as they fall within my area of expertise, which is based on both my first-hand experience and to a lesser extent, my teaching.

11. In preparing this affidavit, I have reviewed the Affidavit of Lorne Waldman dated August 19, 2025 (**"Waldman Affidavit"**), which also addresses these issues. I refer to the Waldman Affidavit when issues in the Waldman Affidavit also fall within my expertise and experience. For example, I conducted very few interviews for spousal sponsorship, refugee cessation and vacation, and removal situations, and therefore will not address those contexts here. I can address issues of admissibility, which is an area within my expertise and experience. In relation to eligibility to institute a refugee claim, I can address the value of counsel in asserting exceptions related to an anchor relative under the *Safe Third Country Agreement* between Canada and the United States. I can also address prior recognition as a refugee in a country other than Canada.

12. I am aware of my obligations as an expert and have read the *Code of Conduct for Expert Witnesses* set out in the schedule to the *Federal Courts Rules* and agree to be bound by it. A signed copy of the *Code of Conduct for Expert Witnesses* is attached as **Exhibit "B"** to my affidavit.

Officers' resistance to participation by counsel in POE interviews and examinations

13. Based on my expertise and experience, in my opinion, officers are resistant to participation by counsel in POE interviews and examinations for four reasons:

a. compliance with federal government policy

b. concerns about effective border management;

c. ensuring applicants meet the burden of proof; and

d. perception that counsel would turn an inquisitorial process into an adversarial one.

Federal government policy

14. CBSA officers will generally not permit counsel participation during POE interviews and examinations and are resistant to doing so, because the existing policy states that individuals do not have the right to be represented by counsel unless they are arrested or detained. This policy is outlined in one of the operational manuals used by both Immigration, Refugees and Citizenship Canada ("**IRCC**") and CBSA employees, the Enforcement Manual (ENF) 4, *Port of Entry*

Examinations, Right to counsel at POE examinations, which I attach as **Exhibit "C"** to my affidavit.[1] Section 8.3 of states:

> For routine information-gathering to establish admissibility during an Immigration Secondary examination, a person is not entitled to counsel unless arrested or detained. A person who is arrested or detained must be informed without delay of their right to counsel and granted the opportunity to retain and instruct counsel.

15. Officers consider this policy to be clear and succinct. Officers also believe the policy to be consistent with the Supreme Court's decision in *Dehghani v. Canada (Minister of Employment and Immigration)*, [1993] 1 SCR 1053, which held that there was no right to counsel for routine information gathering at a POE examination.

16. Officers exercise their legal authority with care, consistently erring on the side of caution if they believe their actions would deviate from standard practices.

Effective border management

17. Some officers may also believe that participation by counsel prolongs the POE interview and examination process. They may consider that granting a role for counsel is inefficient as it prevents effective border management. Moreover, officers may fear that allowing participation by counsel on one occasion may require them to do so on every occasion, and this "floodgates" issue may pose a capacity problem by extending the length of POE interviews and examinations for many applicants.

18. Effectively managing border operations is a key priority for CBSA, which have made procedural changes aimed at improving efficiency. One example is the recent decision to end "flagpoling" for work and study permits at the POE. According to a Government of Canada Operational Bulletin, dated December 24, 2024 (modified February 14, 2025), which I attach as **Exhibit "D"** to my affidavit:

> Foreign Nationals with temporary resident status in Canada will no longer be able to leave the country and apply for an immigration document on re-entry to receive same-day service

[1] ENF 4, section 8.3, Right to counsel at POE examinations (last modified 28 February 2024), https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf04-eng.pdf.

on their application. This comes as a means of alleviating burdens placed on border operations that are already under significant pressure.

19. Officers likely view the participation of legal counsel in POE interviews and examinations through a similar lens, as it could further strain operational resources.

Applicants' burden of proof

20. Some officers may perceive the participation of counsel in POE interviews and examinations as unnecessary and even counterproductive. They may be of the view that counsel get in the way of the task at hand, which is to assess the applicant. Since the applicant bears the burden of proof, officers feel it is for the applicant alone to discharge that burden, and that it is not appropriate for their counsel to attempt to do so on their behalf.

21. Indeed, an officer may view the participation of counsel as a form of interference. Section 8.3. of ENF (4) states:

> Generally, CBSA's policy is not to permit counsel at an examination if detention has not occurred. However, if a BSO is dealing with a FN/PR who does have legal representation with them, even though the FN/PR is not entitled to have legal representation present, the BSO should allow the legal representative to remain present as long as they do not interfere with the examination process. If the legal representative does interfere, the BSO or Minister's delegate (MD) can ask the legal representative to leave, as there is no legal obligation to allow them to be present.

Section 8.3. does not define which actions by counsel are interference. The officer must interpret this term. Since the burden of proof rests with the applicant, an officer may interpret any participation by counsel – for example, responding to questions on an applicant's behalf – as interference.

Perception of an adversarial role

22. Finally, officers tend to view the participation of counsel as purely adversarial. Based on this perception, officers may be apprehensive about having counsel actively participate in the examination process out of concern that it would change the character of POE interviews and examinations, which they see as primarily inquisitorial and fact-finding.

Counsel can enhance the efficiency and effectiveness of POE interviews and examinations

23. In my experience, and contrary to the above concerns, participation by counsel can enhance the efficiency and effectiveness of POE interviews and examinations in a number of ways. Counsel can:

a. serve as third-party observers and record keepers;

b. promote operational efficiency and effectiveness through workload reduction;

c. address issues of cultural competency; and

d. play a particularly important role in applications for refugee protection.

Third-party observer and record keeper

24. POE interviews and examinations are not electronically recorded. Instead, an officer documents them through a field notebook, hard-copy file notes, statutory declarations, and entries on the Global Case Management System (GCMS) databank.

25. Counsel who are present at POE interviews and examinations can prepare contemporaneous notes. I agree with Mr. Waldman (at paras. 60 and 61 of his affidavit) that these notes provide an important safeguard for both the applicant and the examining officer in any subsequent disputes over what transpired during the interview. For example, the notes can be admitted as evidence in subsequent proceedings before the Immigration and Refugee Board (**"IRB"**) and/or Federal Court. The notes could address any discrepancies between the evidence of the applicant and officer, or disputes about the accuracy of an interpreter's translation (as Mr. Waldman explains at para. 62 of his affidavit).

Operational efficiency and workload reduction

26. As I discussed above at para. 18, CBSA prioritizes efficient and effective border management. The presence and participation of counsel can play a key role in supporting that objective.

27. By ensuring applicants understand the application, provide all the relevant information completely and accurately, and address any anticipated problems, counsel can reduce the length of time for officers to process an application. This can help the system as a whole, by reducing backlogs. This occurs in a number of ways.

28. Counsel may free officers from the task of helping applicants navigate the application process. This is particularly helpful for complex matters. Instead, counsel can perform that role. For example, immigration applications and forms can be puzzling even to the most diligent person. Counsel can explain these materials to applicants.

29. Counsel can also ensure that applicants provide all the relevant information regarding their personal circumstances immediately, completely and accurately to officers. They can prevent innocent errors or omissions of crucial information which can lead to significant consequences for applicants. I agree with Mr. Waldman's statement (at para. 53 of his affidavit) that these errors on the part of applicants may lead an officer to deny an application that in fact should have been granted.

30. Officers cannot help applicants correct those errors, because they are guided by the principle of *functus officio*, whereby the officer cannot revisit a decision once they have made it. I agree with Mr. Waldman's statement (at para. 51 of his affidavit) that because of excessive workload, officers may become detached from the specific details of an applicant's circumstances.

31. If an officer denies an application based on missing information or unintentional errors, the applicant typically has no choice but to reapply or seek an explanation or reconsideration from the officer – both of which are less efficient than if the application had been complete and accurate in the first place, and could have been avoided entirely if counsel had been involved from the outset. In certain instances, officers may even conclude the applicant misrepresented germane facts, which creates challenges for reapplication and/or reconsideration that could have been prevented.

32. Counsel can proactively address any anticipated problems in an initial application, preventing complications later in the process and increasing efficiency. For example, while serving on a redress committee for individuals denied a NEXUS card or whose cards were seized by the CBSA, I encountered a case where an applicant was refused due to alleged criminal inadmissibility. Counsel for the applicant later provided a clear and well-reasoned submission, with evidence and legal argument demonstrating that the applicant was not, in fact, criminally inadmissible. Had

counsel participated in the original application, the need for this re-examination could have been avoided entirely, reducing workload.

33. Counsel may also spare officers from the effort of engaging in detailed research regarding certain legal issues. I agree with Mr. Waldman (at paras. 72 et seq. of his affidavit) that the participation of counsel is particularly useful in admissibility decisions, because counsel can gather relevant evidence and offer a legal analysis to the officer conducting the interview. For example, I once assessed an admissibility issue involving a rather complex U.S. federal statute. Counsel's submission significantly shortened the time I would have otherwise spent researching the matter. Although I ultimately disagreed with their interpretation and conclusion, counsel's participation was very helpful. Counsel not only reduced my workload, but also enhanced the quality and professionalism of my work. Both counsel and the applicant appreciated that my decision was well-reasoned and fair, even though I did not agree with them.

Dealing with cultural competency

34. Understanding cultural dynamics in dealing with applicants from diverse backgrounds is an operational necessity for CBSA officers to avoid conflicts and misunderstandings. The goal of every officer interaction is to treat all individuals with respect and dignity. While operational guidelines, cultural sensitivity training, and exposure to diverse cultures can help, they cannot fully prepare officers for every situation. Even the most culturally aware individuals may exhibit unconscious bias, particularly when dealing with many diverse applicants and operational pressures. I agree with Mr. Waldman's views on this issue (at para. 56 of his affidavit).

35. Counsel can provide valuable assistance in maintaining the integrity of the system by bridging a gap created by cultural differences between an officer and an applicant. By explaining how specific cultural differences influence understanding of, and compliance with, immigration laws, lawyers can help reduce the pressure on officers, who may not always be familiar with these nuances.

36. For example, in some cultures, out of deference to authority, it is felt that the listener is responsible to understand what is being communicated. If they do not understand a question, they may consider it rude to ask questions for clarification. They also provide brief answers for the same reasons. Applicants may also be reticent to provide full and detailed answers based on distrust of government officials, if they are from a corrupt or authoritarian country, or have experienced

discrimination or trauma (as Mr. Waldman states at paras. 17(a) and 55 of his affidavit). Officers may interpret vague or brief answers as deceitful or deliberately incomplete, when in fact they are not intentionally so. Counsel can advise applicants to provide complete, accurate and precise information to officers, which also enables officers to make well-informed decisions.

Dealing with applications for refugee protection

37. The refugee protection process in Canada involves applications made at the POE, and at inland offices of the CBSA and IRCC. At either location, officers determine the applicant's eligibility. Officers are challenged with handling distressed applicants conveying stories of traumatic events, a high workload, and legal complexities where they must address both ineligibility concerns and humanitarian obligations. Rendering well-reasoned decisions in this environment can be extremely difficult.

38. Counsel can assist applicants and officers. Particularly in complex eligibility cases, or situations where clients have mental health challenges or fear government authorities, counsel can play a role in ensuring an officer has the necessary evidence to reach an informed decision. This can include helping applicants prepare for eligibility interviews by explaining the requirements, gathering relevant documentation, clarifying ambiguous information, and preparing clients for the potential consequences of their applications.

39. For example, refugee claimants will be found ineligible if they do not meet one of the exceptions to the *Safe Third Country Agreement* between the United States and Canada. Some applicants may not be fully prepared to assert their eligibility for these exceptions. Officers may make good-faith errors when making on-the-spot decisions. These errors have significant consequences both for the applicant who is mistakenly denied and for the public perception of the government in handling this politically charged issue.

40. I agree with Mr. Waldman that counsel can assist applicants to avail themselves of these exceptions, and officers to assess if applicants are eligible (as he discusses at paras. 70 and 72 of his affidavit). For example, with the assistance of counsel, applicants can properly avail themselves of the anchor relative exception, by ensuring the relative is present at the border. Counsel can also assist applicants in gathering the required evidence, including documentation, that they had been previously recognized as refugees by a country other than Canada.

Transborder criminality

41. Section 36(2.1) of the *IRPA* renders inadmissible to Canada foreign nationals who commit prescribed offences at the time they enter Canada, even in the absence of a formal charge of conviction. For example, firearms offences and smuggling are covered under this provision. The purpose of section 36(2.1) is to empower CBSA officers to respond to transnational criminal activity without the need to initiate prosecutions in the criminal justice system.

42. The right to counsel is only triggered in such situations if the foreign national is detained. However, detention is uncommon because the CBSA officers usually order removal from Canada, without first detaining the individual. In circumstances where there is no detention, CBSA does not recognize the right to counsel.

43. When CBSA officers exercise their authority under section 228(1)(a.01)of the *Immigration and Refugee Protection Regulations* in conjunction with section 36(2.1), the Immigration Division of the Immigration and Refugee Board does not hold a hearing – unlike the former version of this provision, which was in force until 2022.

44. Removal under section 36(2.1) has a number of consequences, aside from the finding of inadmissibility.

45. CBSA uploads decisions made under section 36(2.1) to the Canadian Police Information Centre database. This database can be accessed by any peace officer across Canada. A peace officer may rely on the information in the database to arrest the individual without a warrant should they re-enter or be found in Canada post-removal.

46. As the designated removal order in these cases is deportation, the individual must also apply for an Authorization to Return to Canada before becoming eligible to return or succeeding in any immigration application. Finally, upon removal, any electronic Travel Authorization that the individual was issued is cancelled.

47. Counsel can assist individuals and officers at CBSA interviews when section 36(2.1) is raised. The CBSA officer is required to determine if a crime has been committed. Counsel can ensure all the relevant evidence is before the officer, make submissions on the elements of the

offence and whether the individual has committed the crime, and address any questions, concerns or misunderstandings the officer may have prior to a decision being reached.

48. I make this affidavit for no improper purpose.

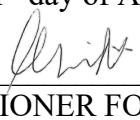
DECLARED REMOTELY at the City of Niagara Falls)
in the Province of Ontario before me at the City of Toronto)
in the Province of Ontario, on August 21, 2025 in)
accordance with O. Reg. 431.20, Administering Oath)
or Declaration Remotely.)

John Bauer
John Bauer (Aug 21, 2025 12:19:58 EDT)

John Bauer

Maureen Silcoff
a Commissioner for Taking Affidavits

This is Exhibit **"A"** referred to in the affidavit
of JOHN BAUER sworn before me
this 21st day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

7182 Freeman Street Niagara Falls, Ontario L2E 5V7
905-357-9194
jbauer3@bell.net

JOHN BAUER

PROFILE

- An experienced law enforcement professional and college faculty member.
- A career that is marked by comprehensive operational and teaching assignments.
- Excellent communication and interpersonal skills.
- Strong project management, organizational, and report writing skills.
- Ability to exercise sound judgment and discretion.
- Operational knowledge to research and analyze legal information to apply appropriate laws and procedures.

PROFESSIONAL EXPERIENCE

PROFESSOR, JUSTICE STUDIES

NIAGARA COLLEGE CANADA, SCHOOL OF JUSTICE AND FITNESS, WELLAND, ONTARIO

2016 – The Present

- Prepare course materials such as syllabi, assignments, and student guides.
- Deliver lectures to second and third-year students on topics such as immigration and refugee law, legal and psychological issues in interviewing and investigation, ethics in law enforcement, comparative criminal justice systems, communications for investigative and pre-trial activities and criminal justice.
- Evaluate and grade students' class work, assignments, and papers.
- Initiate, facilitate, and moderate classroom discussions.
- Compile, administer and grade examinations.
- Conduct research, plan, evaluate and revise curricula, course content, course materials and methods of instruction.

THE CANADA BORDER SERVICES AGENCY (CBSA), SOUTHERN ONTARIO REGION

VARIOUS ROLES | 2005 - 2016:

Regional Program Officer (2016)

- Conducted in-depth legal, policy, and regulatory research and prepared reports/briefings on immigration enforcement and facilitative matters to support regional operations.

Security Screening Officer (2014 – 2016)

- Analyzed data from Canadian and American law enforcement records, interviews, and professional consultations to determine eligibility for bi-national pre-inspection services,
- Evaluated immigration, criminal, customs, agricultural, and other program violations as a member of a redress committee, upholding or overturning initial decisions.

Immigration Case Specialist (2011 – 2013)

- Investigated, evaluated, and made decisions (approve/deny) on applications for exoneration, submitted by persons inadmissible to Canada, against established program criteria, guidelines, and legislative regulations to determine applicant eligibility under program's different business lines.

Border Services Officer (2005 – 2008, 2010 – 2011)

- Performed inspections at Ports of Entry that involved detailed research, interviewing, and investigation on an evolving group of files/cases.

Operations Superintendent (2008 – 2010)

- Supervised operational teams.

Regional Trainer (2005 – 2016, part-time)

- Planned, prepared, and delivered training programs on immigration law and procedures.

CITIZENSHIP AND IMMIGRATION CANADA (CIC) NOW IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA (IRCC), SOUTHERN ONTARIO REGION

VARIOUS ROLES | 2000 - 2005:

Immigration Investigator/Removals Officer (2004 – 2005)

- Conducted investigations on immigration law breaches and coordinated removals.

Immigration Intelligence Officer (2002 -2004)

- Collected and analyzed intelligence related to immigration cases.

Immigration Supervisor (2001 – 2002)

- Provided guidance and oversight on case assessments and decisions.

Senior Immigration Examining Officer (2000 – 2001)

- Assessed complex immigration applications.

GLOBAL AFFAIRS CANADA, THE CONSULATE GENERAL OF CANADA IN BUFALO, N.Y., U.S.A.

IMMIGRATION CASE ANALYST | 1994 - 2000:

- Determined prima facie eligibility of prospective immigrants. Aided by profiles and consultations with law enforcement partners, conducted security and criminal screening of applicants.
- Investigated cases to verify or supplement original statements. Obtained and evaluated supporting documentation, official files, relevant policy, procedures and precedent decisions to ensure applicants met the standards of admission.
- Utilizing data-mining, compiled and assessed information to develop profiles, expand databases and build case files.
- Responded to a high volume of enquiries from senior management, Members of Parliament, colleagues, applicants, and legal counsel in regards to various program modules.
-

EDUCATION

BROCK UNIVERITY, ST. CATHARINES, ONTARIO

HONORS BACHELOR OF ARTS, SOCIAL AND BEHAVIOURAL SCIENCE, WITH A MAJOR IN PSYCHOLOGY

- Activities: Undergraduate Research Assistant, Statistical Analysis Course Tutor.
- Graduated with First Class Standing.
- Course Emphasis on Social Science Research Methodology and Statistical Analysis

.

OFFICIAL LIAISON/ PROFESSIONAL HIGHLIGHTS

Served as the local Departmental representative to the Niagara Integrated Border Enforcement Team (IBET); a multi-agency law enforcement team that targets cross-border criminal activity.

Active four-year member of the Canadian and American Law Enforcement Association (CALEO); a bi-national law enforcement information-sharing and networking organization that encompasses federal, state, and local law enforcement, intelligence, and regulatory agency personnel.

Participated in three bi-national annual conferences dealing with various transnational law enforcement issues.

Identified U.S. wanted fugitive criminal aliens who had established themselves in Canada. Ultimately leading to arrest and deportation from Canada. The Assistant Deputy Minister of Operations took special note of this initiative.

Reported on an Africa-based child smuggling operation in tandem with the U.S. Bureau of Immigration and Customs Enforcement (ICE). This issue had been brought to the attention of Departmental Headquarters and resulted in grand jury indictments and criminal convictions for the persons concerned.

Identified foreign nationals, residing in Canada, suspected of joint monetary and narcotics smuggling. Combined efforts led to appropriate interdiction.

Carried out a special visa-vetting project aimed at identifying persons suspected of being involved in East European-based Organized Crime. The assessments were completed with the aid of the RCMP, CSIS, and the Department's Organized Crime Section. Valuable tactical intelligence was acquired by all stakeholders.

Profiled applicants who may have been involved in war crimes or crimes against humanity. This brought favorable attention to my employer at the time - The Consulate General of Canada in Buffalo, New York.

Facilitated an inter-agency meeting pertaining to abuses of the foreign worker provisions to exploit women brought to Canada as exotic dancers. A more rigorous approach was adopted to ensure abuses were controlled.

This is Exhibit **"B"** referred to in the affidavit
of JOHN BAUER sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

FORM 52.2 **Court File: IMM-12116-25**

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

Certificate Concerning Code of Conduct for Expert Witnesses

I, John Bauer, having been named as an expert witness by the Applicant, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the *Federal Courts Rules* and agree to be bound by it.

Dated August 21, 2025

John Bauer
John Bauer (Aug 21, 2025 12:15:31 EDT)

John Bauer
7182 Freeman Street
Niagara Falls, ON L2E 5V7
Phone: 905-357-9194

SOR/2010-176, s. 12.

This is Exhibit **"C"** referred to in the affidavit
of JOHN BAUER sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Immigration, Refugees and Citizenship Canada
Immigration, Réfugiés et Citoyenneté Canada

ENF 4

Port of Entry Examinations

Canada

Updates to the manual

Listing by date

2024-02-28

- 4 Instruments and delegations – included wording about training.
- Appendix D Temporary resident permit (TRP) annual compliance review and checklist – included annual TRP compliance review.

2023-07-05

- Section 15.5 – made the items mandatory to be included in GCMS remarks.
- Section 15.5 – inserted plain language descriptions of mandatory elements.
- Section 15.5 – added guidance on equating foreign criminal charges.
- Section 15.5 – added the requirement for the name of any approving authority or the name of any officer entering remarks on behalf of another officer to be documented in the remarks.
- Section 15.5 – TRP narrative example added

2022-05-18

- Entire document reviewed to: fix grammatical errors, fix broken links, add acronyms and links, update form numbers and replace some terminology.
- Updated all sections according to the more recent policies and guidelines such as PDI, OB and SBB.
- Section 5 - added information on the PIK.
- Section 7 - merged sections 7.9 & 7.10 and sections 7.2 & 7.7
- Section 8 – removed former 8.2 and created section 8.9 on electronic devices and 8.10 travel documents issued to non-citizens.
- Section 9 - removed previous section 9.6.
- Section 12 - removed previous section 12.5, 12.11 et 12.12, and added section 12.10 on medical surveillance.
- Section 13 - added information on NDC and Edison, section 13.9 on PG visa, 13.37 on collection of biometrics, removed previous sections 13.28 to 13.32 and updated 13.12 to include eTA-X.
- Section 17 – 17.2 was removed and added to 7.8.
- Section 21 - created a new section on Media cases.
- Section 25 - removed previous sections 25.1 to 25.3.
- Section 27 - remove previous sections 27.4 and 27.5.

2020-09-23

- Section 3 – Clarified wording around obligations
- Section 3 – Added Section R41(d)
- Section 3 – Updated Section R183 to include R183(1)(d)
- Section 3.1 – Changed IMM1262 to BSF821

- Section 4.1 – Clarified Section A55(3) to include inadmissibilities under sections A34, 35, 36, and 37
- Section 8.7 – Added Certificate of Indian Status and Secure Certificate of Indian Status as examples of identity documents
- Section 10 – Clarified wording around "right to enter and remain in Canada"
- Section 10.1 – Added wording around the Temporary Confirmation of Registration Document, and updated address
- Section 11.10 – Clarified wording around GCMS
- Section 13 – Clarified wording around foreign nationals
- Section 13.14 – Clarified wording around BSO MD
- Section 13.20 – Added new COVID-19 conditions under R183(1)(d)
- Section 13.24 – Added use of Visitor Records in cases of work permit exemption for clergy under R186(l)
- Section 13.25 – Clarified BSO cancellation authorities concerning temporary residents
- Section 13.27 – Clarified to whom people should be addressing their cheques when paying deposits or posting guarantees
- Section 15.3 – Clarified wording and added missing links
- Section 15.4 – Added Indigenous cultural considerations as factor to consider
- Section 15.6 – Emphasized wording for clarity
- Section 15.9 – Designated authority to issue a TRP expanded for clarification
- Section 16.2- Updated the text to refer to the right manual
- Section 22.10 – Added further example of training for DART officers
- Section 25.1- Updated the text to refer to the right manual
- Section 25.2- Updated the text to refer to the right manual
- Appendix D: Updated the TRP checklist
- Entire document reviewed to replace "registered Indian" with "people registered under the *Indian Act*"
- Entire document reviewed to fix grammatical errors
- Entire document reviewed to fix broken links

2019-08-15

- Section 8.8 – Additional information has been added on how to conduct GCMS checks

2019-02-01

- Section 10 – Updates to port of entry processing of people who are registered under the *Indian Act*
- Section 10.1 – Change made to federal contact information from INAC to Indigenous Services Canada (ISC); clarification of determination of registered Indian status
- Section 10.2 – Clarification of the procedure for establishing registered Indian status without documents
- Section 10.3 – Clarification of port of entry processing of American Indians

2016-12-23

- Section 4 on Instruments of Delegation expanded for clarification
- Section 4.2 on Delegation of Officers amended persons to officers
- Section 10.1 on Determining Registered Indian status updated for clarification
- Section 11.4 on investigating permanent residents for inadmissibility amended

- Section 12.1 on Permanent resident visas wording updated for clarification
- Section 12.6 on Confirmation of Permanent Residence form [IMM 5292B]updates and procedures Section of completing the Confirmation of Permanent Residence document
- Section 13.14 on eTA validity and cancellation amended
- Sections 13.3 and 13.4 on re-entry into Canada on original visa amended
- Section 28 on Open Skies Treaty deleted
- Entire document updated CIC to IRCC
- Entire document updated to reflect changes for FOSS to GCMS where appropriate
- A number of l links updated to become functional throughout document
- Request to make hyperlinks in the table of contents visible (blue)

2016-03-18

- Sections 12.12 and 12.13 on entrepreneurs have been deleted, as conditions are no longer imposed at ports of entry.

2016-02-10

- Sections 3 and 4.1 – added subsections 16(1.1) and 16(2.1) of IRPA on the requirement of the person concerned to appear before an officer for an examination and for an interview, respectively.
- Section 9.3 – updated to include document validity dates.
- Section 9.7 – formerly *Emergency passports*, updated for clarity.
- Section 12.3 – updated to include new information on merging client identification numbers.
- Section 13.2 – updated to include Puerto Rico as part of the United States and a link to the *TWOV/CTP Standard Operating Procedures* found on Atlas.
- Section 13.3 – updated to include Puerto Rico as part of the United States.
- Section 13.11 – updated to include TRPs.
- Section 13.18 – updated for clarity.
- Section 13.19 – updated to include the U.S. SENTRI card.
- Section 13.24 – updated for clarity.
- Section 13.32 – updated for clarity.
- Section 13.37 – updated for clarity.
- Section 15.3 – new procedures.
- Section 15.7 – new procedures.
- Section 25.4 – information on recovering removal costs.
- Appendix B – updated addresses.
- Appendix D – deleted and replaced with link to *TWOV/CTP Standard Operating Procedures* in section 13.2.
- Appendix E – renamed Appendix D and updated with new procedures for reporting and consulting.

2015-08-01

- Section 7.5 – addition of Electronic Travel Authorization (eTA) to part of the basic questioning during primary examination.
- Section 8.9 – addition of eTA to part of the basic questioning during secondary examination.

- Section 11.5 – update concerning the documents with which Canadian permanent residents must travel in order to return to Canada by air mode.
- Section 13.12, section 13.13 and section 13.14 – added to reference the eTA regulations, exemptions, and validity.
- Appendix D – updated to include reference to the eTA requirement.

Updates to the manual prior to 2015

Acronyms used throughout this manual

Acronyms	Definitions
AME	Alternate means of examination
API	Advanced Passenger Information
ARC	Authorization to Return to Canada
BOC	Border Operations Centre
BSO	Border Services Officer
BSOMD	BSO Minister's Delegate
CAQ	Québec Acceptance Certificate
CBSA	Canada Border Services Agency
CCA	Customs Controlled Areas
CDRP	Commercial Drivers Registration Program
CDT	Control and Defensive Tactics
CIC	Citizenship and Immigration Canada
CID	Criminal Investigations Division
CIS	Certificate of Indian Status
CoPR	Confirmation of Permanent Residence
CPC-S	Citizenship Case Processing Centre in Sydney
CPIC	Canadian Police Information Centre
CPR	Cardiopulmonary resuscitation
CSIS	Canadian Security Intelligence Service
CSQ	Québec Selection Certificate
CTP	China Transit Program
D&D	Designation and Delegation
DART	Disembarkation and Roving Team
DHS	Department of Homeland Security
DLI	Designated Learning Institution
DOB	Date of birth
DOS	U.S. State Department
EDISON TD	Electronic Documentation and Information System on Investigation Networks with information on Travel Documents
EDL	Enhanced Driver's License
EIC	Enhanced Identification Card
EMT	Emergency Medical Technician
ESDC	Employment and Social Development Canada
ESS	Employee Self-Service
eTA	Electronic Travel Authorization
eTA-X	Electronic Travel Authorization Expansion
ETC	Enhanced Tribal Card
FAST	Free and Secure Trade
FMIOA	Foreign Missions and International Organizations Act
FN	Foreign National
FOSS	Field Operations Support System
FRT	Flexible Response Team
GAC	Global Affairs Canada
GBV	Gender-Based Violence
GCMS	Global Case Management System
IAD	Immigration Appeal Division
IATA	International Air Transport Association

ICAO	International Civil Aviation Organization
ICES	Integrated Customs Enforcement System
ICET	Immigration and Customs Enforcement Team
ICS	Integrated Customs System
ID	Immigration Division or Identifier
IDA	Improperly Documented Arrival
IFHP	Interim Federal Health Program
IME	Immigration Medical Examination
INAC	Indigenous and Northern Affairs Canada
IPIL	Integrated Primary Inspection Line
IRB	Immigration and Refugee Board
IRCA	Initial Refugee Claimant Assessment
IRCC	Immigration, Refugee and Citizenship Canada
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
ISC	Indigenous Services Canada
LMIA	Labor Market Impact Assessment
LO	Liaison Officer
MD	Minister's Delegate
MHB	Migration Health Branch
MLACMA	Mutual Legal Assistance in Criminal Matters Act
MOU	Memorandum of Understanding
MRZ	Machine Readable Zone
NCB	Non-Computer Based Entry
NCIC	National Crime Information Centre
NDC	National Document Centre
NGO	Non-governmental organization
NHQ	National Headquarters
NI-TRP	National Interest TRP
NIV	Non-immigrant visa
OB	Operational Bulletin
OIC	Order in Council
OSC	Operations Support Centre
PAXIS	Passenger Information System
PDI	Program Delivery Instructions
PDP	Previously Deported Person
PHAC	Public Health Agency of Canada
PHLU	Public Health Liaison Unit
PIK	Primary Inspection Kiosk
PIL	Primary Inspection Line
PNR	Passenger Name Record
POB	Place of birth
POE	Port of Entry
PP	Protected Person
PR	Permanent Resident
RCMP	Royal Canadian Mounted Police
RPD	Refugee Protection Division
SARS	Severe Acute Respiratory Syndrome
SAWP	Seasonal Agricultural Worker Program
SBB	Shift Briefing Bulletin
SCIS	Secure Certificate of Indian Status

SENTRI	Secure Electronic Network for Travellers Rapid Inspection
SFV	Systematic Fingerprint Verification
SIN	Social Insurance Number
SMU	Statement of Mutual Understanding
SP	Study Permit
SRT	Single Reporting Tool
SSI	Support System for Intelligence
TCRD	Temporary Confirmation of Registration Document
TELO	Time, Employment, Lookout, Other
TEPS	Travellers Entry Processing System
TRP	Temporary Resident Permit
TRV	Temporary Resident Visa
TT	Targeting Travellers
TTP	Trusted Traveller Program
TWOV	Transit Without Visa Program
U.S.	United States
UCI	Unique Client Identifier
UNHCR	United Nations High Commissioner for Refugees
USINS	United States Immigration and Naturalization Service
USLPR	United States Lawful Permanent Resident
VR	Visitor record
VTIP	Victims of Trafficking in Persons
WP	Work Permit
WRC	Warrant Response Centre
XDC	Office of Protocol

1 What this manual is about

This manual describes how a Border Services Officer (BSO) conducts primary and secondary immigration examinations of:

- Canadian citizens;
- persons registered under the *Indian Act*;
- permanent residents (PR);
- foreign nationals (FNs) (including permanent residence applicants, temporary resident permit (TRP) holders and protected persons).

2 Program objectives

The objectives of the Act for conducting primary and secondary immigration examinations are the following:

- facilitate the entry of persons who have the right to enter Canada;
- facilitate the entry of FNs into Canada for purposes such as trade and commerce, tourism, international understanding, and cultural, educational, and scientific activities;
- protect the health and safety of Canadians and maintain the security of Canadian society;
- promote international justice and security by denying access to Canadian territory to those who are criminals or security risks; and
- offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, as well as those at risk of torture or cruel and unusual punishment.

3 The Act and its Regulations

The authority for a BSO to conduct an examination comes from a variety of sources, including the *Immigration and Refugee Protection Act* (IRPA), the *Immigration and Refugee Protection Regulations* (IRPR) and the *Designation of Officers and Delegation of Authority* documents.

Statutory requirements relating to persons seeking entry into Canada

The IRPA and IRPR provide for a number of different provisions that impose certain obligations on prescribed classes of persons seeking entry and provide BSOs with a number of different authorities and options when conducting examinations.

Relevant provisions	**Requirement**	**Explanation**
A10.01	Provide biometrics	A person who makes a claim, application or request must follow the procedures set out in the regulations for the collection and verification of biometric information

A11(1)	Apply for visa	A foreign national (FN) must, before entering Canada, apply to an officer for a visa or for any other document required by the Regulations.
A11(1.01)	Apply for eTA	A FN must, before entering Canada, apply by means of an electronic system for an electronic travel authorization.
A15(1)	Submit to an examination	An officer is authorized to proceed with an examination if a person makes an application to enter Canada.
A16(1)	Tell the truth and produce required documentation	A person who makes an application to enter Canada must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents reasonably required by an officer.
A16(1.1)	Appear for an examination	A person who makes an application must, on request of an officer, appear for an examination.
A16(2)	Fingerprints, photographs and a medical examination	A FN must produce photographic and fingerprint evidence if required to establish identity or compliance with the Act and, on request, must submit to a medical examination.
A16(2.1)	Appear for an interview conducted by the Canadian Security Intelligence Service (CSIS) and answer all questions truthfully	A FN who makes an application must, on request by an officer, appear for an interview for the purpose of an investigation conducted by CSIS under section 15 of the *Canadian Security Intelligence Service Act* for the purpose of providing advice or information to the Minister under section 14 of that Act. They must answer truthfully all questions put to them during the interview.
A16(3)	Evidence relating to identity	An officer may require or obtain from a PR or a FN who is arrested, detained, subject to an examination or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.
A18(1)	Appear for an examination	A person who seeks to enter Canada must appear for an examination to determine whether they have a right to enter Canada or may be authorized to enter and remain in Canada.
A18(2)	Transit passengers	A person who seeks to leave an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada must appear for an examination. Other examples could include when a flight is cancelled due to the weather or persons denied at US pre-clearance.
A20(1)(*a*)	To become a permanent resident	A FN who seeks to become a PR must establish that they hold the visa or other document required under the Regulations and have come to Canada to establish permanent residence.

A20(1)(*b*)	Entry of temporary residents	A FN who seeks to become a temporary resident must establish that they hold the visa or other document required under the Regulations and will leave Canada by the end of the period authorized for their stay.
A20(2)	Provincial selection criteria	A FN who seeks to become a PR and intends to reside in a province that has sole responsibility for the selection of FNs under a federal-provincial agreement pursuant to A9(1) must also establish that they hold a document issued by the province, indicating that the competent authority of the province is of the opinion that the FN complies with the province's selection criteria.
A28(1)	Residency obligation	A PR must comply with the residency obligation in A28 with respect to every five-year period.
A29(2)	Obligations of temporary residents	A temporary resident must comply with any conditions imposed under the Regulations and with any requirements under the Act and must leave Canada by the end of the period authorized for their stay.
A30(1)	Work and study	A FN may not work or study in Canada unless authorized to do so under the Act.
R6, R7, R8 and R9	Permanent and temporary resident visas, work and study permits	A FN must obtain these documents prior to entering Canada.
R12.001	Request or application at port of entry	A person may only make a request or application at a port of entry that provides collection services for biometric information.
R12.1	Collection of biometric information	Claims, applications and requests requiring the collection of biometric information.
R12.5	Verification of biometric information	When seeking to enter Canada and when directed, the person shall provide their biometric information for verification.
R27(1) and R27(2)	Appear for examination	A FN must appear without delay before an officer at a POE for an examination or, if entering at a place other than a POE, must appear without delay for examination at the nearest POE.
R28	Making an application	A person who seeks to enter Canada is deemed to be making an application pursuant to A15(1) and must therefore submit to an examination.
R30	Submit to medical examination	A FN who seeks to enter Canada for more than six months and who has resided or stayed in certain countries in excess of six months is required to submit to a medical examination and must hold a medical certificate stating that they are not inadmissible on health grounds.
R37	End of examination	See section 5.6 of this manual for details.

R40	Direction to leave	Except in the case of protected persons within the meaning of A95(2) and in the case of refugee protection claimants, an officer who is unable to examine a person who is seeking to enter Canada at a POE will, in writing, direct the person to leave Canada.
R41	Direct back	An officer may temporarily direct back a FN who is seeking to enter Canada from the United States if: • the examination cannot be completed; • the Minister's delegate (MD) is not available to review the report; • the admissibility hearing cannot be held by the Immigration Division (ID); • the FN is prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act*.
R42	Withdrawing an application	An officer who examines a FN who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada will allow the FN to withdraw their application and leave Canada, unless a report is being or has been prepared under 44(1) of the Act.
R43	Mandatory conditions in cases requiring further examination	A FN who has been authorized to enter Canada under A23 must comply with the following conditions: • report in person for the completion of the examination or the admissibility hearing; • not engage in any work in Canada; • not study in Canada; and • report in person at a POE if they withdraw their application to enter Canada. • comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.
R45	Deposits or guarantees	An officer can require of a person or a group of persons seeking to enter Canada the payment of a deposit or the posting of guarantee, or both, to guarantee compliance with any conditions imposed.
R50	Documents: applicants for permanent residence	A FN seeking to become a PR requires a PR visa as well as a passport, travel document or other document prescribed by the *Regulations*. For detailed requirements, see R50(1), (2) and (3).
R51	Obligations of applicants for permanent residence	A FN in possession of a PR visa who seeks at a POE to become a PR must inform the officer if: • they have become or ceased to be a spouse, common-law partner or conjugal partner after the visa was issued; or

		• material facts relevant to the issuance of the visa have changed or were not divulged when the visa was issued. The FN must also establish that they and their family members, whether accompanying or not, meet the requirements of the Act and Regulations.
R52	Documents: temporary residents	A FN who seeks to become a temporary resident must hold one of the following documents, which must be valid for the period authorized for their stay: a passport, a travel document or another document prescribed by the Regulations. For detailed requirements and exceptions, see R52(1) and R52(2).
R183 and R185	General and specific conditions on temporary residents	A temporary resident must comply with conditions of their entry, including the requirement to leave by the end of the period authorized for their stay and not to work or study unless authorized by the Act or Regulations and comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.
R184	Conditions on crew members	A FN who enters Canada as a crew member or in order to become a crew member is required to join the means of transportation within the period imposed or, if no period is imposed, within 48 hours after they enter Canada. A crew member must leave Canada within 72 hours after ceasing to be a crew member.
R196	Authorization to work	A FN must not work in Canada unless authorized by a work permit (WP) or the Regulations.
R212	Authorization to study	A FN may not study in Canada unless authorized by a study permit (SP) or the Regulations.
R243	Requirement to pay removal costs	A FN is not allowed to return to Canada if they were removed from Canada at the expense of Her Majesty and the debt incurred from removal is outstanding.

3.1 Forms

These are some of the forms used during a POE examination

Form title	**Form number**
Medical Surveillance Undertaking	IMM 0535B
Visitor Record	IMM 1097B
Authorization to Return to Canada Pursuant to Section 52(1) of the *Immigration and Refugee Protection Act*	IMM 1203B
Direction to Leave Canada	BSF503
Direction to Return to the United States	BSF505
Notice of Seizure of Travel and/or Identity Document(s)	BSF698
Notice to appear for a proceeding under subsection 44(2)	BSF504
Referral Under Subsection 44(2) of the *Immigration and Refugee Protection Act* for an Admissibility Hearing	BSF506

Acknowledgement of Conditions – *The Immigration and Refugee Protection Act*	BSF821
Allowed to Leave Canada	IMM 1282B
Declaration	IMM 1392B
Confirmation by Transporter Regarding Passenger(s) Carried	BSF453
Notice to Transporter	BSF502
Voluntary Departure - Confirmation	IMM 5021E
Temporary Resident Permit	IMM 1263B
Subsection A44(1) Highlights Port of Entry Cases	BSF516
Port of Entry (POE)/Secondary Examination Record	IMM 5059B
Entry For Further Examination or Admissibility Hearing	BSF536
Supplementary Identification Form	IMM 5455B
Authority to Release Personal Information to a Designated Individual	IMM 5475E
Use of a Representative	IMM 5476E
Record of Direct Backs for Refugee Claimants at the Land Border	Appendix C
Customs Referral Form (Airport)	E311
In-Person Processing – Air Mode	BSF423
Secondary Referral - Border	BSF235
Report to Warehouse (Border: Commercial Drivers)	Y28

4 Instruments and delegations

The instruments explain who has been designated to act as an officer and who has been delegated the authority to do anything that may be done by the Minister, under the Act or Regulations, depending on their position/level. There are two IRPA Designation and Delegation Instruments. One is made by Immigration, Refugees and Citizenship Canada (IRCC) and the other by the Canada Border Services Agency (CBSA). In each instrument, IRCC and the CBSA designate and delegate authorities to their own officers, as well as to officers in other departments. Therefore, it is important to read both documents to know all authorities linked to a position under IRPA.

Any person in a prescribed position and making decisions under a designated or delegated authority must successfully complete all official prerequisite CBSA training required for those positions before exercising their designated or delegated authority.

These instruments can be found in manual *IL 3, Designation of Officers and Delegation of Authority.*

4.1 Powers and authorities of an officer

The following sections provide authority for an officer relating to the examination of persons seeking to enter Canada:

Powers of an officer under IRPA and IRPR	**Relevant provisions**
Authority to conduct an examination where a person makes an application. R28 specifies that every person who seeks to enter Canada is making an application and is, therefore, subject to an examination.	A15(1)

Authority to: • board and inspect any means of transportation bringing persons to Canada; • examine any person carried by that means of transportation and any record or document respecting that person; • seize and remove any record or document to obtain copies or extracts; and • hold the means of transportation until the inspection and examination are completed. This section provides authority for officers to commence an examination prior to the passenger's arrival at the Primary Inspection Line (PIL).	A15(3)
Authority to require a person being examined to produce a visa and all relevant evidence that the officer reasonably requires, including, in the case of FNs, photographic and fingerprint evidence. Authority to request that the FN undergo a medical examination.	A16(1) and (2)
Authority to require that a person who makes an application appear for an examination.	A16(1.1)
Authority to require that a FN who makes an application appear for an interview conducted by CSIS.	A16(2.1)
Authority to require or obtain from a PR or FN who is arrested, detained, subject to an examination or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.	A16(3)
Authority to authorize a person to enter Canada for the purpose of further examination or an admissibility hearing at a later time or date.	A23
Authority to issue a TRP, if justified by the circumstances, to a foreign national who is inadmissible or who does not meet the requirements of the Act, and to cancel the TRP at any time.	A24
Authority to prepare a report on PRs and FNs who are believed to be inadmissible.	A44(1)
Authority to impose conditions, including the payment of a deposit or the posting of a guarantee for compliance with any conditions considered necessary, on a PR or FN who is the subject of a report.	A44(3)
Authority to authorize a FN against whom a removal order has been enforced to return to Canada.	A52(1)
Authority to issue a warrant for the arrest and detention of a PR or FN who the officer has reasonable grounds to believe is inadmissible and: • is a danger to the public or • is unlikely to appear for ▪ examination, ▪ an admissibility hearing or ▪ removal from Canada or ▪ a proceeding that could lead to the making of a removal order by the Minister under A44(2)	A55(1)

Authority to arrest and detain, without a warrant, a foreign national, other than a protected person: • who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under A44(2); or • if the officer is not satisfied with the identity of the FN in the course of any procedure under the Act.	A55(2)
Authority to detain a PR or FN on entry to Canada if the officer considers it necessary to do so in order to: ▪ complete an examination or ▪ has reasonable grounds to suspect that the person is inadmissible under A34, 35, 36, or 37.	A55(3)
Authority to order the release from detention of a PR or a FN before the first detention review by the ID if the officer is of the opinion that the reasons for the detention no longer exist. This section also allows the officer to impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary.	A56
Authority to conduct eligibility determinations for refugee claimants and to refer eligible claims to the Refugee Protection Division (RPD).	A100(1)
Authority of officers to have the authority and powers of peace officers for the purpose of enforcing the provisions of the Act, including provisions with respect to the arrest, detention and removal of a person from Canada.	A138(1)
Authority to search any person seeking to come into Canada, including their luggage, personal effects, and means of transportation, if the officer believes on reasonable grounds that the person has not revealed their identity or has hidden documents relevant to their admissibility or has committed, or possesses documents that may be used in the commission of an offence referred to in A117, A118 or A122.	A139
Authority to seize and hold any means of transportation, document, or other thing that the officer believes on reasonable grounds was fraudulently or improperly obtained or used or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of the Act.	A140
Authority to impose, vary or cancel conditions on any person who is obliged to submit to a medical examination.	R32
Authority to conduct alternate means of examination.	R38
Authority to direct a person who cannot be examined to leave Canada, in writing, unless this person is a protected person or a refugee claimant.	R40
Authority to direct a FN to return to the United States temporarily.	R41
Authority to allow or to refuse to allow a FN to withdraw their application to enter Canada and leave Canada.	R42
Authority to impose conditions on persons authorized to enter Canada for further examination under A23.	R43

Authority to require the payment of a deposit or the posting of a guarantee.	R45
Authority to impose conditions, including the period of time that a temporary resident may remain in Canada.	R183
Authority to impose, vary or cancel specific conditions on a temporary resident.	R185
Authority to issue a work permit if eligibility is met.	R200
Authority to issue a work permit on the basis of Canadian interests.	R205
Authority to issue a work permit on the basis the FN can not support themselves without working.	R206
Authority to issue a study permit if eligibility is met.	R216
Authority to require a transporter to provide a written report with respect to a stowaway.	R262
Authority to require a transporter to provide copies of a passenger's ticket, itinerary and information about travel and identity documents.	R264
Authority to require a transporter to assemble all members of the crew aboard a vessel.	R266
Authority to require a transporter to provide a written report respecting a FN who has ceased to be a member of the crew.	R268

Powers of officer under the *Criminal Code*	**Relevant provisions**
Authority within the meaning of the *Customs Act*, the *Excise Act* or the *Excise Act, 2001* or a person having the powers of such an officer to perform any duty in the administration of any of those Acts.	Section CC2
Authority and powers of a peace officer, including those set out in sections 487 to 492.2 of the *Criminal Code* to enforce IRPA.	Section CC2
Justification, when acting on reasonable grounds, in doing what is authorized or required in the administration or enforcement of Program Legislation, and in using as much force as necessary for that purpose.	Section CC25
Justification to use as much force as is reasonably necessary to prevent the commission of an offence (or to prevent anything being done that on reasonable grounds to believe were it done would be an offence) for which, if it were committed, the person who committed it might be arrested without warrant, and would be likely to cause immediate and serious injury to the person or property of anyone.	Section CC27
Authority to arrest without warrant a person who has committed, is committing or is about to commit a criminal offence.	Subsection CC495(1)
Limitations on when an officer will arrest a person without warrant who has committed, is committing or is about to commit a criminal offence.	Subsection CC495(2)
Authority to issue an appearance notice in lieu of arrest if the offence is listed in section CC553.	Section CC497
Authority to release from custody a person arrested, without warrant, for an offence other than one described in section CC496.	Subsection CC498(1)

Powers of officer under the *Customs Act*	Relevant provisions
In conjunction with section 2 of the *Criminal Code*, where the definition of "peace officer" includes the term officer described at CA2. The term "Officer" is defined for the purposes of the *Customs Act* as a person employed in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Import Measures Act* and includes any member of the Royal Canadian Mounted Police (RCMP).	Section CA2
Lists the particular sections of the *Customs Act* that, if violated, are punishable by either indictment or summary conviction; officers, therefore, may arrest for contraventions of those sections listed.	Section CA160
Authorizes designated officers, when at a customs office and performing their normal duties, to make an arrest for a criminal offence under any other Act of Parliament.	Subsection CA163.5(1)

4.2 Designation of officers

A6(1) authorizes the Minister of Immigration, Refugees and Citizenship Canada (IRCC) and the Minister of Public Safety and Emergency Preparedness to designate officers or classes of officers to carry out any purpose or provision of the Act. A designation is made, in most cases, where the word "officer" is referred to in the Act or Regulations with respect to a power, duty, requirement, or authority.

4.3 Ministerial delegations

A6(2) authorizes the Minister of IRCC and the Minister of Public Safety and Emergency Preparedness to delegate powers to other persons. A delegation is made, in most cases, where the word "minister" is referred to in the Act or Regulations with respect to a power, duty, requirement, or authority. Certain ministerial powers, referred to in A6(3), may not be delegated.

4.4 Designations of Ports of Entry (POE)s

The Minister has authority under R26 to designate a place as a POE. The purpose in designating a POE is to ensure that persons seeking to enter Canada are aware of where they are required to report for examination.

See a list of POEs with detailed information, including the types of services and hours of operation.

5 Departmental policy

5.1 Examinations

A15(1) authorizes an officer to examine any person making an application in accordance with the Act. This manual deals only with the examination of persons seeking to enter Canada.

R28 stipulates that a person makes an application by:

- submitting an application in writing;
- seeking to enter Canada;
- seeking to transit through Canada in airports as provided for by R35; or
- making a claim for refugee protection.

5.2 Persons to be examined

A18(1) provides that every person who seeks to enter Canada, whether they intend to or not, must appear for an examination.

A18(2) provides that this also applies to persons who, without leaving Canada, seek to leave an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada.

5.3 Primary and secondary examinations

Every person seeking to enter Canada must appear for an examination to determine whether they have a right to enter Canada or may become authorized to enter and remain in Canada. The examination process at a POE may include a primary and a secondary examination. Primary examinations are completed by a BSO at the PIL. In some airports, travellers will use a Primary Inspection Kiosk (PIK) to verify their travel documents, confirm their identity and complete an on-screen declaration. In some remote ports, an RCMP officer may complete the primary examination. Immigration Secondary examinations are conducted by a BSO at Immigration Secondary following a referral from a BSO at the PIL or from the PIK. This manual refers to both primary and secondary examinations at a POE.

5.4 Ministerial Instructions

A15(4) provides that an officer will conduct an examination in accordance with any instructions that the Minister of IRCC or the Minister of Public Safety and Emergency Preparedness may give. The authority for the Ministers to give instructions to officers can be used to ensure consistency in the application of the Act with respect to examinations. Ministerial instructions are not regulations (see A93) but are nevertheless binding on officers.

5.5 Duties and conduct of the Border Services Officer (BSO)

A BSO must deal with each person being examined in a courteous, professional and efficient manner. If it is determined that the person has a right of entry under A19, the BSO must not delay their entry into Canada.

A FN who is determined:

- to be admissible, should be authorized into Canada as a temporary resident with minimal delay; and
- to be inadmissible, should be counselled accordingly and the BSO should consider all options afforded by the IRPA and IRPR prior to making a decision.

A BSO should carefully examine all the facts before making a decision and, where appropriate, explain the reasons for that decision to the traveller.

5.6 End of examination

R37 provides that the examination of a person seeking to enter or transit through Canada is not final until one of the following outcomes takes place:

Outcome	Explanation
A final determination is made that the person has a right to enter Canada or is authorized to enter Canada and the person leaves the port of entry.	The Regulations provide that an examination is not final until the person has left the controlled area of the POE or, if no controlled area exists, has left the POE. For example, an examination may be continued if, during a Customs Secondary examination, evidence arises that indicates the person may be inadmissible to Canada. If the person's passport has been stamped or even if the person has been granted PR status, these decisions are not final and may be revisited as long as the person has not left the controlled area of the POE.
A person in transit departs from Canada.	Certain passengers in transit through Canada are not required to appear for examination if they remain in a controlled area pending their onward flight out of Canada. They are, nevertheless, subject to examination. If they seek to leave, for any reason, the area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada, they must report for examination [A18(2)].
The person is allowed to leave Canada, and their departure is confirmed.	A BSO may determine a person to be inadmissible and allow them to leave Canada pursuant to R42 if no report referred to in A44(1) is prepared or transmitted. The examination concludes once their departure is verified. If, for any reason, the person does not depart, the examination resumes.

Entry is authorized by the Minister and the person leaves the port of entry.	The Minister's delegate, in reviewing a report pursuant to A44(1), continues the examination of the person seeking entry. If the Minister's delegate determines the report is not founded, the person will be allowed to enter Canada, and the examination will conclude when the person leaves the POE.
A removal order is issued by the Minister and the person leaves the port of entry.	The Minister's delegate, after reviewing a report pursuant to A44(2), may issue a removal order. The examination ends when the person leaves the POE.
The Minister refers the case to the ID for an admissibility hearing and the person leaves the port of entry.	The Minister's delegate, after reviewing a report pursuant to A44(2), may determine that the report is well founded and refer it to the ID of the Immigration and Refugee Board (IRB) for an admissibility hearing. The examination ends when the person leaves the POE.
For refugee claims made at a POE, the examination ends when the later of the following occurs: • the officer determines that their claim is ineligible under A101 or the Refugee Protection Division (RPD) accepts or rejects their claim under A107, or • a decision in respect of the person is made under A44(2) and the person leaves the POE.	The point at which examination ends is different where the person is a refugee claimant as the application exists up until the claim has been decided. R37(2) provides delegated officers the authority to examine a refugee claimant until a decision is made in regards to the claim. For more details, please consult section 11.6 of *ENF 5, Writing 44(1) Reports.*

A23 allows an officer to authorize a person to enter Canada for the purpose of further examination or an admissibility hearing.

For more information on pre-removal risk assessments, see IRCC's *Program Delivery Instructions*.

For more information on removals, see *ENF 10*, *Removals*.

6 Definitions

Border services officer (BSO)	A person designated as an officer by the Minister, employed by the CBSA [A6(1)] [R2]
Canadian citizen (CC)	A citizen referred to in subsection 3(1) of the *Citizenship Act*
Common-law partner	In relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year [R1(1)]

Convention refugee	A person who, by reason of a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion, (*a*) is outside of their country of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of that country; or (*b*) does not have a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country [A96]
Foreign national	A person who is not a Canadian citizen or a PR; includes a stateless person [A2(1)]
GCMS	Global Case Management System: IRCC/CBSA client immigration database
Officer	A person designated as an officer by the Minister under A6(1) [R2]
Permanent resident (PR)	A person who has acquired permanent residence status and has not subsequently lost that status under A46 [A2(1)]
Protected person (PP)	A person on whom refugee protection is conferred and whose claim or application has not subsequently been deemed to be rejected because of cessation or vacation proceedings [A95(2)]
Sterile transit area	An area in an airport where in-transit passengers, in-transit pre-clearance passengers or goods that are in transit or pre-controlled are physically separated from other passengers and goods [R2]

7 Primary Inspection Line (PIL) examinations

The examination process usually commences upon the arrival of a person at a POE. This may be a land border, an airport, a marine harbour or any other place designated as a POE. BSOs at the PIL are delegated the authority to conduct the initial immigration examination of persons seeking entry into Canada. BSOs at the PIL administer legislation and programs by providing a wide range of inspection, examination and enforcement activities on behalf of many government departments and agencies.

7.1 Memorandum of Understanding with Immigration, Refugees and Citizenship Canada (IRCC)

On December 12, 2003, the CBSA was created, and immigration enforcement and intelligence responsibilities under IRPA were transferred to this new agency from IRCC.

The purpose of the Memorandum of Understanding (MOU) is to define, in general terms, the basis for cooperation between IRCC and the CBSA regarding:

- the delivery of the immigration program;
- information sharing; and
- the provision of various services.

For more information on the roles and responsibilities of the CBSA and IRCC, see the full text of the MOU.

7.2 Immigration secondary referral list

Paragraph 59 of part 2, chapter 1 of *The People Processing Manual* provides the Immigration Secondary Referral List which contains the categories of persons who are mandatory referrals for an Immigration examination, such as:

- inadmissible persons under sections 34 to 42 of the IRPA;
- persons whose citizenship or status is doubtful;
- FNs refusing to answer questions;
- FNs refused entry into another country;
- persons whose documents, such as passport, seems doubtful;
- immigration Lookouts;
- Canadian citizens in possession of an emergency passport issued abroad;
- PRs of Canada who have had extended absences from Canada;
- FNs intending to stay longer than six (6) months;
- FNs seeking medical treatment or appear ill;
- Foreign workers and students on first entry.

BSOs at the PIL may also refer anyone else who they believe should be examined in more detail.

Examples of types of referrals that should be sent to Immigration Secondary include cases where the BSO at the PIL:

- has doubts about the person's identity;
- suspects the FN may have a criminal record;
- believes the FN may require documentation such as a WP or SP;
- has concerns about the length of time the FN is requesting to stay in Canada in light of their actual travel plans.

7.3 Liaison with officers at the PIL

BSOs at the PIL are encouraged to inquire about the results of their referrals to Immigration Secondary. BSOs at Immigration Secondary do not operate under the same time constraints as BSOs at the PIL and have more time to conduct immigration examinations effectively. BSOs at Immigration Secondary should, whenever possible, provide feedback on the results of referrals. Liaising between officers is a key element in developing and maintaining an effective and positive working relationship with officers who conduct the primary portion of the examination process. In addition, discussing cases allows BSOs at Immigration Secondary to give guidance to BSOs at the PIL regarding immigration requirements. This increases the quality of referrals from the PIL. BSOs working at the PIL are encouraged to write in referral notes in IPIL when referring someone to secondary. See OBO-2019-030 for more details.

7.4 Responsibilities of primary examining officers

BSOs conducting primary examinations are responsible for:

- confirming the identity of the person and verifying that the biometric photograph matches in PIL, when applicable;
- questioning persons and reviewing documentation to determine whether persons have a right to enter Canada (Canadians, PRs and persons registered under the *Indian Act*) or are FNs who may be authorized to enter Canada as temporary residents;
- determining whether or not persons seeking entry into Canada are doing so as new or returning PRs;
- authorizing persons to enter Canada and stamping passports when required. As per the CBSA Stamp Policy, which came into effect on April 2, 2012, BSOs are **not** expected to notate stamps in passports at the PIL except in the following circumstances:
    - Officers will notate the stamp at the PIL (as per the CBSA Operational Bulletin PRG-2018-40) when authorizing entry under the
        - Parents and Grandparents Extended Stay Temporary Resident Visa (Super Visa), and
        - Authorized Period of Extended Stay;
    - Officers may place a stamp in the holder's passport on subsequent entry of persons with a valid and subsisting status document.
        - If a stamp is placed in the passport, the officer will notate the initial expiry according to the status document.
        - If a stamp is not placed in the passport, the officer will remind the person of the initial expiry date;
- referring persons for a more detailed Immigration Secondary examination when appropriate, in accordance with the Immigration Secondary referral list; and
- authorizing FNs to leave Canada or directing them to return to the U.S. at ports where there are no BSOs present at the Immigration Secondary.

7.5 Primary examination questions

Primary examination questions are designed to elicit essential information about citizenship, residency, intention, employment, length of stay and identity as quickly as possible. Normally, the examining BSO at the PIL begins by asking one or more of the six primary questions below. Under most circumstances, a BSO at the PIL does not need to ask all questions of all travellers.

Issue	Question	Rationale
Identity	What is your name?	If the BSO has any reason to doubt the person's identity, they will ask for the person's name. A comparison can then be made with the person's documents to determine if the name given is the same as the name in the document.
Citizenship	What is your citizenship?	By asking this question, the BSO can identify a person who may enter Canada by right. It is rare that a person who has a right to enter Canada be referred to Immigration Secondary.

		If the person is not Canadian, this question enables the BSO to determine whether a passport, a visa or an electronic Travel Authorization (eTA) is required to enter Canada. If the person has a machine-readable passport, the BSO does not necessarily have to ask about citizenship. A passport reader, however, is no substitute for a good verbal examination.
Residency	Where do you reside?	This question helps the BSO to determine, should the person answer they have status in Canada, what their obligations and conditions are. If the person is a PR, the BSO may ask the supplementary question "How long have you been away?" The BSO at the PIL must refer for Immigration Secondary examination all PRs who may not comply with the residency obligation of A28, which requires PRs to reside in Canada for at least 730 days out of every five-year period to maintain their status. The possible loss of PR status under A46 can be further explored at a secondary examination.
Intention	What is the purpose of your trip to Canada?	Once the BSO determines that the traveller is a FN, they must establish why the FN is coming to Canada. By asking this question, they can identify the need for a referral to Immigration Secondary for control purposes (for example, to become a PR, to work, or to study).
Employment	Do you intend to take or seek employment while in Canada?	If the BSO has not yet determined whether the person is coming to Canada to work, this question ensures that employment opportunities for Canadians are protected and that the person will comply with relevant employment regulations.
Length of stay	How long do you intend to stay in Canada?	BSOs may allow a FN to enter Canada for a stay of up to six months and should stamp the passport of a person who is otherwise admissible. A FN who is intending to remain in Canada for longer than six months should be referred for a Immigration Secondary examination.

The BSO at the PIL may ask additional questions as warranted but usually does not conduct in-depth examinations. This would create line-ups and delays for the travelling public. A BSO at the PIL who doubts the *bona fides* of a person or believes that a detailed examination may be in order should refer the person to an Immigration Secondary examination.

Most travellers seeking entry at an international airport will use a Primary Inspection Kiosk (PIK) instead of being seen by a BSO at the PIL. Travellers in possession of an ePassport will have the photo stored in their passport's chip compared to their photo taken at the PIK to authenticate their identity. If the traveller does not have an ePassport or the system was unable to validate their identity, the podium officer will verify their identity by comparing the photograph in the passport with that of the traveller in front of them. Also, travellers who have previously had their biometrics enrolled will be asked to verify their identity via fingerprint verification at PIK.

7.6 Criminality

BSOs at the PIL shall not ask a FN about criminality during a PIL examination. Questions about criminality are better suited for Immigration Secondary, where BSOs have more time to conduct a full examination and to question a person in a more private setting. Consequently, when a BSO at the PIL suspects, through questioning, lookouts and IPIL, or other indicators, that a FN may have a criminal record, the FN should be referred to an Immigration Secondary examination. All BSOs at Immigration Secondary should take care to ensure privacy by not questioning a person about criminality in the presence of accompanying family members or other travellers.

National Crime Information Center (NCIC) queries cannot be conducted as a matter of course and should never be done as a matter of routine. However, travellers can be queried in NCIC if officers have reasonable suspicion indicating criminal activity. If the reasonable suspicion (or reasonable grounds to suspect) standard has been met, name-based checks in NCIC for an investigative purpose or for criminal history are authorized on persons originating from or associated with the United States of America or any of its territories.

BSOs must have completed the mandatory training, M1126-P in the ESS self-service portal prior to doing any NCIC query. Refer to OBO-2020-080 on authorized usage by CBSA of the NCIC.

BSOs may refer to the *NCIC Quick Reference Guide* on Atlas for instructions on how to query NCIC.

7.7 Referral of FNs with medical conditions

A38 states that FNs are inadmissible to Canada on health grounds if a medical officer has concluded that the applicant's health condition:

- is likely to be a danger to public health;
- is likely to be a danger to public safety; or
- might reasonably be expected to cause excessive demand on health or social services.

Referral for an Immigration Secondary examination is mandatory when a foreign national:

- is seeking to enter Canada in order to undergo medical treatment; or
- is obviously ill.

It is not possible, given the time constraints of the primary examination process, to assess the health status of every FN seeking authorization to enter Canada. BSOs at the PIL should adopt a practical approach based partly on visual risk assessment and partly on common sense and experience.

BSOs should not be consciously looking for medical problems as part of their examination but should refer for further examination those whom a reasonable person would judge to be ill. Examples could include FNs who:

- act abnormally;

- have incoherent speech;
- are on a stretcher or are accompanied by medical personnel (e.g., nurse, personal physician, etc.);
- exhibit obvious signs of illness.

Certain viruses can lead to widespread epidemics/outbreaks in a specific country and could even lead to a global pandemic such as COVID-19 did. In the past, Ebola, Severe Acute Respiratory Syndrome (SARS) and H1N1 swine flu have threatened the global populations. In response to these epidemics, CBSA and Public Health Agency of Canada (PHAC) work together to screen travellers who might be infected. BSOs at the PIL are to notify PHAC immediately if they believe a person is showing signs of infection. A PHAC quarantine officer will assess the person, either over the phone or in person depending on your work location, and render an opinion. Each POE should have protocols in place for these types of situation.

BSOs can access a health specialist through the new PHAC Notification Line: **1-833-615-2384** and email **phac.cns-snc.aspc@canada.ca.**

On occasion, a FN who is critically ill or injured will be transported to a hospital in Canada via an ambulance. Due to the seriousness of the foreign national's condition, the BSO may feel that conducting a full primary or secondary examination is not advisable at that time. The BSO should not unduly delay a person who needs urgent medical treatment. Information should be obtained from the emergency medical technician (EMT) as to which hospital the FN is being transported to and the FN's passport should be seized so that the BSO can conduct an examination when the FN is release from the hospital.

For more information on medical inadmissibility, see section 17 below or visit IRCC's PDI on the matter.

7.8 CBSA referral forms

There are various forms that a BSO at the PIL uses to refer a person to the Customs or Immigration Secondary examination areas.

CBSA referral forms		
Form	**Use**	**Explanation**
E311	Primarily airports	The E311 form is completed by passengers on airplanes destined to Canada and by some bus and train passengers. A passenger presents the E311 form to the BSO at the primary inspection booth, and the BSO verifies the information and codes the form. This form is being phased out and replaced with BSF423.
BSF423	Airports	The BSF423 is completed by a BSO when a passenger is unable to use the PIK.
PIK receipt	Airports with PIK	Primary Inspection Kiosks (PIK) allow travellers to verify their travel documents, confirm their identity and complete an on-screen declaration. Once completed, the PIK will print a receipt for the traveller to present to a BSO.

BSF235 (E67)	Land border crossings and ferry sites	The BSF235 form is completed by a BSO at the PIL at land borders.
Y28	Land border crossings and ferry sites	The Y28 form is completed by a BSO at the PIL for commercial drivers.

These forms facilitate the control and streaming of passengers, provide data for Statistics Canada and are used to refer passengers to Customs and/or Immigration Secondary.

Note: The PIK receipt, E311 and BSF423 forms are not only a referral form but also a declaration card. While travellers use PIK, complete an E311 or have a BSF423 completed by a BSO in air mode, the BSF235 (E67) at land and marine modes is only issued if the traveller or vehicle is referred to a secondary examination.

The forms carry a code by which the BSO at the PIL gives the reason for referral to a secondary examination.

The immigration portion of the BSF235 (E67) is coded with four letters: T, E, L, and O. When using the BSF235 (E67), the BSO at the PIL will circle the appropriate letter to indicate the reason for referral.

TELO coding on the BSF235 (E67)		
Letter	**Meaning**	**Explanation**
T	Time	The person intends to stay in Canada for an extended or unusual period of time.
E	Employment	The person has indicated an intention to seek employment in Canada.
L	Lookout	The person may be the subject of a "watch for" as being of interest to CBSA's BSOs in Immigration Secondary.
O	Other	This includes any other reason not covered above. In this case, the PIL officer will typically write a few words on the BSF235 (E67) to guide the secondary examination. Officers should be cautious when recording any information on the BSF235 (E67), as the person who is being referred may be able to read the form.

8 Secondary examinations

8.1 Immigration Secondary examinations

An Immigration Secondary examination is usually initiated by a referral from a BSO at the PIL. It can also result from a referral from a BSO, such as a Disembarkation and Roving Team (DART) member who has boarded and inspected an airplane, bus, train or ship before any of the passengers have presented themselves at the PIL. An Immigration Secondary examination is usually conducted by a BSO in the Immigration Secondary area but may be conducted by a BSO at Customs Secondary if no BSO at Immigration Secondary is available at the POE. An Immigration Secondary examination may also be conducted by telephone or other electronic means if the person is in a remote location, where no BSO is available.

8.2 Responsibilities of examining BSOs at Immigration Secondary

BSOs conducting Immigration Secondary examinations are responsible for facilitating the entry of Canadians, persons registered under the *Indian Act,* and PRs as well as *bona fide* FNs and identifying inadmissible persons.

Responsibilities of such officers include:

- examining persons seeking entry to Canada to determine admissibility;
- facilitating the entry of Canadians, PRs and persons registered under the *Indian Act*;
- confirming identity and biometrics verification;
- collecting biometrics when FNs makes a claim, application or request;
- authorizing FNs to enter Canada as temporary or PRs and issuing documents where appropriate;
- receiving refugee claims and determining eligibility to make such claims;
- reporting persons who are inadmissible;
- reviewing inadmissibility reports;
- issuing removal orders, where appropriate, to inadmissible persons;
- referring cases to the Immigration Division, where appropriate, for an admissibility hearing;
- authorizing inadmissible persons to enter Canada on a TRP;
- denying entry to inadmissible persons, arranging for their removal and confirming their departure;
- allowing persons who have indicated that they want to withdraw their application to enter Canada to do so and leave Canada; and
- arresting and/or detaining persons if applicable grounds exist.

All BSOs working at Immigration Secondary are responsible for "closing the loop" in IPIL as per OBO-2019-029.

8.3 Right to counsel at POE examinations

For the purpose of routine information-gathering to establish admissibility during an Immigration Secondary examination, a person is not entitled to counsel unless arrested or detained. A person who is arrested or detained must be informed without delay of their right to counsel and granted the opportunity to retain and instruct counsel.

The Supreme Court of Canada has held that an Immigration Secondary examination at a POE does not constitute a detention within the meaning of paragraph 10(*b*) of the *Canadian Charter of Rights and Freedoms* [Dehghani v. Canada (*Minister of Employment and Immigration*), [1993] 1 S.C.R. 1053]. The Court determined that the principles of fundamental justice do not include the right to counsel for routine information-gathering, such as is gathered at POE examination interviews.

This Court decision clarifies that the Charter only gives the right to counsel to those who are arrested or detained. Generally, CBSA's policy is not to permit counsel at an examination if detention has not occurred. However, if a BSO is dealing with a FN/PR who does have legal representation with them, even though the FN/PR is not entitled to have legal representation present, the BSO should allow the legal representative to remain present as long as they do not interfere with the examination process. If the legal representative does

interfere, the BSO or Minister's delegate (MD) can ask the legal representative to leave, as there is no legal obligation to allow them to be present.

The right to counsel depends on what transpires after the FN/PR is first subject to examination. For example,

- if a FN/PR is being examined, and the examination does not go beyond what is required to establish admissibility, the person is not entitled to legal counsel;
- if the examination becomes very lengthy and exhaustive but not beyond what is required to establish admissibility, the FN/PR is not entitled to legal counsel. The BSO may, however, consider allowing the person to acquire legal counsel;
- if the FN is not restrained in any way but advised to come back the next day for further examination as outlined in A23, then they are not considered detained, and there is no right to counsel;
- if a person is being held for a lengthy period of time and is subject to questioning by other agencies, such as the RCMP or CSIS, then this may constitute detention, and the FN should be notified of their right to counsel;
- if restraining devices are used, or the person is placed in a holding cell, even temporarily, then an officer must inform the person of the reason for the detention and of their right to counsel; and
- if the person is arrested for a criminal offence, they must be informed of the reason for the arrest and of their right to counsel.

At any time an officer arrests and/or detains a FN or PR they must advise them of their right to counsel. The right to counsel is triggered with a physical restriction, such as being placed in a restraint or a holding cell, or mentally, when informed of the arrest and or detention.

For more information on the right to counsel during POE examination, refer to *ENF 6*, *Review of reports under A44(2).*

For more information on IRPA arrest and detention, including right to counsel, refer to immigration manuals *ENF 7, Immigration Investigations and IRPA s. 55 Arrests/Detention* and *ENF 20*, *Detention*.

8.4 Use of interpreters

BSOs regularly encounter hundreds of different languages and dialects. Often the person seeking entry to Canada does not speak French, English or any other language familiar to the BSO. In such cases, the BSO may be able to authorize entry on the basis of documentation in the possession of the traveller. In appropriate circumstances, the BSO can ask accompanying friends or family members to assist in translation. At times, a BSO may also solicit help from staff or other persons who are familiar with the language. This is a pragmatic practice that allows a BSO to facilitate the entry of travellers in cases where an official interpreter is not readily available.

A BSO who is using a non-accredited interpreter to conduct a basic examination should suspend the examination if it becomes apparent that the person may be inadmissible or more intrusive questions need to be asked. The examination can be continued once an IRB's accredited and security-cleared interpreter is available. This is important for the following reasons:

- When making a decision on admissibility, the BSO needs a reliable and trustworthy interpreter in order to be sure that information provided by the client is accurately translated. Inaccurate translation could result in a decision based on misinformation, which is detrimental to the person. This would constitute a breach of natural justice.
- Information obtained at examination is often used as evidence in admissibility hearings and, less frequently, in criminal prosecutions. If a competent interpreter is not used, the evidence can be discredited or rendered inadmissible.
- All immigration decisions relating to admissibility are subject to judicial review by the Federal Court. The Federal Court reviews the fairness of the process leading to the decision and will strike down any decision based on evidence obtained through an interpreter whose competency is in doubt.
- It is to the benefit of both the person and the CBSA that a competent interpreter be used in examinations that may lead to a person being found to be inadmissible to Canada.

Further information on the use of interpreters can be found on IRCC Connexion, Interviews and interpreters page.

Guidelines for the use of telephone interpretation

Telephone interpretation is a viable alternative to in-person interpretation and should be considered in order to process refugee claimants, establish identity and purpose of travel, issue a removal order, deny entry and detain and/or arrest a FN. BSOs should allow for a degree of discretion when deciding to provide interpretation services in other situations not included in this list.

The following guidelines outline procedures for the use of telephone interpretation when the service is available and appropriate. The BSO should do the following:

- Determine if interpretation services are required. If the person speaks an official language of Canada, the BSO asks them if they would be comfortable conducting the interview in that language or if they would like an interpreter. The BSO records this in their officer notes. The BSO reiterates throughout the interview that if the person should require an interpreter at any point, the BSO will pursue this request.
- Secure an interpreter by accessing the IRB list of accredited interpreters.
- Follow port procedures in terms of completing interpreters' contracts, worksheets and obtaining required payment information.
- Ensure that the interpreter is alone.
- Ensure that the interpreter and the person concerned are not known to each other and that there is no conflict of interest.
- Whenever operationally feasible, provide refugee claimants the option of being interviewed by an officer of the same sex or gender identity with the assistance of interpreters of the same sex or gender identity when cultural sensitivities or signs of gender related persecution exist.
- Ask the question "Do you and the interpreter understand one another?" to begin the dialogue and to ensure that the person and interpreter understand each other.
- Use, when necessary, a series of introductory warm-up questions to observe the person's ability to respond quickly and easily to the questions and to satisfy the BSO that the interpreter is fluent in both languages.
- Ask the person directly whether they are able to clearly understand the interpreter and record this question and the person's response in their officer notes.

- Advise the person and the interpreter to let the BSO know if, at any point in the examination, either the person or the interpreter does not understand or is having difficulties.
- Remain vigilant throughout the examination to ascertain if the person is able to understand the interpretation and communicate effectively.
- Read back the information provided by the person through the interpreter in order to confirm that it accurately captures the person's responses.
- When processing a refugee claimant, record the name of the telephone interpreter on the *Generic Application Form for Canada* [IMM 0008E], the *Schedule A – Background/Declaration* form [IMM 5669E], and the *Interpreter Declaration* form [IMM 1265B] and note that the interpretation was provided over the phone along with the start and end time of the interview as well as any breaks in interpretation services.
- Make a note if more than one interpreter was used with the corresponding names and start and end times.
- In the case of unaccompanied minors, contact the relevant child protection office and make every attempt to obtain interpretation services in the interim.
- Make attempts to find another interpreter in cases where it is evident that the person is unable to communicate through the current interpreter.
- If no interpretation services are available, note on file all attempts that were made to secure these services. This is especially important in cases of detention.

Situations where it would be inappropriate to conduct a telephone interview include but are not limited to:

- Certain cases where travellers are physically and/or mentally challenged.
- When guidelines for the interpreters are not met, such as
    - when the interpreter does not have access to a landline or is unable to work in a private space; or
    - when telephone line quality or equipment quality makes hearing all parties very difficult.

8.5 Confidentiality

Fast-flow counters where BSOs conduct Immigration Secondary examinations are designed to deal with cases expeditiously but offer limited privacy. A BSO should take care to consider the sensitive nature of information that may arise during an examination and, where appropriate, should secure a private setting for the continuation of an examination. Such cases might involve personal medical information or issues of criminality.

Information obtained in the course of a secondary examination is confidential. The *Privacy Act* requires that personal information concerning clients be released only to the client or the client's designated representative.

Subsection 8(2) of the *Privacy Act* contains exceptions to this requirement. For example, pursuant to paragraph 8(2)(*f*) of the *Privacy Act*, IRCC has entered into a Statement of Mutual Understanding (SMU) with the United States Immigration and Naturalization Service (USINS), now the Department of Homeland Security (DHS), and the U.S. State Department (DOS), which permits the exchange of information on persons who are inadmissible or whom there are reasonable grounds to believe may be inadmissible or

subject to removal. This agreement also allows for the sharing of information between the CBSA and the DHS and DOS.

8.6 Pre-questioning procedures

Before questioning a traveller, a BSO at Customs or Immigration Secondary should:

- review the referral information from the PIL, such as that found on the BSF235 (E67), E311 or BSF423 forms or the PIK receipt, to identify the reason for the referral;
- obtain the person's relevant identity documents, such as a passport, travel document, citizenship card, Certificate of Indian Status/Secure Certificate of Indian Status card, Permanent Resident Card or birth certificate;
- view the airline ticket of anyone travelling by air;
- determine whether the person is in possession of any immigration documents that may assist in quickly establishing the reason the person is seeking entry into Canada; and
- open the PIL referral and verify if the person is flagged and what for.

See section 13.36 of this manual for information on processing biometrically enrolled FNs at Primary.

8.7 Global Case Management System (GCMS) checks

Using the information on the identity document presented by the person, a BSO at Immigration Secondary completes an integrated search in the GCMS. It is a departmental policy that a GCMS check be completed for every person referred for an Immigration Secondary examination. During secondary examination, it is mandatory that the BSO conduct system queries based on the traveller's name and date of birth, and not on a unique client or application/document number. This will ensure that potential derogatory information will be identified. Officers must also remain vigilant in identifying close name matches that may be related to the traveller.

Where small POEs do not have access to GCMS, they must call another POE in their district to get them to run the checks.

8.8 Basic questioning

Basic questioning by BSOs at immigration secondary should cover the following areas, as appropriate:

Issue	Question	Explanation
Identity	What is your name?	This will enable the BSO to identify the person. The name should be verified against the referral card, identity documents and airline ticket.
Citizenship	What is your country of citizenship?	The BSO should ask this of each person being examined to ensure that the person's stated citizenship matches the identity document they present.

		This response will help the BSO determine passport, visa or eTA requirements. If satisfied that the person is a Canadian citizen, the BSO will allow the person to enter Canada without further questioning. Officers should show sensitivity with this question as Indigenous Peoples, including persons registered under the *Indian Act* may not abide by colonial views of citizenship. If the BSO is presented with a Certificate of Indian Status (CIS), a Secure Certificate of Indian Status (SCIS) or an original Temporary Confirmation of Registration Document (TCRD) issued by Indigenous Services Canada (ISC), the officer shall allow the person entry by right under A19(1).
Residency	Where do you reside?	Establishing whether a person is a PR may enable the BSO to authorize entry into Canada with minimal further delay. This question will also help the BSO to determine visa, requirements and to verify whether the person can return to the country of residence if it is different from the country of citizenship. For example, if the person claims to be a resident of the United States but has a passport of another country, the BSO may want to see their US Permanent Resident Card before authorizing entry into Canada.
Intentions	What is the purpose of your trip? How long do you intend to stay in Canada? Where in Canada are you planning to go? Do you intend to look for work in Canada? Do you intend to study in Canada? Where will you be staying while in Canada (hotel or friend's place)?	If the person is not someone who may enter Canada by right, the BSO should establish the person's intention in seeking entry. Questions such as these may assist in this determination.
Funds available	Do you have a return ticket? Show it to me please. What sources of funds do you have access to while in Canada?	Questions such as these are appropriate for determining if a FN possesses the financial means to carry out their intended travel plan and to depart at the end of their authorized time. The BSO should be satisfied that the FN will not take unauthorized employment or have to rely on social assistance while in Canada. Additional

		questioning may be required if a FN cannot establish how they will support themselves while in Canada. If they indicate that a friend or relative will support them, it may be advisable to contact the support person to verify this information.
Personal history	What is your occupation? Are you currently employed in your country? Do you intend to visit anyone in Canada? Do you have any family or friends in Canada?	If the BSO is concerned that a FN may not leave Canada at the end of the authorized time, further questioning may be necessary to establish ties to the foreign national's homeland. In these cases, questions concerning the foreign national's family both abroad and in Canada may be appropriate, including questions concerning marital status.
Background	Do you or have you had any health problems? Have you ever been arrested, charged or convicted of a crime or an offence? Have you ever been refused entry to or removed from Canada?	The person's past may be relevant to admissibility. Questions such as these may be appropriate for determining whether the person is inadmissible due to ill health, criminality or previous non-compliance with immigration requirements.

See manual *ENF 2, Evaluating Inadmissibility*, for more information on determining admissibility.

8.9 Verifying electronic/digital devices

As per the policy guidance, BSOs are responsible for:

- completing the *Examination of Digital Device* online training course (S7188-P) in order to conduct digital device examinations;
- obtaining approval from their Superintendent/Chief prior to conducting a digital examination;
- taking steps to disable network connectivity;
- remaining sensitive to the potential private nature of data stored on digital devices; and
- making timely and comprehensive notes explaining their rationale whenever a traveller's digital device is examined, including what indicators are present and what contravention those indicators are pointing towards.

For more information on CBSA's *Policy on Port Of Entry Examinations Of Travellers' Digital Devices,* consult CBSA's *Enforcement Manual, part 4, chapter 16*. Also, OBO-2021-037, OBO-2021-023, OBO-2019-055 and 2020-HQ-AC-10-30 are good references.

8.10 Travel Documents Issued by Canada for Non-Citizens

There are two types of travel documents issued by the government of Canada to protected persons and PRs of Canada. These are:

- *Canada Travel Document* (pale blue passport type) – issued to refugees to whom Canada has conferred protected person status. Can be used to travel internationality except to the country against which they claimed protection from.
- *Certificate of Identity* (grey passport type)– issued to PRs of Canada who are not yet Canadian citizens and are either stateless or can't get a travel document for an unknown reason.

To see examples of these documents, refer to Part 10 of the Guide for Transporters on the CBSA's website.

9 Examining Canadian citizens at POEs

9.1 The right to enter Canada

A Canadian citizen within the meaning of the *Citizenship Act* has a right to enter and remain in Canada pursuant to A19(1).

9.2 Examination of Canadian citizens

A15(1) provides for an officer to proceed with an examination if a person makes an application to the officer in accordance with the Act.

R28(*b*) provides that a person seeking to enter Canada is making an application.

Additionally, A18(1) requires every person seeking to enter Canada to appear for an examination to determine whether they have the right to enter Canada or may be authorized to enter and remain in Canada. This includes Canadian citizens.

A BSO at Immigration Secondary will normally examine a Canadian citizen only when the BSO at the PIL doubts the person's citizenship. A BSO at Immigration Secondary should examine Canadian citizens as expeditiously as possible. Once the officer establishes that a person is a Canadian citizen, the examination should end, and the person should be allowed to enter Canada without further delay. It is not appropriate for BSOs at Immigration Secondary to elicit further personal information from a Canadian citizen.

However, Canadian citizens may be asked to willingly provide additional information if it will assist a BSO in determining the admissibility of an accompanying foreign national.

9.3 Determining Canadian citizenship

BSOs at POEs have the discretion to authorize the entry of Canadian citizens, even in the absence of documentation. For more details, see section 9.4 of this manual.

The following documents are acceptable proof of Canadian citizenship:

- Canadian passport (regular, diplomatic, special or temporary);
- Emergency Travel Document for a Single Journey Only document (a BSO at the PIL will automatically refer for an Immigration secondary examination a person in possession of a this document. Once the person's identity has been verified, the BSO at Immigration Secondary retains the document and forwards it to:

  Passport Program Integrity Branch
  Attention: Intelligence Division, Immigration, Refugees and Citizenship Canada
  70 Crémazie, 3rd floor
  Gatineau, Quebec, J8Y 3P2

- Enhanced Driver's License (EDL) and/or the Enhanced Identification Card (EIC).

The following documents are good indicators of Canadian citizenship however must be supported by other Canadian government issued photo-identification.

- Certificate of Canadian Citizenship (Issued on or after February 1, 2012: 8.5 x 11 paper format or the wallet-sized card issued before February 1, 2012);
- A Canadian provincial/territorial birth certificate;
- Certificate of Naturalization issued before January 1, 1947;
- Certificate of Registration of Birth Abroad issued between January 1, 1947, and February 14, 1977, inclusively; and
- Certificate of Retention of Canadian Citizenship issued between January 1, 1947 and February 14, 1977, inclusively.

See if you may be a citizen is a useful link in determining if someone may be a Canadian citizen.

To see examples of these documents, refer to Part 10 of the Guide for Transporters on the CBSA's website and the Government of Canada's public website concerning travel documents.

More information on documents can be found in *ENF 32, Passports and Travel Documents.*

9.4 Establishing citizenship without documents

Canadian citizens returning to Canada by air usually have to provide proof of identity and citizenship to get on the flight. Canadian citizens arriving at land borders, however, will frequently be without satisfactory documentary proof of Canadian citizenship. In these cases, the BSO should question the person until the BSO is satisfied with the person's claim of Canadian citizenship. Once the BSO is satisfied that the person is a Canadian citizen, the person must be allowed to enter Canada without further delay.

9.5 Citizenship record searches

BSOs at Immigration Secondary may request a search of citizenship records by emailing the Citizenship Case Processing Centre in Sydney (CPC-S), Nova Scotia, at CPC-SYDNEY-SEARCHENQ@cic.gc.ca.

The official response will be provided via email. Where a record letter is required, BSOs at Immigration Secondary must follow up the email request by submitting a completed *Application for a Search of Citizenship Records* form [CIT 0058E]. A written response will be forwarded by facsimile as well as by regular mail.

Note: Citizenship searches will only reveal if a person has obtained Canadian citizenship through naturalization. The Sydney CPC does not keep records of persons who are Canadian citizens by birth. Proof of citizenship by birth can be established by a search of provincial birth certificates or baptismal records.

After a person has received Canadian citizenship, the information is entered into GCMS.

9.6 Canadian Travel Documents

The Canadian passport comes in four categories: regular, special, diplomatic and temporary.

For Canadian citizens who are abroad and in need of a Canadian travel document to return to Canada, Consular Services can issue another type of travel document in urgent cases. This is:

- *The Emergency Travel Document for a Single Journey Only* - may be issued at a Canadian visa office abroad to facilitate the return of a Canadian citizen. It may also be issued as a one-trip document for travel from a Canadian visa office abroad without passport services to another office with full passport services in another country.

The *Emergency Travel Document for a Single Journey Only* is a single page document printed on 8.5 x 11 security paper serially numbered.

BSOs at the PIL are required to refer holders of this document for an Immigration Secondary examination. The Passport Office requires the surrender of an emergency passport immediately on the holder's arrival in Canada or at the destination for which the passport was issued. BSOs at Immigration Secondary recover the emergency passport and promptly forward it to:

Passport Program Integrity Branch
Attn: Intelligence Division
Immigration, Refugees and Citizenship Canada
70 Crémazie, 3rd Floor
Gatineau, Quebec J8Y 3P2

A space is provided on the back of the document for a signature indicating that the document has been received.

In circumstances where the traveller has not reached their final destination upon arrival at a POE and will be boarding a domestic flight, the BSO may use discretion to provide the traveller with a photocopy of the emergency travel document to present to the airline for identification validation when boarding. The BSO may also issue their contact information (e.g., a business card) for the traveller to provide to the airline should verification be required.

To see examples of these documents, refer to Part 10 of the Guide for Transporters on the CBSA's website.

10 Examining people who are registered under the *Indian Act* at POEs

A19(1) provides that every person registered under the *Indian Act* (Canadian legislation), whether or not that person is a Canadian citizen, has the right to enter and remain in Canada.

Section 6 of the *Indian Act* specifies (subject to provisions in section 7) persons entitled to be registered under the *Indian Act*. Under the terms of the *Indian Act*, Indian status in Canada—and inclusion in the Indian register maintained by Indigenous Services Canada (ISC)—is not determined on the basis of Canadian citizenship but rather on the degree of descent from ancestors who were registered or entitled to be registered as Indians. As a result, it is possible for a FN to be recognized as registered under the *Indian Act* and have the right to enter and remain in Canada under A19(1).

A15(1) provides the authority for an officer to proceed with an examination where a person makes an application to the officer. R28(*b*) provides that a person seeking to enter Canada is making an application. Additionally, A18(1) requires every person seeking to enter Canada to appear for an examination to determine if they have the right to enter Canada or is or may become authorized to enter and remain in Canada. This includes people who are registered under the *Indian Act*. If a BSO at PIL is not satisfied that the person is registered, the officer can make a referral to Immigration Secondary. Once the officer establishes that a person is registered under the *Indian Act*, the immigration examination should end, and the person must be allowed to enter Canada without further delay.

If a FN is a person registered under the *Indian Act*, they are authorized to work and study in Canada without a permit, per R186(*x*) and R188(*d*). See PRG-2018-72 for details.

Note: When examining people who are registered under the *Indian Act*, officers should be aware of *People Processing Manual*, part 1, chapter 4, paragraphs 21 to 28, Articles of Religious, Spiritual and Cultural Significance.

10.1 Determining status of registration under the *Indian Act*

BSOs at POEs have the discretion to authorize the entry of persons registered under the *Indian Act*, even in the absence of documentation. Acceptable documents establishing one's status as registered under the terms of the *Indian Act* include the Certificate of Indian Status (CIS) and the Secure Certificate of Indian Status cards (SCIS). Both are commonly referred to as the status card and are produced by ISC. The paper-laminate CIS card is issued in partnership with First Nations in 500 communities across Canada through ISC's

Indian Registration Administrator Program. An original Temporary Confirmation of Registration Document (TCRD) issued by ISC may also be used as proof of Indian status.The SCIS is an identity card with enhanced security features. Some but not all SCIS feature a machine readable zone (MRZ).

Subject to an application process, the CIS and SCIS cards are issued to adults, children and dependent adults listed in the Indian Register. The Indian Register, which is maintained by ISC, is the official record identifying people who are registered under the *Indian Act*. Bands also have the option of determining their own membership.

If BSOs require verification of a person being registered under the *Indian Act*, or if officers have reason to doubt the authenticity of a card being presented, they may contact the supervisor of Registration Services at:

> Secure Certificate of Indian Status Application Centre
> M006-15 Eddy Street
> Gatineau, QC K1A 0H4
> Fax: 1-819-994-2622
>
> Hours of operation: 8 a.m. to 4 p.m. (Eastern Time)
> Toll-free telephone: 1-800-567-9604
> Email: InfoPubs@aadnc-aandc.gc.ca

10.2 Establishing status of registration under the *Indian Act* without documents

People who are registered under the *Indian Ac*t and who are seeking entry to Canada may not be in possession of documentary proof of their status. In such cases, the BSO should question the person until they are satisfied with the person's status. The officer's decision on ascertaining identity and status is based on all the evidence presented at that time, including verbal statements and documentation. Once the BSO is satisfied that the person is registered under the *Indian Act*, the person must be allowed into Canada without further delay. Border processing of people who are not registered under the *Indian Act* is discussed in the following paragraph.

10.3 American Indians[1] who are not registered in Canada

The authorization of entry to Canada is governed solely by IRPA and IRPR. Travellers who do not meet criteria for a right of entry under A19 are treated as FNs and must meet admissibility and documentary requirements, such as visas and eTAs, to be allowed to enter Canada.

For example, Native Americans (also could be identified by the U.S. legal term "American Indians") who may have cultural or family connections to First Nations in Canada, but who

[1] American Indian is the legal term; Native American is the preferred term in the U.S.

are not Canadian citizens, PRs of Canada or registered under the *Indian Act*, do not have right of entry under A19.

Many First Nations people from Canada and the U.S. assert a right to mobility across the Canada–U.S. border, which in their view, is recognized in Article III of the Jay Treaty of 1794, an international agreement between the U.S. and Great Britain. The courts in Canada, however, have found that the Jay Treaty was abrogated by the War of 1812, and it is not a treaty conferring rights to Indigenous peoples under Canada's laws.

As a result, Native Americans coming to work or study in Canada who are not registered under the *Indian Act* require a WP or SP. Some travellers in these circumstances may object to being processed as FNs to enter Canada. BSOs should deal tactfully with cases of this nature while still upholding the requirements of the IRPA.

Canada's immigration laws regarding the entry of North American Indigenous peoples differ from those of the U.S. Under the U.S. *Immigration and Nationality Act*, a right of entry to the U.S. for the purposes of employment and residence is recognized for "American Indians born in Canada". This right is conditional, however, on a person being able to demonstrate that, under the terms of the law, they "possess at least 50 per centum of blood of the American Indian race".

In the case of First Nations people from Canada, the U.S. provides an indication that it accepts the CIS and SCIS card, issued to people who are registered under the *Indian Act* by ISC, as evidence of meeting the prescribed "blood quantum" criteria. In some cases, however, more evidence is required.

Indications from concerned U.S. government departments are that the proof of meeting the blood quantum requirement is sufficient to establish both a right of entry and a right to work and reside permanently in the U.S. without obtaining PR status, more commonly known in the U.S. as a "green card."

10.4 Haudenosaunee passport

For information on travellers seeking to enter Canada with the Haudenosaunee passport, please consult operational bulletin OPS-2011-03.

11 Examining Permanent Residents (PRs) at POEs

A2(1) defines a permanent resident as a person who:

- has acquired PR status; and
- has not subsequently lost that status under A46.

11.1 Rights of PRs

A27(1) provides that a permanent resident has the right to enter and remain in Canada subject to the provisions of the Act.

A19(2) requires a BSO to allow a permanent resident to enter Canada if satisfied following an examination on their entry that they have that status.

PRs who are under enforcement proceedings keep their PR status and retain the right to enter Canada until a final determination of their loss of status has been made.

11.2 Verifying PR status

The Permanent Resident Card is the best evidence of PR status in Canada.

The following documents may be satisfactory indicators of permanent residence:

- the original Record of Landing (such as IMM 1000);
- a certified true copy of a Record of Landing document issued by IRCC National Headquarters (NHQ);
- a letter issued by IRCC NHQ verifying permanent residence;
- a passport duly stamped showing the date on which permanent residence was granted if the person was granted PR status before 1973;
- a *Confirmation of Permanent Residence* form [IMM 5292B or IMM 5688]; and
- a permanent resident travel document (visa counterfoil).

CBSA's website lists acceptable travel and identity documents.

11.3 Establishing PR status without documents

BSOs at POEs have the discretion to authorize the entry of PRs, even in the absence of documentation. If documentary evidence is not available, the BSO at Immigration Secondary must establish the person's PR status by questioning the person and checking the person's status in GCMS. The status of persons who became PRs before 1973 has to be verified by contacting the Operations Support Centre at IRCC's National Headquarters at OSC-CSO@cic.gc.ca. However, the burden of proof lies on the person who is claiming to be a PR at a POE. An adjournment for further examination can be done under A23 to allow the person to get their documents and return to the POE to show the BSO.

11.4 Investigating PRs for inadmissibility

When a PR appears at a POE for examination, the BSO must determine whether the person is a PR. The person is considered a FN until the BSO is satisfied that the person is a PR. The burden of proof lies on the person at a POE examination.

BSOs must remain cognizant of the fact that A19(2) gives permanent residents of Canada the right to enter Canada at a POE once it is established that a person is a PR, regardless of non-compliance with the residency obligation in A28 or the presence of other inadmissibility grounds. Meaning, should a BSO write up an A44(1) report for non-compliance and the superintendent issue a departure order that is not in force, the person still has the right to enter Canada until a final determination has been made regarding their loss of PR status and the removal order becomes in force.

BSOs can not refuse entry to a PR. However, once a person has lost their PR status under A46, they are considered a FN and may be inadmissible if they do not meet the requirements of the Act. For example, when a final determination has been made outside of Canada that the PR has failed to comply with the residency obligations, or when a removal order comes into force and all their rights to appeal have passed.

However, as per A27(1), this right to enter and remain in Canada is subject to the provisions of the Act, and does not preclude the CBSA from ensuring that PRs are in compliance with IRPA and thus admissible to Canada. During the process of determining that a person is a PR, BSOs will sometimes become aware of evidence of inadmissibility. The BSO should explain to the person that while it has been established that they have a right to enter Canada, there is some reason to believe they could be the subject of a report under IRPA which could lead to the issuance of a removal order.

Officers should always remain aware of the principles of procedural fairness in these proceedings. The PR must be given a fair opportunity to know the case to be met; to provide evidence in order to correct or contradict any concerns related to admissibility; and to have the evidence fully and fairly considered by the decision-maker.

In cases where:

- PR status is established; and
- the BSO believes on a balance of probabilities that the person is in non-compliance with IRPA for failure to comply with residency obligation (A41(*b*), A28) or for misrepresentation (A40); or
- the BSO has reasonable ground to believe that the person is inadmissible to Canada for any other reasons outlined at A34, A35, A36(1) or A37,

the BSO at Immigration Secondary may report the person (pursuant to A44(1)) if there is sufficient evidence to support an inadmissibility allegation. In the absence of sufficient evidence to support the writing of an inadmissibility report, the BSO may enter any available information into an Info Alert in GCMS without delay (date of entry, last country of embarkation, current address in Canada, etc.) and forward notification of the same to a CBSA inland office in Canada to determine whether an investigation is warranted.

For more information on assessing inadmissibility, refer to *ENF 1, Inadmissibility* and *ENF 2*, *Evaluating inadmissibility.*

For more information on procedures for dealing with clients who fail to meet the residency obligation, refer to *ENF 23*, *Loss of Permanent Resident Status*.

Questioning Permanent Residents Regarding Cessation (A108) and Vacation (A109):

In cases where the PR was granted Convention Refugee or Protected Person status prior to becoming a PR, and the BSO has suspicions that the individual has:

- voluntarily reavailed themself of the protection of their country of nationality;
- voluntarily reacquired their nationality;

- acquired a new nationality and enjoys the protection of the country of that new nationality;
- has voluntarily become re-established in the country that they left or remained outside of and in respect of which they claimed refugee protection in Canada; or
- has obtained protected status directly or indirectly via misrepresentation or withholding of material facts relating to a relevant matter;

the BSO may ask questions of a PR where the officer suspects, on a balance of probabilities, the existence of a potential inadmissibility under A40(1)(*c*) or A40.1(1) or A40.1(2) in relation to the cessation (A108) and/or vacation (A109) of refugee protection.

The BSO, for example, may ask questions about:

- whether the person has travelled to the country of persecution;
- why they returned;
- for what length of time they were there.

The BSO may also make photocopies of documentation presented at the time of examination. The BSO must have reasonable grounds to believe that the documents that are photocopied are relevant to a potential inadmissibility under A40(1)(*c*) or A40.1(1) or A40.1(2) and that the photocopies would be reasonably required should the CBSA file an application under A108 or A109 with the IRB.

Any information gathered should be forwarded to the appropriate Hearings Office via the BSF729E form. For more information, see IRCC's Program Delivery Instructions (PDI) on the subject.

11.5 Permanent Resident Card

The PR card is the status document referred to in A31(1) that indicates that the holder is a PR of Canada. A person who holds a PR card is presumed to have PR status unless a BSO at Immigration Secondary determines otherwise. The PR card, or, alternatively, the A31(3) travel document issued by one of Canada's visa offices, is the prescribed document for PRs when boarding a commercial transporter bound for Canada.

Canadian PRs need to show their card when travelling to Canada in order to prove their PR status. PRs who do not have a PR card or who are not carrying their PR card when travelling outside the country will need to obtain a PR travel document (counterfoil) before returning to Canada by air mode in order to comply with eTA requirements.

For more information on the PR card, refer to *ENF 27*, *Permanent Resident Card*.

11.6 Prescribed document

A148(1)(*a*) prohibits commercial transporters from carrying to Canada a person who does not hold a prescribed document. R259 makes the PR card a prescribed document for the purpose of A148. Valid PR cards and A31(3) travel documents are prescribed documents for establishing PR status. Consequently, the PR card or the A31(3) travel document is the prescribed document for PRs for the purposes of boarding a commercial transporter (e.g., aircraft, train or ship) bound for Canada.

11.7 Permanent resident cards with one-year validity date

R54(2) provides that a PR card will be issued with a validity of one year instead of five years as per R54(1) if the PR:

- is subject to a process set out in A46(1)(*b*) until there has been a final determination;
- is the subject of a report prepared under A44(1) that is being considered by the Minister;
- is the subject of a removal order made by the Minister pursuant to A44(2) and the period for filing an appeal from the decision has not expired or, if an appeal is filed, there has been no final determination of the appeal; or
- is the subject of a report under A44(1) that has been referred by the Minister to the Immigration Division (ID) under A44(2) and the period for filing an appeal from the decision of the ID has not expired or, if an appeal is filed, there has been no final determination of the appeal.

11.8 Travel document

A31(3) states the following:

A PR outside Canada who is not in possession of a status document indicating PR status shall, following an examination, be issued a travel document if a visa officer at a visa office is satisfied that:

> (*a*) they comply with the residency obligation under A28;
>
> (*b*) an officer has made the determination referred to in A28(2)(*c*); or
>
> (*c*) they were physically present in Canada at least once within the 365 days before the examination and they have made an appeal under A63(4) that has not been finally determined or the period of making such an appeal has not yet expired.

The purpose of the travel document is to facilitate the return of all PRs to Canada. This includes those who may have lost their PR card while outside of Canada as well as those who are appealing a decision made outside Canada that they failed to meet the residency obligation under A28.

The travel document will take the same form as a temporary resident visa counterfoil that is placed in a passport or travel document. It is usually valid for one entry to Canada simply to facilitate the PR's return, but it may be issued for multiple entries.

If the travel document was issued for a single entry, the BSO is to strikethrough the counterfoil upon entry to Canada by drawing a line from the top left of the counterfoil to the bottom right. The BSO at Immigration Secondary would counsel the PR that they may apply for a PR card from within Canada. If the travel document was issued for multiple entries, it should be treated like a multiple-entry temporary resident visa.

11.9 Coding on the travel document

PRs who have demonstrated that they have complied with the residency obligation listed in A28 will be issued counterfoils bearing the coding "R".

- In cases where PRs have not met the residency requirement, but humanitarian and compassionate considerations grounds exist to support the retention of their status pursuant to A28(2)(*c*), a counterfoil bearing the coding "RC" will be issued.
- In cases where the document has been issued pursuant to A31(3)(*c*) where an appeal of a loss of status determination is filed or the time period for filing an appeal has not expired, and the person has been physically present in Canada at least once in the past 365 days, the counterfoil will bear the coding "RX".
- In cases where the PR does not meet the residency obligation and no humanitarian and compassionate grounds exist, but the Immigration Appeal Division has ordered the PR to appear in person at the hearing, a counterfoil bearing the coding "RA" will be issued.

Counterfoils bearing the "RX" code or the "RA" code will be mandatory referrals to Immigration Secondary for BSOs at the PIL.

If a person with a counterfoil bearing the "RX" or "RA" coding is returning to Canada to attend an appeal of a decision made outside of Canada regarding loss of status or an appeal has yet to be filed and the period for filing has not expired, the BSO at Immigration Secondary should authorize entry without delay if satisfied that no final determination has been made with respect to the person's loss of PR status. The BSO at Immigration Secondary should update GCMS with the person's date of entry into Canada and current address.

The principal difference between a travel document and a one-year PR card is the period of validity. The travel document is used to return to Canada, while the PR card remains valid until the outcome of an appeal is decided or until the period for making an appeal expires. Since the PR is already pending a determination by the Immigration Appeal Division, the BSO should not prepare an A44(1) report for the same inadmissible grounds at the POE.

11.10 Persons appealing the loss of PR status

BSOs at Immigration Secondary who encounter a person in possession of a PR card issued with a one-year validity should check GCMS to determine whether there is a final determination that the person has lost their status under A46. If the person is returning to Canada to attend the appeal of a decision made outside Canada regarding the loss of status or an appeal has yet to be filed, and if the period for filing has not expired and that person is in possession of a travel document, the BSO must acknowledge their right of entry without delay if satisfied that no final determination has been made with respect to the person's loss of status.

The BSO should update GCMS with the person's date of entry into Canada, current address in Canada and contact information.

Upon a final determination of loss of PR status, a person becomes a foreign national. Should they return to Canada, they must be assessed to determine if they meet the requirements

of the Act and Regulations for entry as a temporary resident, even if they still possess a PR card . For more information, refer to *ENF 23*, *Loss of Permanent Resident Status*.

11.11 PRs holding other travel documents

PRs may also travel to Canada with a Canadian Travel Document (pale blue passport-type), a Canadian Certificate of Identity or a Single Journey Travel Document. Where a PR travels on one of these documents in air mode, the PR must be in possession of a PR card or PR travel document (counterfoil).

11.12 Residency obligation for PRs

A28(1) states that a PR must comply with the residency obligation with respect to every five-year period. A28(2) stipulates that a PR complies with this obligation if, on each of a total of at least 730 days in that five-year period, they are:

- physically present in Canada;
- outside Canada accompanying a Canadian citizen spouse or common-law partner or, in the case of a child, their parent;
- outside Canada employed on a full-time basis by a Canadian business or by the public service of Canada or of a province;
- outside Canada accompanying a PR spouse or common-law partner or, in the case of a child, their parent, who is employed on a full-time basis by a Canadian business or by the public service of Canada or of a province; or
- able to meet other conditions for compliance that are set out in the Regulations.

When BSOs are assessing the residency obligation, the period considered is limited to the five years immediately preceding the examination. If a person has been a PR for less than five years, they must be able to comply with the residency obligation for the five-year period immediately after becoming a PR.

For more specifications on how to apply A28(2), refer to R61.

For more information on loss of PR status, see *ENF 23*, *Loss of Permanent Resident Status*.

Since November 2014, regulatory amendments came into force giving the decision to voluntarily renounce PR status the force of law. For more information, refer to *IRCC's Program Delivery Instructions* and *Operational Bulletin PRG-2014-066*.

11.13 Issuing removal orders for failure to comply with PR obligations

The decision that a PR has lost their status may be made outside Canada by a visa officer, whereas, at a POE, if following an examination of a PR, an officer concludes that a PR has failed to comply with the residency obligation under A28, the officer may prepare a report for inadmissibility under A41(*b*), taking into account prescribed considerations set in the IRPA. A28(2)(*c*) specifically requires officers and the MD to take into account humanitarian and compassionate considerations, including the best interests of a child directly affected by the determination, when assessing whether such considerations overcome any breach of the residency obligation prior to the determination. Officers must articulate consideration of these prescribed factors in the decision to write a report under A44(1) and/or their

recommendation to the MD. These considerations must be written in the *Examination's Notes* tab without delay by both the BSO and the MD. If the report is well founded, and insufficient humanitarian grounds exist, the MD will issue a departure order pursuant to R228(2).

The PR has the right to appeal the decision made outside Canada or at the POE to the Immigration Appeal Division, pursuant to A63. PRs who have been issued a removal order maintain their right of entry until the appeal period has elapsed; therefore, BSOs should allow entry into Canada until a final determination of status is made.

For more information, see the following manuals:

- *ENF 2, Evaluating Inadmissibility*
- *ENF 5, Writing 44(1) Reports*
- *ENF 23, Loss of permanent resident status*
- *ENF 6, Review of reports under A44(1)*
- *ENF 19, Appeals before the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB)*

11.14 Other inadmissibility allegations

If a BSO believes a PR is inadmissible for reasons other than failure to comply with the residency obligation (A28), they are still required to allow the person to come into Canada. If the PR does not wish to answer any further questions, the BSO at Immigration Secondary should attempt to obtain sufficient information (including current address, phone number, and employment location) to enable follow-up action from an inland office.

See *ENF 2*, *Evaluating Inadmissibility*, for more information on determining inadmissibility.

11.15 Arrest and detention of PRs

If an immigration arrest warrant was issued against a PR pursuant to A55(1), the BSO must execute the warrant and arrest the PR. The BSO may then release the PR from detention if reasons for detention no longer exist as per A56.

In certain circumstances, PRs may also be detained under A55(3), if a BSO believes it necessary to complete the examination or they have reasonable grounds to suspect is inadmissible on grounds of security (A34), violating human or international rights (A35), serious criminality (A36(1)), criminality (A36(2)) or organized criminality (A37).

For more information on arrest and detention procedures, refer *to ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention* and *ENF 20*, *Detention*.

11.16 Seizing PR visas and permanent resident cards

A140(1) authorizes an officer to seize and hold a document or other thing if the officer believes on reasonable grounds that:

- it was fraudulently or improperly obtained or used;

- the seizure is necessary to prevent its fraudulent use or improper use; or
- the seizure is necessary to carry out the purposes of the Act.

Even if the BSO prepares an A44(1) report against the PR, unless provisions of A140(1) are met, the PR card should be kept by the holder, who will retain their PR status until a final decision is made respecting their loss of status. Pending this decision, A31 requires that a PR be provided with a status document. R53(1) provides that the status document is the PR card.

BSOs may seize these documents if they have reason to believe that the documents were fraudulently issued or obtained or if they are trying to prevent improper or fraudulent use of these documents. For example, if there is a final determination that the person has lost their PR status or renounced their status, the BSO may seize and retain the documents in order to prevent their improper use, such as using it to travel to Canada instead of obtaining a TRV or eTA.

12 Examining FNs seeking to become PRs at POEs

12.1 Permanent resident visas and *Confirmation of Permanent Residence* (CoPR) documents

Under R70(1), permanent residence applicants are issued a PR visa when a visa officer was satisfied that, at the time of issuance, the FN named in the document was not inadmissible and met the selection criteria and requirements of the Act and Regulations. This visa and CoPR document [IMM 5688] are to be presented at the POE for processing in order to become a PR.

In December 2011, the use of a counterfoil was eliminated for countries that are visa-exempt. The CoPR is now evidence that a visa officer was satisfied.

12.2 Examination of FNs with PR visas/CoPR

When an applicant in possession of a CoPR/PR visa applies to become a PR at a POE, the role of the BSO at Immigration Secondary is to:

- verify the applicant's identity;
- confirm that the information on the CoPR/PR visa is correct;
- establish that the applicant complies with all requirements of the Act and Regulations and is not inadmissible;
- confirm that the applicant's marital, common-law, or family status has not changed since the issuance of the CoPR/PR visa;
- confirm that the applicant and their family members (whether accompanying or not) still meet the requirements of the class of PRs under which the CoPR/PR visa was issued;
- impose and explain any appropriate conditions; and
- welcome the new PR to Canada and provide information about programs and services available to facilitate integration into Canadian society.

The Regulations require that a FN in possession of a CoPR/PR visa and who is seeking to become a PR:

- Inform the officer at examination if their marital status has changed since the CoPR/PR visa was issued, as required by R51(*a*)(i); and
- of any other facts relevant to the issuance of the CoPR/PR visa that have changed since the visa was issued, or that the FN failed to disclose at the time the CoPR/PR visa was issued, as required by R51(*a*)(ii).
- Establish that they and their family members, accompanying or not, meet the requirements of the Act and Regulations, as required at R51(*b*).

The applicant must be able to show upon landing that their dependents meet the medical and criminal criteria. The BSO should check GCMS for any notes added by the visa office to ensure they were not aware of any changes in the application. Applicants are asked to inform the visa office **immediately** of any change in the composition of their family. If they have not done so, prior to their CoPR/PR visa issuance, a new application will be required for all family members.

If the BSO at Immigration Secondary establishes that the FN failed to notify of the changes to their marital status or did not declare a dependent before or after the issuance of the CoPR/PR visa, the BSO may prepare a report under A44(1) with the specific regulation stated above that they did non comply with. The MD, if they find the report well founded, will defer the case for inquiry at the ID under R229(1)(*n*).

For more information on report writing, refer to *ENF 5*, *Writing 44(1) Reports*.

12.3 GCMS check

BSOs at Immigration Secondary conduct an integrated name search in GCMS for every FN in possession of a CoPR who is seeking to establish permanent residence in Canada. A name search may reveal that the person has multiple FOSS client identification numbers (IDs) or GCMS Unique Client Identifiers (UCIs), in which case the BSO should create a household to associate the UCIs/IDs together by following the step-by-step on Wiki.

FOSS ID or GCMS UCI numbers under which warrants were issued or sponsorship files must be maintained as the primary identification.

BSOs ensure that there is no information recorded in GCMS that would alter the decision to grant permanent residence.

For example, there may be an outstanding warrant for the applicant's arrest, or the applicant may have been previously deported from Canada. BSOs at Immigration Secondary should carefully review any adverse information to determine whether the applicant satisfies all the requirements of the Act and Regulations. In some cases, it may be useful for the examining BSO to contact the officer who issued the CoPR/PR visa to confirm whether this information would have altered the favorable decision. In some cases, the BSO may need to defer the examination, pursuant to A23, in order to obtain more information before deciding whether to grant PR status.

12.4 Documents required by FNs seeking PR status

- R50(1) specifies the type of passport, travel or identity document that an applicant must have in their possession to be given PR status. This document is necessary to verify the identity of the person seeking permanent residence.
- R50(2) provides that a protected person who has been issued a PR visa may become a PR when it is not possible for them to obtain a passport, identity document, or travel document.
- R6 specifies that applicants who are citizens of certain countries must have a PR visa (coded IM).
- *Confirmation of Permanent Residence* document (IMM 5688);
- Proof of settlement funds for those in the Federal Skilled Worker Program and the Federal Skilled Trades Program; and
- A *Certificat de Sélection du Québec/ Quebec Selection Certificate* (CSQ) for those wanting to reside in the province of Québec.

12.5 *Confirmation of Permanent Residence* document [IMM 5688]

Successful permanent residence applicants are issued the *Confirmation of Permanent Residence* document [IMM 5688] from a Canadian consulate or visa office. The *Confirmation of Permanent Residence* (CoPR) is evidence that an officer was satisfied at the time of issuance, that the FN named in the document was not inadmissible and otherwise met the requirements of the Act and its associated regulations.

The CoPR is printed in two copies on regular 8 1/2 x 14 white paper and one copy contains a photo of the holder.

The CoPR by itself is not a prescribed document as per R259 to board a means of transportation to Canada. CoPR holders will be issued a visa counterfoil [IMM 1346] bearing the coding "IM" in order to facilitate their boarding for those needing a TRV to travel to Canada. For visa-exempt FNs, an IMM 5785 e-Foil (electronic facilitation counterfoil) coded IM will be issued.

When a FN arrives at a POE to become a PR and is in possession of a CoPR, the BSO at Immigration Secondary should adhere to the following procedures :

- examine the passport and any other identity documents provided;
- use the applicant's passport and other identity documents to confirm that each name is correctly spelled and that the family and first names are clearly identified;
- verify the date of birth with the identity documents provided by the applicant (the day and month are sometimes transposed due to different international systems for displaying the date);
- for CoPRs where a clerical error has been identified, BSOs must correct the IMM 5688E form to ensure it is consistent with the biographical data in the passport or travel document. The corrections must be made on both copies of the CoPR by placing an asterisk beside the data error and noting the correction in the remarks section of the form. Any corrections made must also be reflected in GCMS.

- check the information on sex and marital status, particularly when dealing with common-law relationships and accompanying family members;
- verify their biometrics for those not verified at PIK;
- confirm that the applicant intends to establish permanent residence in Canada;
- confirm that the applicant is not inadmissible under A39;
    - Persons who do not need to provide proof of funds are those who:
        - have been sponsored;
        - have been issued visas as government-assisted refugees;
        - applied under the Canadian Experience Class; or
        - are authorized to work in Canada and have a valid job offer, even if they applied under the Federal Skilled Worker Program or the Federal Skilled Trades Program.
    - Those who need to provide proof of funds to meet the minimum requirements are those who:
        - applied under the Federal Skilled Worker Program and
        - applied under the Federal Skilled Trades Program
    - For those immigrating to the province of Quebec, the capacity for financial self-sufficiency is lower.
- assess that the applicant and family members are not inadmissible for any other IRPA inadmissibility; and
- collect biometrics only from select resettled refugees when **BIO-CDA** is printed in the remarks section
    - Refer to Shift briefing bulletins 2019-HQ-AC-06-04 and 2021-HQ-AC-03-31 for more information.

The examining BSO should then:

- Complete the following fields on both copies of the CoPR using a black pen:
    - **Became PR at:** The officer must write the location of where PR status is granted (either a POE or an inland IRCC office).
    - **Became PR on:** The officer must write the date that PR status is granted.
    - **Flight no.:** BSO must write which flight the client arrived on or if it was at a land border.
    - **Conditions:** Have the client write their initials beside any imposed conditions.
    - **Have you ever been charged/convicted of a crime or offence; refused admission to Canada or required to leave Canada?:** The client must write "yes" or "no" as well as their initials. If the client is a minor, the answer should be "N/A".
    - **Dependent(s) information:** The client must write "yes" or "no" as well as their initials. If the answer is yes, the dependent's information must be added only if they have been included in the application and they have been examined.
    - **Signature:** Have the client sign and date.
    - **Officer signature:** BSO must sign with a complete signature, not just initials or badge number. Add the date.

- Complete and confirm the CoPR in GCMS following one of the instructions on the CBSA Wiki:
    - Become PR with Conditions
    - Become PR without Conditions
- Update the client's complete address in Canada in GCMS, including the postal code.

- If an address is already indicated on the CoPR, the officer must check with the client to ensure that it is still accurate and that the client will be able to receive correspondence at that address.
- If they have no address, advise the client that they have 180 days to provide IRCC with their address as per R58(1). BSOs should provide them the IMM 5456B *Address Notification – Permanent Resident Card* form and inform the client to send it to IRCC via one of the methods mentioned on the form or the client may update their address in Canada by accessing the online Change my Address tool.
- Stamp the travel or identity document as per the stamping policy.
- Counsel the client that they will receive their PR card in approximately two – three months and that if they have not received it within four months they should contact the IRCC Call Centre at 1-888-242-2100.
- Give the new PR the second copy and keep the copy with the photograph.
- Once the CoPR has been completed and confirmed in GCMS, the BSO will counsel the PR as to their rights and obligations under IRPA and IRPR. See section 12.14 of this manual for more information.

Persons who wish to have their PR card issued in a name that is different from what appears on the CoPR or passport must submit a formal request to the OSC, using the Guide for this purpose [IMM 5218E] and the IMM 1436 form *Request to Amend Valid Temporary Resident Documents or Information Contained in the Confirmation of Permanent Residence*.

Applicants should not apply for an amendment to reflect the new name of an adopted child. When an application for Canadian citizenship is submitted, IRCC will be able to issue the citizenship certificate with the new name, provided they have appropriate supporting documents.

Photographs

There are specific requirements for the PR photograph:

- The background must be white (use screens provided with camera to take photographs).
- There must not be any objects in the background.
- The photograph should show the full front view of the person with the head and shoulders centred in the photograph.
- There must be no staples, stamps, pen marks, holes or tape on the photograph.
- Eyeglasses in photos are acceptable if they are a normal feature of a person's appearance, as long as the glasses do not hide the eyes.
- Head coverings on photographs, other than those worn for religious reasons, are not acceptable.
- Torn photos are not acceptable.

Signatures

- Children 14 years of age and over must sign their own form.
- A parent or legal guardian must sign for children under the age of 14, using their own name and not the child's name.
- The signature must match the name on the form except in the case of a child under the age of 14 whose parent or legal guardian has signed on their behalf.

- If the person is illiterate or cannot make a mark (e.g. an X) for a physical reason, a thumbprint should be placed on the form.

For further details on how to properly process a CoPR, see IRCC's Operational Bulletin 545.

12.6 Changes in marital and family status

R51 requires a FN who has been issued a PR visa/CoPR to advise an officer if their marital status has changed since the visa/CoPR was issued.

A report under A44(1) for A41(*a*) for R51 is not necessary, if the non-declaration of a marriage or common-law relationship to the visa officer does not affect the grant of permanent residence to the person in the following cases:

- In the case of refugees and protected persons, a BSO should grant PR status to these classes of persons and provide counselling regarding the sponsorship of a spouse or common-law partner.
- A FN who marries their sponsor after the visa/CoPR is issued but before the grant of permanent residence. This change in circumstance is not material to admissibility.

The BSO should assume the truthfulness of voluntary statements relating to marital status and proceed as though the person seeking to become a PR were married, whether or not there is documentary proof of the marital status. The BSO should usually defer the examination pursuant to A23 in order to consult the visa office and obtain more information and evidence about the person's marital status. In some cases, the BSO may ask the visa officer to interview a non-accompanying spouse or common-law partner outside Canada to determine if they meet the requirements of the Act and Regulations and can be issued a PR visa/CoPR.

The procedure for authorizing PR status to the person seeking to become a PR and the spouse will vary from case to case, depending on the applicant's and the spouse's particular circumstances. The BSO should provide a full case summary to accompany the file, so that the receiving inland IRCC office can follow up appropriately.

The BSO should bear in mind that the applicants' and their family members' medical examination, security check and travel document may need to be updated while the spouse or common-law partner is being examined and before permanent residence can be granted.

If, after the investigation, there is sufficient evidence to proceed with enforcement action, a BSO may write the appropriate A44(1) report against the person seeking to become a PR as well as an accompanying spouse or common-law partner.

12.7 Common-law partners

R1(1) states the following:

> ***common-law partner*** means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.

R1(2) states the following:

> "…, an individual who has been in a conjugal relationship with a person for at least one year but is unable to cohabit with the person, due to persecution or any form of penal control, shall be considered a common-law partner of the person."

Tact and diplomacy should be exercised when conducting an interview about personal relationships as questions could be embarrassing to both BSO and client.

Every person seeking to become a PR should be asked if their marital or common-law status has changed to include either a spouse or common-law partner.

12.8 Dependent children with common-law partners

When verifying the marital status or common-law partnership status of dependent children during an examination, the situation may arise whereby a dependent child is unmarried, but may have a common-law partner. If so, as in the case of a married dependent child, the child is no longer a dependent according to the established definition (R2). Children under 22 years of age in married and common-law relationships are no longer dependent children.

A dependent who is single, divorced or widowed, whose marriage has been annulled or who is no longer in a common-law relationship at the time of the initial receipt of the application is considered to meet the definition of a dependent child and must continue to meet the definition of a dependent child for the duration of processing.

12.9 Procedure for dealing with children whose marital or family status has changed

A BSO at Immigration Secondary who determines that the marital status of a dependent child has changed should do the following:

- Determine whether, despite the change in marital or common-law status, the person is still considered a dependant:
  - 22 years of age or older;
  - have depended substantially on the financial support of the parent since before the age of 22; **and**
  - be unable to support themselves financially due to a physical or mental condition. It is the financial dependency that must have been ongoing since before the age of 22. It is not necessary for the physical or mental condition to have existed before the age of 22.
- If so, the BSO should grant PR status.
- If not, and the consequence of a change in marital status or common-law partnership status cannot be readily determined, the BSO should defer the examination pursuant to A23.
- Create an Examination in GCMS and add corresponding details in it's *Notes* tab without delay and update the person's complete address and telephone number on their GCMS Client record.
- Send an email to the visa office that issued the PR visa/CoPR explaining the case details, including the visa office B file number, GCMS identification number and case information.

12.10 Medical surveillance

Inactive pulmonary tuberculosis is the only medical condition for which medical surveillance is currently required. Code S2.02 refers to inactive pulmonary tuberculosis and code S2.02U refers to complex inactive pulmonary tuberculosis and/or other complex, non-infectious tuberculosis.

Applicants who have been issued a *Confirmation of Permanent Residence* (CoPR) [IMM 5688] have already had their immigration medical examination (IME) abroad. If follow-up medical surveillance is required, this condition will appear on the CoPR and is imposed by the visa officer who completes a *Medical Surveillance Undertaking* form [IMM 0535B] in GCMS.

It is no longer required for the BSO to complete and fax this form to the Public Health Liaison Unit at IRCC. Once the BSO changes the CoPR status in GCMS to "confirmed", the information is automatically sent to the Public Health Liaison Unit. It is important that the PR's Canadian residential address and phone number or at minimum, their email address, be in GCMS so that Public Health can contact them. The officer shall counsel the applicant concerning the conditions imposed and the need to contact the Public Health Liaison Unit by email (IRCC.MHBSurveillance-SurveillanceDGMS.IRCC@cic.gc.ca) with an address as soon as one has been established, if applicable. It is no longer necessary for the applicant to contact Public Health as indicated on older versions of the IMM 0535B. If the applicant has any questions, they can contact IRCC's Public Health Liaison Unit directly at the aforementioned email address. Also, there is a new public webpage on medical surveillance for applicants which they can go to.

For more information on medical surveillance see *OP 15 Medical Surveillance and Notifications*, the Wiki for GCMS step-by-step or contact the Public Health Liaison Unit directly.

12.11 Family members arriving before the principal applicant

Occasionally, a BSO at Immigration Secondary will encounter a family member (coded DEP on the CoPR) that arrives to be granted PR status before the principal applicant (coded PA on the CoPR). R51(*b*) requires a PR visa/CoPR holder to establish that they and their family members, whether accompanying or not, meet the requirements of the Act and Regulations. For a family member to meet these requirements, it is usually incumbent on the principal applicant being admissible at the POE.

A BSO encountering this situation should obtain the following information from the dependent:

- why the dependent is preceding the principal applicant (e.g., to seek accommodation or employment, lack of a seat on the aircraft carrying the principal applicant);
- when the principal applicant is due to arrive; and
- the person's means of support.

The BSO should complete the verification process but should not grant PR status to the dependent. If the person has a valid PR visa/CoPR and the BSO is satisfied that the principal

applicant intends to come to Canada, the BSO may wish to defer the examination pursuant to A23 in order to wait until the principal applicant arrives so they may be examined.

The BSO should enter the information into the *Notes* tab of the application in GCMS without delay, which indicates that the granting of permanent residence has been deferred pending the arrival of the principal applicant.

12.12 Arrival of the principal applicant prior to family members

A principal applicant may have decided to proceed to Canada in order to commence employment or to confirm that adequate settlement arrangements, such as accommodation and educational facilities exist prior to the arrival of their dependents. A BSO at Immigration Secondary must confirm that the dependents meet the requirements of the Act and its Regulations before granting PR status to the principal applicant. In most instances, the BSO can assume that persons listed as dependents on the principal applicant's CoPR meet the requirements of the Act and Regulations and can grant PR status to the principal applicant.

12.13 Expired or cancelled PR visa / CoPR

A person who presents an expired or cancelled PR visa and/or CoPR cannot be authorized to enter Canada as a PR. The person may be reportable under A41 and R6 for non-compliance with the Regulations because a FN may not enter Canada to remain on a permanent basis without first obtaining a PR visa/CoPR.

If the examination of a holder of a valid PR visa/CoPR is deferred pursuant to A23, the person may be granted permanent residence at a later date after the expiration of their visa/CoPR provided they initially appeared for examination and presented their PR visa/CoPR within its period of validity.

12.14 Counselling new PRs

The BSO at Immigration Secondary should counsel each new PR on the following matters:

- the conditions of PR status that have been imposed and how to comply with the conditions;
- the residency obligation;
- the procedure for obtaining a PR card;
- the procedure for obtaining a social insurance number via Service Canada; and
- the procedure for applying for provincial health coverage.

13 Examination of FNs at POEs

FNs may be authorized to enter Canada. A22(1) provides that:

> A FN becomes a temporary resident if an officer is satisfied that the FN has applied for that status, has met the obligations set out in A20(1)(*b*), is not inadmissible and is not the subject of a declaration made under 22.1(1).

Temporary residents include: visitors, students, workers, and temporary resident permit holders.

13.1 Visa requirements for temporary residents

A Temporary Resident Visa (TRV) is a counterfoil document issued by a visa officer that is placed in a person's passport. Every citizen from a TRV required country who is approved for travel to Canada will be issued a TRV (IMM1346B). See section 13.2 below for exemptions to this requirement.

A TRV indicates that the FN has been pre-screened by a visa officer and that this officer was satisfied that the visa holder met the requirements for entry into Canada at the time of the issuance of the visa. Holding a TRV does not guarantee that the FN will be authorized entry into Canada.

A11(1) requires FNs to apply for a visa before entering Canada. R7 also provides that a FN may not enter Canada to remain on a temporary basis without first obtaining a TRV.

13.2 Exemptions from a visa requirement

R7(2) exempts certain FNs from the requirement to obtain a visa. These include:

- FNs who hold a TRP issued under A24(1);
- FNs who are authorized under the Act or its Regulations to re-enter Canada to remain in Canada;
- a citizen of Romania who is seeking to enter Canada by air and who obtained an eTA before December 1, 2017; and
- FNs exempt under R190.

See R190 for a complete list of temporary resident visa exemptions for FNs. This section includes:

- visa-exemptions by nationality [R190(1)];
- other document holders who are exempt from the temporary resident visa requirement [R190(2)];
- special categories of persons who are temporary resident visa exempt [R190(3)];
- persons entering Canada who are or to become crew members of a means of transportation other than a vessel [R190(3)(*a*)(i)];
- FNs in transit for refuelling destined to or originating from the US [R190(3)(*b*)];
- FN on a flight that makes an unscheduled stop in Canada due to an emergency or other unforeseen circumstances [R190(3)(*b*.1)];
- members of the Transit Without Visa Program (TWOV) and the China Transit Program (CTP) [R190(3)(*c*)] (for more information, refer to the Transit Without Visa/China Transit Program Standard Operating Procedures on Atlas);
- members of armed forces coming to carry out official duties under of the *Visiting Forces Act* [R190(3)(*d*)] and in possession of travel or military orders;
- persons seeking re-entry into Canada, after visiting only the U.S. or St. Pierre and Miquelon, within the authorized period of stay granted upon initial entry into Canada or extension to this period [R190(3)(*f*)] (see section 13.3 below);
- temporary residents seeking re-entry to Canada from the U.S. or St. Pierre and Miquelon, after applying to renew their status, remain under their original status

until a decision is made and they are notified [R183(5)]. These people are considered to have maintained status;
- persons conducting inspections on flight operation procedures or cabin safety on commercial air carriers [R190(3)(*g*)]. **Note** : This visa exemption does not apply to In Flight Security Officers (IFSO), also known as air marshals. They are not to be considered as members of a crew; or
- Persons participating as an accredited representative or adviser to an aviation accident or incident investigation conducted under the *Canadian Transportation Accident Investigation and Safety Board Act*, and have valid documentation to that effect [R190(3)(*h*)].

Note: Under the Regulations, the definition of the United States includes Puerto Rico.

13.3 Re-entry into Canada without a visa

FNs who require a temporary resident visa and who seek to re-enter Canada must be in possession of a multiple-entry TRV **unless**:

- since leaving Canada after being authorized to enter as a temporary resident, they have only visited the U.S. or St. Pierre and Miquelon, and are returning to Canada before the end of the period initially authorized by a BSO for their stay or any extension to it.[R190(3)(*f*)];
- they have only visited the U.S. or St. Pierre and Miquelon and they are in possession of a valid visitor record (VR), WP, SP, or a TRP (authorizing re-entry) and are returning within the initial period authorized by a BSO, [R190(3)(*f*)];
- they are seeking entry on maintained status. A temporary resident with maintained status that leaves Canada is exempt from obtaining a temporary resident visa pursuant to R190(3)(*f*) if they are returning from a visit solely to the United States or St. Pierre and Miquelon. Their status as a temporary resident is extended until a decision is made and they are notified in accordance with R183(5). They are **not** authorized to work or study in Canada as they did not remain in Canada as per R186(*u*) and R189 until their application for a renewal on their WP or SP has been approved. To emphasize these conditions, BSOs may consider documenting these FNs on a VR. For guidelines on when to issue a VR see section 13.24 below.

Note: Under the Regulations, the definition of the United States includes Puerto Rico.

These FNs must comply with all other entry requirements. If they visit any country other than those stated above, they are not visa-exempt under R190(3)(*f*).

Furthermore, visa-required FNs may attempt to use the provision in 190(3)(*f*) to bypass the appropriate procedures for extending their TR status in Canada (e.g. to avoid obtaining a new visa). Officers are reminded that if they do not place a new stamp with a specified validity date the FN automatically receives a 6 months authorized period of stay as per R183(2) on every entry. Therefore, officers should consider limiting the authorization to the initial entry validity date by writing that date under a new stamp. However, an officer can authorize the FN into Canada for a 6 month period if they believe the FN is admissible and will comply with the conditions of their entry.

Regarding work, study, visitor and TRP applications, it should be noted that the CBSA does not have the authority to renew or extend these permits at the POE, but will assess such

requests as a **completely new application**, as well as the individual's admissibility to Canada. Individuals seeking entry to Canada at a POE who currently have a valid TR status may be admitted to Canada on the basis of their existing permit and instructed to apply to IRCC in Canada for an extension or renewal.

13.4 Examples of situations applying R190(3)(*f*)

- A FN in possession of a TRV valid for one year, who is subsequently issued a four-year SP at a POE, may leave and return to Canada after the expiry of the visa as long as they have only visited the U.S. or St. Pierre and Miquelon and the SP is still valid.
- A FN in possession of a single-entry TRV may leave and return to Canada without the issuance of a new or multiple-entry visa as long as they return to Canada within the initial period (or any extensions) authorized and have only visited the U.S. or St. Pierre and Miquelon.
- Pursuant to R190(3)(*f*) a FN who is from a Temporary Resident Visa (TRV) required country, who has been admitted to Canada as a temporary resident and is re-entering Canada from the U.S. or St. Pierre and Miquelon, before the expiry of the period initially authorized for their stay, is exempt from the requirement to obtain a TRV. R198(1) allows a person who is exempt from the requirement to obtain a TRV to apply for a WP at the POE. Taken together R190(3)(*f*) and R198(1) allow for a FN to apply for the first or subsequent WP at a POE as long as the FN has been initially authorized to enter Canada as a temporary resident and returns to Canada from the U.S. or St. Pierre and Miquelon by the end of the period initially authorized for their stay and any extension to it.

13.5 Foreign representatives posted to Canada

Whether from a visa-exempt country or visa-required one, foreign representatives and their family members seeking entry into Canada to be accredited (i.e., to take up posting) are required to apply for a TRV based on instructions devised by IRCC in consultation with Global Affairs Canada's Office of Protocol (XDC); related applications are processed based on operational guidance, in consultation with XDC.

Foreign representatives and their family members who subsequently enter Canada and receive/maintain a valid diplomatic acceptance, a consular acceptance, or an official acceptance issued by the Chief of Protocol of Canada are regarded as properly accredited and exempt from obtaining a TRV or an eTA as per R190(2)(*a*) and R7.1(3)(*c*).

If a BSO has concerns regarding incoming and properly accredited foreign representatives and family members they should contact IRCC's Case Management Branch at: IRCC.CMBImmigrationCaseAdvice-ConseilCasImmigrationDGRC.IRCC@cic.gc.ca and in cc add xdc-ircc@international.gc.ca.

For urgent cases, the BSO may contact the IRCC Liaison Unit at the Office of Protocol at 613-992-0889. The IRCC Liaison Unit is available for urgent cases during regular business hours, Monday to Friday. For after-hours service, contact the Operations Officer at 613-944-1294.On the first arrival in Canada of a foreign representative or family member whose passport bears a D-1 or O-1 visa counterfoil or a single entry counterfoil-less visa, the BSO at the PIL should stamp the passport giving them status in Canada for six months. During the six-month period, the official's embassy or consulate will forward their passport to the

Diplomatic Corps Services Division, Office of Protocol, Global Affairs Canada. The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance, which indicates that the person is accredited to Canada and entitled to remain in Canada for the duration of their official status.

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age and considered to be "members of the family forming part of the household" will be issued acceptances. Children over 19 years of age will be issued acceptances only if they are registered as full-time students at a Canadian Designated Learning Institution (DLI). After 25 years of age, family members are no longer eligible to receive official acceptances, and must change their official status under *Foreign Missions and International Organizations Act (FMIOA)* to a non-official temporary resident status under IRPA.

For more information, see procedures related to diplomatic and official visas.

13.6 Affirmations for visas

An *Affirmation for Visa* form [IMM 1281B] is to be used as a document in lieu of a passport involving nationals of countries not recognized by Canada. When a person presents an IMM 1281B form, a BSO at Immigration Secondary must apply the port stamp in the lower right corner of the visa (partly on the visa, partly on the page).

13.7 U.S. government officials

The following official U.S. government personnel assigned to temporary postings in Canada are not issued diplomatic or official acceptances in Canada:

- Department of Homeland Security officers;
- U.S. Customs officers;
- International Joint Commission employees; and
- Inspectors with the Federal Grain Inspection Service of the United States Department of Agriculture and other U.S. government officials in possession of official U.S. government passports and assigned to temporary postings in Canada.

U.S. government personnel arriving in Canada for the first time will be issued a fee exempt WP, on presentation of a "letter of introduction" from the appropriate agency, identifying the assignment, its location and the number of years the employee will be assigned in Canada. For more information on the documentation of U.S. government employees, refer to *United States government personnel* on IRCC's Connexion page, which deals with temporary foreign workers applications at POEs.

13.8 Courtesy visas

Visa officers may issue courtesy visas to persons who, although not entitled to diplomatic privileges and immunities, warrant a visa to facilitate their entry because of their position or because their reason for coming to Canada is considered sufficiently important.

Courtesy visas may be issued to:

- persons of diplomatic rank coming to Canada for tourism purposes;
- members of the International Air Transport Association (IATA);
- members of a trade mission visiting Canada; and
- well-known visiting professors coming to Canada to attend conferences.

Courtesy visas may be issued in any type of passport to FNs who require visas or who are normally visa-exempt. The visa should draw a BSO's attention to the fact that the individual is considered by the IRCC visa office to warrant particularly expeditious and courteous treatment at the POE. Such FNs are subject to normal documentation requirements and are not exempt from regular examination procedures.

13.9 Parents and Grandparents Extended Stay Temporary Resident Visa (Super Visa)

Eligible parents and grandparents of Canadian citizens and PRs may be issued a multiple-entry TRV coded PG-1 for up to 10 years or for visa-exempt FNs, a letter of introduction will be issued for five (5) years or until passport expiry. The status period of such eligible persons will be for two (2) years on each entry to Canada. These travellers can be admitted at the PIL however, should they be referred to Immigration Secondary, BSOs should verify that the super visa holder or the holder of a super visa letter of introduction has valid medical insurance, continues to meet the requirements of the super visa and is not inadmissible.

The BSO will then stamp the super visa holder's passport, but **no handwritten date is required**. Should the BSO authorize a period of stay of *less than* 2 years, a VR should be issued to the client with clear notes indicating the reason why the period of stay was shortened.

Some travellers with a PG-1 TRV may also be subject to medical surveillance.

BSOs should follow the same procedure for TRs as for PRs. Refer to section 12.10 of this manual for detailed procedures.

13.10 Expired temporary resident visas

A person seeking to enter Canada with an expired temporary resident visa is inadmissible and should be reported pursuant to A41(*a*) for A20(1)(*b*).

13.11 Notification to visa office if a visa holder is refused entry

A BSO at Immigration Secondary who is of the opinion a FN who holds a TRV or a TRP is inadmissible should send full details of the refusal by email to the issuing visa office. This allows the visa office to review the decision to issue the visa and to deal with future representations that the person may make to the visa office.

The BSO must put the phrase: "As requested: ENF 4" in the subject line and include the following information in the following order:

(a) the name and nationality of the subject of the A44(1) report; or a person allowed to withdraw their application;

(b) the person's date and place of birth;

(c) the visa or permit number, date and office of issue;

(d) the date and POE where the person sought to enter Canada;

(e) the reason for refusal, using the code letter for the reason for refusal:

A: seeking permanent residence,
B: claims Convention refugee status,
C: intends to seek or take employment,
D: intends to follow a course of study,
E: has insufficient funds to maintain themselves and their family members,
F: medical inadmissibility,
G: criminal inadmissibility,
H: expired temporary resident's visa, or
I: other;

(f) the name and file number of the office responsible for follow-up enforcement action, if the office differs from the POE; and

(g) the visa office file number (some visa offices include the number on the visa).

The BSO should not provide any other details in the email report. This procedure allows the BSO to transmit the report as an unclassified message.

If the reason for refusal was code "I" (other), the officer should send a report by mail to the issuing visa office giving further details of the reason for the refusal.

This reporting system gives IRCC visa offices immediate feedback on their decisions for issuing temporary resident visas (TRVs) and assists in monitoring the effectiveness of the TRV program.

13.12 Electronic Travel Authorization (eTA) and eTA Expansion (eTA-X)

An eTA is an entry requirement for visa-exempt FNs travelling to or transiting through Canada by air. U.S citizens and U.S. lawful permanent residents (USLPR) are some of the exempted populations from this requirement. An eTA is a paperless document electronically linked to a traveller's passport that must be obtained prior to travelling to or through Canada by air.

R7.1(1) requires all FNs from visa-exempt countries to obtain an eTA before entering Canada.

R7.01 defines which citizens, from visa-required countries, are eligible for an eTA when travelling to Canada by air under the eTA-X program. The eligibility criteria are:

- Have held a Canadian TRV in the preceding 10 years; **or**
- Currently hold a valid U.S. non-immigrant visa (NIV).

An eTA issued pursuant to the eTA expansion provisions of the IRPR has the same legal authority, except that the eligibility criteria differs.

BSOs should be aware that the TRV exemption for "contiguous territory", R190(3)(*f*) may apply to eTA–X clients who were authorized entry at an air POE and subsequently departed Canada for a visit solely to the US or St-Pierre and Miquelon and then returned to Canada via any mode within the period initially authorized for their visit.

13.13 eTA exemptions

R7.1(3) states that select individuals are exempt from the eTA requirement, including:

- Queen Elizabeth II and members of the Royal Family;
- holders of valid TRVs;
- citizens of the United States or a person who has been lawfully admitted to the US for permanent residence (USLPR);
- accredited diplomats, consular and officials in Canada;
- select civil aviation personnel (flight crew, flight safety advisors, accident investigators);
- French citizens who are residents of St. Pierre and Miquelon arriving from St. Pierre and Miquelon;
- foreign military personnel carrying out duties under the Visiting Forces Act;
- FNs seeking re-entry directly from the US or Saint-Pierre-et-Miquelon with prior status in Canada;
- FNs holding a valid U.S. document travelling to and from the U.S. who are passengers on a flight stopping in Canada for the sole purpose of refuelling;
- FNs transiting Canada under the TWOV or the CTP;
- FNs onboard flights diverted to Canada for medical, mechanical, or other emergency reasons.

13.14 eTA validity and cancellation

An eTA will be valid for up to five years or until the passport expires, whichever comes first. A visitor may travel to Canada repeatedly without having to apply for another eTA, so long as their original eTA remains valid.

Unlike a TRV, BSOs at the POE may cancel an eTA and eTA-X when the holder may become ineligible to possess one. The CBSA's OB PRG-2017-41 describes when a BSO may cancel an eTA and eTA-X if at least one of the following conditions are met:

- they are the subject of a declaration made under A22.1(1);
- they were issued a TRP under A24(1);
- they are the subject of a report prepared under A44(1);
- they are the subject of a removal order made under A44(2) or A45(*d*);

- they withdrew their application to enter Canada under R42(1);
- they were refused a temporary resident visa because they did not meet the requirement set out in R179(*b*);
- they were refused a WP because they did not meet the requirement set out in R200(1)(*b*);
- they were refused a SP because they did not meet the requirement set out in R216(1)(*b*); or
- in the case of a FN referred to in R7.01(1), it is established that, on the day on which they made their application for an eTA-X, they did not meet either of the conditions set out in R7.01(2)(*a*) and (*b*).

Please refer to the Wiki page for step-by-step instructions on how to cancel an eTA in GCMS as well as the comments to be inserted in the eTA cancellation *Correspondence* tab.

13.15 Document requirements for FNs

R52(1) provides that a FN seeking to become a temporary resident of Canada must possess a valid passport, identity or travel document. The purpose of this requirement is to ensure adequate identification of the FN and to guarantee that person's re-entry either into the country that issued the passport, identity or travel document or into another country.

R52(1) provides a list of acceptable passports or travel documents for FNs seeking to enter Canada as temporary residents.

Visa officers should ensure that a travel document is acceptable for travel to Canada before issuing a visa. A CBSA officer can normally assume that a document containing an authentic visa is acceptable for travel to Canada, unless there is some reason to question its acceptability.

13.16 Passport and travel document exceptions

R52(2) provides a list of persons who are exempt from the requirement to have a passport or travel document to enter Canada as temporary residents:

- U.S. citizens;
- Permanent residents of the U.S. seeking to enter Canada from the United States or St. Pierre and Miquelon. Note that U.S. Permanent Resident Cards are only acceptable upon presentation on contiguous territory and not valid for international flights from outside Canada unless accompanied by a valid and subsisting passport or travel document;
- Residents of Greenland seeking to enter Canada from Greenland;
- Citizens of France residing in St. Pierre and Miquelon seeking to enter Canada from St. Pierre and Miquelon;
- Military personnel seeking to enter Canada under the *Visiting Forces Act*;
- Persons seeking to enter as or in order to become air crew members and who hold an airline flight crew licence or crew member certificate issued in accordance with International Civil Aviation Organization (ICAO) specifications; and
- Persons seeking to enter Canada as crew members who hold a seafarer's identity document and are crew members of the vessel that carries them to Canada.

13.17 Examining passports

The purpose of examining a passport is to verify information that has been provided by the holder or that appears on any immigration document issued to the person. A BSO should examine each passport to confirm the following:

- the name of the holder;
- the date of birth of the holder;
- other data such as the person's physical description, place of birth, marital status and profession;
- the country of citizenship;
- the photograph of the holder;
- the date of expiry; and
- visa pages (to determine previous trips to Canada or other recent trips or visa refusal stamps, typically found on the last page that may be relevant to the overall examination of the person).

CBSA's National Document Centre (NDC) contributes to helping prevent the movement of unlawful people across the border through the detection and analysis of document and identity fraud at POEs through collaboration with national and international partners on the integrity of their travel and identity documents and issuance processes. The NDC acts as a center of expertise for the CBSA and IRCC in the analysis of travel and identity document fraud. On their page on Atlas, you can find *Document alerts, Document bulletins and Document communiqués.*

BSOs also have access to EDISON TD, a database which allows users to compare doubtful or unknown travel documents with high definition images of authentic ones. Most often, the documents shown are specimens, that is, documents provided by the issuing authority for comparative analysis purposes.

For more information, please consult section 13 of *ENF 32, Passports and Travel Documents.*

13.18 Valid visas in expired passports

Visa officers will not put a visa in an expired document and will not issue a visa for a period surpassing the expiry date of the passport or travel document. Occasionally, documents containing valid visas are cancelled or replaced. If a valid visa inside an expired document is presented at the POE along with a valid passport or travel document, the visa is considered valid.

13.19 Evidence of U.S. citizenship

The following documents may be satisfactory evidence of U.S. citizenship:

- U.S. passports, U.S. passport cards, and Certificates of Citizenship and Naturalization are considered *prima facie* evidence and are acceptable proof of U.S. citizenship.
- A U.S. birth certificate, when accompanied by another document bearing a picture of the holder, is considered an indicator and may be an acceptable proof of U.S. citizenship.

A U.S. military identification card, although a good supporting document, is not *prima facie* evidence of U.S. citizenship. The U.S. military accepts recruits who are not U.S. citizens.

Sometimes, a verbal declaration may be sufficient to satisfy a BSO that a person is a U.S. citizen. For example, driver's licenses, health cards, U.S. Voter's Registration card, school records, credit cards are not prima facie evidence of citizenship, but they are often used along with a verbal declaration to satisfy the BSO of U.S. citizenship. In other circumstances, the BSO may require better documentary evidence for persons claiming to be U.S. citizens. BSOs should also familiarize themselves with the Enhanced Drivers Licence/Enhanced Identification Cards as well as the trusted traveller cards, such as FAST, NEXUS, CANPASS and the U.S. SENTRI card.

Indigenous identity documents which are recognized by the Government of the United States may assist the examining officer in reaching a determination of the person's US citizenship and country of residence. These documents are the US Enhanced Tribal Card (ETC) and I-872 American Indian Card.

To assist the travel industry, airlines and travel agents have been supplied with the following information:

- a U.S. passport constitutes the best form of identification for U.S. citizens travelling to Canada; and
- U.S. citizens may travel to Canada without passports if they have other means of establishing their citizenship, such as a U.S. birth certificate or naturalization papers.

13.20 Conditions imposed on temporary residents

R183(1) provides for the following general conditions that are automatically imposed on all temporary residents:

- to leave Canada by the end of their authorized period of stay;
- to not work, unless they have been issued a WP or are exempt from the requirement to obtain a WP pursuant to R186 and/or R187;
- to not study, unless they have been issued a SP or are exempt from the requirement to obtain a SP pursuant to R188 and/or R189; and
- to comply with all requirements imposed by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.

A BSO does not need to document these conditions for every person authorized to enter Canada as a temporary resident as they are automatically imposed. However, if the BSO believes that a document is necessary as a control measure or as an aid in counselling the person regarding the conditions of their entry, they may generate a VR and explain in the *Notes* tab, without delay, why a VR was issued.

13.21 Duration of temporary resident status

R183(2) states that the period authorized for the stay of a temporary resident is six months or any other period that an officer imposes based on the following criteria:

- the temporary resident's means of support in Canada;

- the period for which the temporary resident applies to stay; and
- the expiry of the temporary resident's passport or other travel document.

13.22 Six-month entry

In most cases, a BSO should routinely authorize entry for a period of six months to a FN requesting entry as a temporary resident, even when the person requests entry for a very brief period. Six months is adequate for most purposes of travel and preclude the need for the person to request an extension.

The BSO should also stamp the foreign national's passport or travel document, inscribe a date of expiry based on a calculation of six months from the date of entry and initial the notation. Please refer to the CBSA Stamp Policy for more information on annotating a travel document. The BSO should counsel the FN on the need to comply with general obligations for the visit and of any extension, should one become necessary.

In instances where the principal applicant of the family is traveling with their family members, BSOs should generally authorize entry to all members of the family for the same length of time as indicated on the WP or SP of the principal applicant.

13.23 Entry for more or less than six months

Based on the information presented during an examination, a BSO at Immigration Secondary may decide to limit a temporary resident's stay to less than six months despite the length of time requested by the foreign national. If requested by the applicant and the BSO is satisfied that the FN is a temporary resident, is able to support themselves and accompanying family members financially, and is not inadmissible for reasons of health or security, the granting of entry for more than six months may be considered.

In no case should the BSO impose a period of time for a temporary resident's stay greater than the validity of the foreign national's passport or travel document. This will not be applicable to U.S. citizens and other FNs exempted under R52(2) from the requirement to be in possession of a passport or travel document.

13.24 When to document a temporary resident on a Visitor Record (VR)

A BSO at Immigration Secondary who limits a temporary resident's stay to a period of less than six months has in essence decided that there is a need to exercise an element of control over the foreign national's length of stay; therefore, a *VR* form IMM 1097B (for manual completion if GCMS is down) or IMM 1442 (in GCMS) is to be issued in order to document this decision. The BSO should record the reasons why a period of less than six months is being imposed in the *Notes* tab of the GCMS application, without delay.

Similarly, the BSO should issue a VR when authorizing a period of stay greater than six months and indicate in the *Notes* tab in the GCMS application without delay why the greater period of time is being granted.

A BSO at Immigration Secondary should document a FN on a VR if, in the BSO's opinion, a FN should be documented for control purposes regardless of the length of stay. This could include:

- a seafarer who is signing off or seeking entry to join a crew;
- a FN entering for medical treatment;
- a person extradited to Canada who is being allowed forward as a temporary resident;
- any temporary resident on whom other conditions pursuant to R185 are being imposed;
- foreign workers entering Canada to perform after-sales service and intending to remain in Canada for longer than two days, except workers performing continuing after-sales service whose entry has already been documented on a VR, the validity of which covers the period for which the person is seeking entry; or
- military personnel and their accompanying family members entering Canada under the *Visiting Forces Act*; and
- FNs entering as clergy under R186(*l*).

In certain situations, BSOs should issue a VR to the FN who is WP exempt so that they can benefit from certain privileges, such as obtaining a Social Insurance Number. These situations include:

- Public Policy: Short-term work permit exemption for certain high-skilled work;
- Public Policy: 120-day work permit exemption for researchers; or
- Missionaries (e.g.: Jesus Christ of Latter Day Saints) coming to Canada for more than a six month period. Case type 13 in the GCMS application must be used when issuing a VR so that they may apply for and obtain provincial health coverage.

Creating or adding to an existing client record in GCMS with corresponding Notes will assist other BSOs in the event a person applies for an extension or if enforcement action is required.

13.25 Issuing VRs

VRs should be processed and issued in GCMS. If GCMS is not operational, a BSO at Immigration Secondary can complete the VR form [IMM 1097B] manually and enter the information in GCMS as soon as the system is available. For detailed information on completing and coding the IMM 1097B form manually, see the coding manual.

There are no cost-recovery fees for documenting temporary residents on a VR.

A BSO who issues a VR, no matter the reason, should enter remarks in the *Notes* tab of the application, without delay.

13.26 Imposing, varying or cancelling conditions on temporary residents

R185 authorizes a BSO at Immigration Secondary to impose, vary or cancel the following conditions individually concerning a temporary resident:

- the period authorized for their stay;
- the work in which they are permitted to engage or prohibited from engaging, including
  - the type of work;
  - the employer;

    - the location of work; and
    - the times and periods of work;
- in the case of a member of a crew, the period within which they must join the means of transportation;
- the studies in which they are permitted to engage or prohibited from engaging, including
    - the type of studies or course;
    - the location of the studies; and
    - the times and periods of the studies;
- the area within which they are permitted or prohibited to travel in Canada; and
- the times and places to which they must report:
    - for medical examination, surveillance or treatment; or
    - the presentation of evidence of compliance with applicable conditions.

All of these conditions should be imposed in writing by providing the FN with a VR, ST, WP or TRP. When conditions of entry are imposed on a manually completed form, it is not necessary to state on the form the conditions precisely as they are worded in the Regulations. An attempt to reflect the substance and spirit of the conditions in the Regulations and, whenever possible, the wording of R183 and R185 should be used. When a BSO at Immigration Secondary completes a form in GCMS, they may select the appropriate conditions from the list on the screen.

The BSO should not use conditions as a means of discouraging a FN from coming into Canada. The reasons for imposing conditions on a temporary resident are to ensure that the person complies with the period and purpose for which they sought entry into Canada and to make the temporary resident aware of the need for formal authorization before extending that period or varying the purposes of the visit.

13.27 Situations where specific conditions may be considered

Situations where specific conditions may be considered include the following:

- For a FN seeking entry to join a crew of a vehicle already in Canada, a BSO at Immigration Secondary should impose a condition that would require them to join the means of transportation within a maximum period of time of 48 hours [R184].
- R185(*d*) authorizes a BSO to impose a condition that limits the area within which a temporary resident may travel in Canada. For example, the BSO might want to use the condition to limit the travel of a person in transit through Canada to another country (perhaps limiting the person to the airport and surrounding area), or the travel of a person coming to Canada to stand trial or to be a witness in legal proceedings.
- R185(*e*) authorizes the BSO to impose a condition on a temporary resident who otherwise complies with the Act and Regulations, but who has a medical condition of public health significance in Canada. The condition should name the time and place where the temporary resident must report for medical observation and treatment while in Canada. For more information on medical surveillance, please refer to section 12.10 above and manual *OP15*, *Medical Procedures*.
- If the BSO imposes conditions on a temporary resident concerning attendance at a school, work, or medical examination, surveillance or treatment, the BSO should, as a control measure, also impose a condition requiring the person to present evidence of compliance with the conditions imposed [as authorized by R185(*e*)(ii)].

13.28 Deposits and Guarantees

R45(1) authorizes a BSO at Immigration Secondary to require, with respect to a person or group of persons seeking to enter Canada, the payment of a deposit or the posting of a guarantee, or both, to the Minister to guarantee compliance with the conditions imposed on the person or group.

The payment of a deposit or the posting of a guarantee is a control measure in cases where the BSO believes that a temporary resident or group of temporary residents may not comply with one or more conditions being imposed. The deposit or guarantee should specify an amount adequate to guarantee compliance and therefore alleviate doubt regarding a temporary resident's intentions in Canada.

For more information on situations that may warrant a deposit or a guarantee, or how to proceed, refer to *ENF 8*, *Deposits and Guarantees*.

13.29 Counselling temporary residents

A BSO should attempt to answer any questions a temporary resident has concerning their status. When a BSO at Immigration Secondary counsels a temporary resident, they may wish to cover the following points:

- the expiry date of the visit;
- any conditions imposed;
- procedures for applying for an extension;
- cost-recovery requirements should the person seek an extension to their status; and
- information about the cancellation of conditions imposed and a refund if the person has paid a deposit or posted a guarantee (see *ENF 8*, *Deposits and Guarantees*).

The sections to follow provide more detailed procedures for the examination of specific classes of persons seeking to enter Canada.

13.30 Recovering missing, abducted and exploited children

See *ENF 21*, *Recovering Missing, Abducted and Exploited Children*, for more information on policies and procedures relating to examining children seeking to enter Canada.

13.31 Examining foreign students

All FNs require written authorization obtained from an IRCC visa office in order to come study in Canada. Certain exemptions apply when it comes to needing a SP. See *OP 12*, *Students*, for specifics.

Certain FN are eligible to apply for a SP at the POE as per R214. With few exemptions, all Quebec-bound study permit applicants must submit a Certificat d'acceptation du Québec (CAQ) or a confirmation letter from the *Ministère de l'Immigration, de la Francisation et de l'Intégration* (MIFI) when applying for a study permit. The CAQ is issued for a maximum of 49 months. Persons exempted from this requirement can be found on the MIFI's web site.

Quebec's *Regulation respecting the selection of foreign nationals* states at paragraph 49(*g*) that those mentioned at R214 are excluded from the requirement of obtaining a CAQ for a period of not more than six (6) weeks from their arrival to Canada. Should they not yet have a CAQ but meet all other eligibility criteria to apply for a SP at the POE, the BSO may issue a SP for a maximum of six (6) weeks and charge the fees. BSOs should also explain the situation in the permit's *Notes* tab without delay. When the FN mentioned at R214 receives their CAQ, they will have to apply for and pay the fees for a new SP.

For more information on this exemption, please refer to section 2.2 *Programme des étudiants étrangers* of the *Guide des procédures d'immigration* of the MIFI (available only in French).

13.32 Maritime procedures

See *ENF 17*, *Maritime Procedures*, for information on the examination of persons seeking entry as crew members or wanting to become a member of a crew.

13.33 Examining foreign workers

Remarks on VRs allowing people to work in Canada

Service Canada is asking that visible remarks be entered on VRs when a VR is issued to a person who is exempt of the need for a WP. Service Canada needs to know that the person is allowed to work in Canada and is exempt from the need for a WP so a social insurance number may be issued. BSOs at Immigration Secondary should clearly enter in the *User Remarks* section of the VR that the temporary resident is exempt from the need to obtain a WP under either: R186, the 120-day WP exemption for researchers in a publicly funded Canadian degree-granting institution (or its affiliated research institution) or the 15- or 30-day WP exemption for certain high-skilled workers.For more information on these last two, see section 13.24 above and OB PRG-2017-26, *New Work Permit Exemptions for High-Skilled Short-term Work and for Research*.

Seasonal agricultural workers

There are two streams of agricultural workers:

- the Seasonal Agricultural Worker Program (SAWP) stream open to citizens of Mexico and other participating Caribbean countries; and
- the agricultural stream (non-SAWP).

Like all other temporary foreign workers, seasonal agricultural workers in both streams require social insurance numbers (SIN) while working in Canada. As of April 1, 2003, all social insurance cards issued to temporary residents have expiry dates on them, coinciding with the end of the validity period of the WP.

It is important that the expiry date matches the last date of the validity of the temporary resident's WP.

Temporary residents who require a social insurance card may find the application form on the Service Canada website.

SAWP work permits should always:

- have an expiry date of December 15th of the current calendar year no matter the duration of employment indicated on the Labour Market Impact Assessment (LMAI). The only exception to limiting the WP to a date other then December 15th would be if the FN's travel document expires before December 15th;
- 98 as the *Case Type* in GCMS; and
- have the following *User Remarks* already added by the issuing office: "Approved MEX/CCSAWP employer only. Valid to work in ALL PROVINCES. Period of cumulative work not to exceed employment duration specified in the LMIA to a maximum of 8 months – R185(*b*)(iv)".

For more information on the SAWP, visit - Hire a temporary worker through the Seasonal Agricultural Worker Program - Overview - Canada.ca

For more information on the non-SAWP stream, visit Hire a temporary foreign worker through the Agricultural Stream: Overview – Canada.ca

Role of countries sending seasonal workers

Agencies from sending countries must make sure of the following: at least 48 hours in advance, accurate departure lists of workers are sent directly to the CBSA airport office in Canada to ensure that the WPs are prepared (printed) before the arrival of each flight.

- **Note:** IRCC and Employment and Social Development Canada (ESDC) require that BSOs cancel the pre-printed WPs if the worker did not arrive on the scheduled date nor the following day. This ensures that employer compliance conditions are not imposed on an employer erroneously and allows IRCC to use the Labor Market Impact Assessment (LMIA) to issue a WP for another worker, if needed.

At the airport in Canada

Each worker is referred to Immigration Secondary by a BSO at the PIL and presents their own:

- valid passport; and
- WP introduction letter, issued by a visa office.

Role of BSOs at Immigration Secondary

BSOs at Immigration Secondary must make sure of the following:

- Verify the identity of the passport holder;

- Make sure the WP information is correct and matches the passport's biographical data;
- Stamp and properly annotate the passport with the expiry date, their initials and document number of the WP; and
- "Close the loop" in ICS.

13.34 Refugee claimants

For information on processing refugee claimants, refer to IRCC's *PDI, In-Canada claims for refugee protection*. For instructions on handling possible claims for refugee protection see section 13 of *ENF 6*, *Review of reports under A44(1)*.

For information on the United Nations High Commissioner for Refugees, visit the UNHCR website.

13.35 Vulnerable persons

A vulnerable person is a person who has significant difficulties coping with the examination process, due to a specific condition or circumstance.

Examples of persons who may be identified as vulnerable could be someone who is:

- elderly;
- pregnant;
- with physical disabilities or injuries;
- an unaccompanied minor children;
- a victim of gender-based and/or family violence;
- a victim of human trafficking;
- a victim of trauma; and
- children, including those who are victims of abuse.

Individuals react to violence and trauma in various ways, and not all victims of violence and/or trauma exhibit identical or even similar symptoms. While some individuals may show signs of distress, including anxiety, irritability, nervousness, agitation, anger and aggressiveness, others may be easily intimidated and have difficulty communicating. The importance of building trust with victims/survivors might be helpful. For example, officers may need to explain how the examination process works, and their role as officers, to establish credibility and build trust. Officers should keep in mind that establishing a rapport and earning a victim's trust will help victims to be more open and to feel more comfortable about providing information. It may be helpful to separate individuals when conducting interviews if the BSO suspects there may be violence, trafficking, etc. involved. Also ask the victim whether they would be more comfortable in the presence of a female or male officer.

FN victims brought to Canada by human traffickers for exploitation purposes are exposed to increased vulnerabilities because they may have little or no knowledge of Canadian customs, laws and human rights, and this lack of knowledge may be used by the trafficker to compel the victim to provide their labour or service. Victims may react with fear, suspicion, skepticism, distrust, hesitation and/or hostility towards outsiders, especially law enforcement. They may worry about their immigration status in Canada and/or fear of being issued a removal order and deported. They may also be concerned about the continued availability of services in Canada.

Trauma occurs when a victim lives through an experience so extreme that they cannot completely comprehend or accept it. Consequently, it falls so far outside the victim's own system of values for human behaviour that they cannot rationalize it and may even deny that it ever happened. Key symptoms of trauma likely to have serious implications include:

- denial of being a victim of gender-based violence (GBV), even in the face of contradictory evidence;
- de-personalization of the abusive experience and coming to regard it as having happened to another person;
- fragmentation of memory, perception, feeling, consciousness and sense of time;
- difficulty in providing a clear and consistent statements to investigation; and
- tendency to fill in memory blanks by making up plausible elements of a traumatic situation.

Due to these types of trauma, one of the optimal methods for working with victims is to help them feel stable by providing security and assistance.

As a general principle, all offices must be flexible to provide priority processing to travellers who are identified as vulnerable persons.

For additional information on identifying and processing vulnerable persons, see IRCC's PDI, *Processing in-Canada Claims for Refugee protection of minors and vulnerable persons* and *Addressing cases where a person has experienced abuse*.

For *Trafficking in Persons*, refer to *CBSA's Enforcement Manual*, part 2, chapter 15.

Victims Support
In Canada, responsibility for the protection of victims of crime is shared between the federal and provincial/territorial governments. Numerous programs and services are available to victims of crime, including trafficking. These range from health care to emergency housing, and social and legal assistance. Legal-aid programs are administered separately by each province and territory, and eligibility is based primarily on financial need. Similarly, social services such as emergency financial assistance, including food allowances and housing, are administered at the provincial and territorial levels and are available to those in need.

A TRP may be issued by IRCC for victims of family violence or victims of trafficking in persons (VTIP). Should a TRP be issued by IRCC, essential medical care will be provided through the Interim Federal Health (IFH) Program. A vulnerable person, such as a victim of GBV, may be without documents or lack resources such as finances, shelter, or family and friends. However, when a potential victim without legal status is identified at a POE or Inland, and the local IRCC office is unavailable for an interview, the CBSA should ensure the custody and safety of the individual by releasing them on conditions into the care of a NGO, in an immigration holding center, or into the care of a family member. The CBSA must exercise reasonable care for the victim's protection and well-being.

All encountered victims of family violence or trafficking in persons who are FNs, should immediately be referred to IRCC for an interview on immigration options (which could include issuance of a TRP.

Note: The CBSA should immediately contact local Child Protection Services when encountering a child who is believed to be a victim of abuse.

13.36 Biometrically enrolled FNs and PRs

Biometrically enrolled FNs and PRs arriving at a POE will have their travel documents examined and their biometrics compared or verified to assist in making an admissibility decision.

R12.1 lists in which situation biometrics must be collected.

R12.2(1) lists the persons exempt of having their biometrics collected.

R12.5 outlines the procedure for biometric verification upon entry to Canada.
When seeking entry to Canada and when directed by an officer or by alternative means of examination, a biometrically enrolled person shall provide their biometrics for verification.

Biometric Verification – IPIL

If the traveller was biometrically enrolled, the biographic data and photo collected at the time of application will be displayed on the IPIL screen under the Bio tab. The BSO will compare the biometric enrollment photo displayed in IPIL to the traveller and will select whether the photo matches or does not match. If the BSO has doubts as to the traveller's identity, the BSO will refer the traveller to Immigration Secondary for fingerprint verification.

Biometric Verification – PIK with systematic fingerprint verification (SFV)

Biometrically enrolled travellers who complete their primary processing via PIK with SFV will be prompted by the system to complete a fingerprint verification. A no-match result will generate a referral to Immigration Secondary.

At POEs where PIK does not have SFV integrated, the traveller will not be referred to Immigration Secondary but to a referral officer who will do a facial comparison. Should the BSO have doubts on the traveller's identity, they may refer them to Immigration Secondary for fingerprint verification.

Should the verifications raise doubts regarding the identity of the foreign national, existing procedures will be followed to determine admissibility.

See part 11, chapter 7 of the *People Processing Manual* for further information on the processing of biometrically enrolled FNs. For guidelines, refer to the *Job Aid on Systematic Fingerprint Verification*.

Also, BSOs can refer to OBO-2022-02, 2021-HQ-AC-01-19, PRG-2019-07, PRG-2018-69 and 2018-HQ-AC-OPS-12-11 for more information.

13.37 Collection of Biometrics at POEs

Biometrics screening helps to keep Canadians safe. The collection (through enrolment) and verification of biometrics, along with criminal and immigration screening and biometric-based information sharing, strengthen the integrity of Canada's immigration program. This

helps prevent identity fraud, identify those who pose a security risk and stop known criminals from entering Canada.

As per R12.1 the collection of biometrics at the POE is mandatory for WPs, SPs, TRPs, asylum claimants and a limited number of resettled refugees where IRCC has provided a temporary exemption to the biometric requirement as per R12.8. The enrolment can only be done at select Immigration Secondary where there is a LiveScan Kiosk as per R12.001.

In order for the biometrics to be automatically associated to the client, the application must be created in GCMS **prior** to capturing the traveller's fingerprints for enrollment. Should the automatic association fail, BSOs will have to manually associate the biometrics to the application. For additional information on querying the biometrics holding tank in GCMS and associating biometrics, please refer to Search and Associating Biometrics document and Video: GCMS Support for Fingerprints in the Holding Tank.

For more information such as guides on enrolling biometrics, please consult the Biometrics Toolkit on Atlas as well as the LiveScan User Guide and Quick Reference Card.

Additional guidance can also be found in OBO-2020-075.

14 Dual intent

A22(2) states that the intention of a FN to become a PR does not preclude them from becoming a temporary resident if the BSO is satisfied that they will leave Canada by the end of the period authorized for their stay.

A person’s desire to await the outcome of an application for permanent residence from within Canada may be legitimate and should not automatically result in the decision to refuse entry. A BSO at Immigration Secondary should distinguish between such a person and an applicant who has no intention of leaving Canada if the application is refused.

In rendering a decision, the BSO should consider:

- the length of time required to process the application for PR status;
- the means of support;
- obligations and ties in the home country;
- the likelihood of the applicant leaving Canada if the application is refused; and
- compliance with the requirements of the Act and Regulations while in Canada.

In some cases, the BSO may wish to issue a VR documenting the details of the trip for control purposes and provide thorough counselling regarding the conditions of entry. The BSO should enter remarks in the *Notes* tab of the application in GCMS detailing their reasoning and counselling given, without delay. In cases where the applicant has already received a favourable recommendation for PR status, the duration of time authorized at the POE should match the time required to complete the processing of the application.

15 Temporary Resident Permits (TRPs)

A BSO at Immigration Secondary has discretion, pursuant to A24(1), to issue a TRP to an inadmissible FN seeking entry to Canada if satisfied that entry is justified in the circumstances. Consult IRCC's PDI on *Temporary Resident Permits* for more information.

15.1 Process at the POE for persons approved for a TRP by a visa office

- **Background:** Visa offices that approve TRP applications will generate the TRP electronically in GCMS for issuance at the POE. This process is similar to the present process being used when a SP or WP is issued by a visa office.
- **Letter of introduction:** The applicant arrives at the POE with a letter of introduction from the visa office. The top right-hand corner of the letter has the application number. BSOs must do an Integrated Name search and not an application number search in GCMS. This ensures the BSO uses the appropriate application in GCMS.
- **Facilitation counterfoil:** Visa offices issue a facilitation counterfoil [IMM 1346] to FNs who are from a country where a visa is required and have been approved for a TRP. This counterfoil allows the FN to board a commercial carrier bound for Canada.
- There are two types of facilitation counterfoils that can be issued to TRP holders (single entry or multiple entry):
    - When a FN from a visa-required country has been approved by a visa office to travel to Canada to receive a TRP, a counterfoil coded PA-1 will be issued by the visa office.
    - When a FN from a visa-required country has been approved by a visa office to travel to Canada to receive a TRP that authorizes re-entry to Canada, the FN must apply at a visa office for a facilitation counterfoil prior to returning to Canada. This counterfoil will be provided at no cost and be coded PC-1.

Note: Officers at Immigration Secondary must counsel the FN that, should they leave, they require a counterfoil prior to returning to Canada.

15.2 Issuing a TRP approved by a visa office

The BSO at Immigration Secondary will do the following:

- Determine whether the FN is still eligible for the TRP by assessing whether there is any material change in circumstances and ascertaining whether there are other grounds of inadmissibility since being issued the documentation from the visa office;
- Retrieve information from GCMS by doing an Integrated Name Search using the client's bio data;
- Enter the required information, such as contact address in Canada into GCMS;
- Print the TRP on an IMM 1442B form and attach the foreign national's passport-sized photograph. Should the FN not provide a photograph, it should be taken at the POE;
- Stamp the foreign national's passport and notate as per the CBSA stamp policy; and
- Counsel FNs from visa-required countries to obtain a facilitation counterfoil by a visa office if they wish to leave and re-enter Canada.

15.3 Process for initiating a TRP at the POE

Officers may issue TRPs when justifiable and with awareness that the document carries privileges greater than those accorded to other temporary residents (visitors, students and workers). It allows the holder to apply inland for a WP or SP and may give access to health or other social services. It also allows certain holders who remains in Canada continuously for a specified period of time, and who do not become inadmissible on other grounds, to be granted PR status. Factors to consider prior to issuing a TRP are listed below in section 15.4.

For cases involving **serious criminal inadmissibility**, a brief email outlining the case details (red flagged to indicate high importance) is to be sent to the CBSA's Case Management Branch. Referral to IRCC's Case Management Branch is not required unless the case is high profile or contentious, in which case officers are encouraged to consult with IRCC's Case Management Branch. Detailed remarks must always be included in the appropriate systems when documents are issued.

For cases involving **inadmissibility on health grounds**, officers should send a short case summary by email to IRCC's Migration Health Branch.

Once the officer has made the decision to issue a TRP, the following procedures must be followed to ensure that all elements of the decision-making process are documented and all policies and procedures are adhered to, in accordance with IL 3 – Designation of Officers and Delegation of Authority:

- Create a paper TRP file for each client by printing and completing Appendix D's *Temporary Resident Permit Checklist*.
- Add the foreign national's contact address in Canada to GCMS.
- Check validity dates and indicate whether the person shall be allowed to leave and re-enter Canada.
- Collect the $200 processing fee if required (see section 15.6).
- Print the TRP on an IMM 1442B.
- Stamp the foreign national's passport as per the CBSA stamp policy.
- Counsel FNs from visa-required countries to obtain a facilitation counterfoil by a visa office if they wish to leave and re-enter Canada.
- Counsel the FN about their inadmissibility and the ramifications of that inadmissibility for future trips to Canada (e.g. require a TRP be issued by visa office prior to any future trips to Canada).
- Create a note in GCMS regarding your justification for issuing a TRP and the counselling given. This is important as it can be referenced if the FN did not heed the counselling given their last trip.

15.4 Assessment of need and risk when issuing a TRP

An inadmissible person's need to enter or remain in Canada must be compelling and sufficient enough to overcome the health or safety risks to Canadian society.

Officers must consider the factors that make the person's presence in Canada necessary (family ties, job qualifications, economic contribution, attending an event) and the intent of the legislation (protecting public health and the healthcare system).

Note: only IRCC can issue a TRP to victims of human trafficking, suspected victims of human trafficking, and victims of family violence.

Factors to consider

A TRP can be issued for up to three years. Will the TRP be valid for re-entry or for only one trip?		
Criminality	**Medical**	**Other**
• What was the seriousness of the offence? • Did the crime involve physical harm or violence? • What was the punishment received for the offence? • What are the chances of successful settlement without committing further offences? • Were drugs or alcohol involved? • Is there evidence that the person has been reformed or is rehabilitated? • Is there a pattern of criminal behaviour? • Is the person eligible for a pardon or rehabilitation? • How long has it been since the offence occurred?	• Is the person suffering from a communicable or contagious disease? • How severe is the person's anticipated need for health or social services in relation to the demand for these services by Canadian residents? • What is the cost of the treatment? • How will the costs be covered? • Will provincial public health insurers provide insurance coverage?	• Is this a first-time visit and is the person unaware of their inadmissibility? • Is there an economic benefit for Canadians if the person is coming for business reasons? • Is this an urgent family situation such as a funeral, wedding or other low-risk compassionate reason? • Is there a pattern of previous or multiple violations of the Act or Regulations? • Are there public controversial elements to the case that warrant a referral to National Headquarters? • Is there a settlement risk, as persons continuously on a TRP for a specified period of time will be granted permanent residence? • Are there any Indigenous cultural considerations?

15.5 GCMS remarks

When issuing a TRP, officers must enter detailed notes, a record of their decision and their recommendation (where applicable) in the Notes tab of the application in GCMS. These notes may be used in future applications, or in enforcement actions, therefore, the notes need to clearly explain the reasons for the decision to issue a TRP, and reflect that the decision was made in accordance with all existing policies and procedures. The detailed notes in GCMS must include:

1. The details and reason for seeking entry

    - Examples of the above should include: the destination, travel dates and the FN's overall reason for the trip (e.g. work, a family matter, a political meeting, etc.)

2. The allegation of inadmissibility

    - What section(s) of IRPA and IRPR apply, and describe how the FN is inadmissible;

    Note: If the allegation is based on criminality, the remarks must include:

        - The circumstances of each offence and the punishment that was imposed or could be imposed if committed in Canada, including all applicable dates.
        - The foreign criminal/penal code conviction(s) and its equivalent(s) in the Canadian statute in question; *

3. The officer's reasons for the decision to issue a TRP.
    - This is where the officer is required to explain why the issuance of a TRP is justified in the circumstances. Describe how the reason the FN is seeking entry, outweighs the risk presented by the FN entering and staying in Canada (the risk is based on the FN's inadmissibility) which is explained with examples above in 15.4.

    - Consider the following reasons:
        - economic contribution,
        - national interest,
        - personal reasons,
        - political visit,
          ministerial intervention;

4. How the duration of the TRP was determined, if the condition to confirm departure has been imposed and what risks have been taken into account in either granting or refusing re-entry.

5. Any available contact information for themselves and/or their Canadian reception (e.g. phone number, email, address of accommodation)

*Officers will encounter cases where the FN has admitted to having criminal convictions, but systems checks do not show the details, and the FN does not know exactly what they were convicted of and/or the foreign criminal/penal code is not accessible. In these cases, officers will have to determine through further questioning, what transpired in order for the FN to have been arrested/charged/convicted/etc. in order to determine the elements of the offence and to best equate the offence to the Canadian Criminal Code or other statute. (e.g. how much time incarcerated, was a fine paid, was community service ordered, etc.)

Important

- If the TRP has been approved by a designated authority, the name and position of that designated authority must be recorded in the GCMS notes. See IL 3 – Designation of Officers and Delegation of Authority
- If notes have been entered by any officer other than the examining officer, those notes must be prefaced by who is entering them and who they are being entered on behalf of (e.g. The following notes have been entered into GCMS by BSO R. Smith #12345 on behalf of Superintendent B. Hart #23456 who is the designated authority and decision maker in the issuance of this TRP.)

15.6 Public policy: Fee exemption for certain TRPs

Certain TRPs issued to FNs who are inadmissible are fee-exempt under public policy.

As of March 1, 2012, a public policy went into effect wherein **certain** FNs who are inadmissible under A36(2) are exempt (one time only) from the fee for a TRP.

The fee-exempt TRP may be considered only if **all** of the following conditions apply:

- The person was convicted of an offence, not including child pornography or any sexual offence, and received no term of imprisonment as part of the sentence imposed.
- There have been no other convictions or acts committed that would render the person inadmissible.

The fee exemption is available to those who meet the criteria even if they have been issued a TRP in the past.

Before issuing the TRP, officers must check GCMS to ensure the one-time fee-exempt TRP has not already been granted. Officers must also counsel the FN that they are inadmissible to Canada and that they are being facilitated with a one-time only fee-exempt TRP, that a

TRP is only issued in exceptional circumstances, and that they should apply for another TRP at a visa office if they wish to return to Canada in the future, or to apply for individual rehabilitation if they meet the requirements to do so.

On January 11, 2012, the Minister of Citizenship, Immigration and Multiculturalism approved a public policy that allows BSOs to grant an exemption from the TRP cost recovery fee for TWOV/CTP and emergency landing travellers from visa-required countries who find themselves improperly documented (A41) upon arrival in Canada through no fault of their own.

BSOs should make the validity of the TRP coincide with the FN's newly scheduled departure time.

BSOs issuing TRPs under these circumstances should include the following note in GCMS and on the document: "TRP fee exemption granted pursuant to *Fee Exemption for Temporary Resident Permits Issued to Foreign Nationals in the Transit Without Visa Program, the China Transit Program and Emergency Landing Situations.*"

For more information on the Cost recovery fee exemption for TRPs for A36(2), consult operational bulletin PRG-2012-34.

For more information on the Cost recovery fee exemption under the TWOV/CTP and emergency landing, consult operational bulletin OBO-2019-040 and IRCC's PDI on the subject.

15.7 TRPs issued in high-profile, complex, sensitive or contentious cases

The designated authority must inform the CBSA's Case Management and IRCC's NHQ mailbox by sending a brief email (red-flagged to indicate high importance) outlining the case details when they issue a TRP. Detailed remarks must always be included in the appropriate systems when TRPs are issued.

For more information on these cases, refer to IRCC's PDI on the subject.

15.8 National Interest TRPs

In the event that persons approved for a National Interest TRP (NI-TRP) are referred to Immigration Secondary, officers will note the special coding of the TRP (PAX-1) and the information in GCMS and allow the person to proceed as normal. The information in GCMS will indicate the details for the authorization of the TRP, **mainly that no TRP document will be given to the subject** at the POE, and that the holder of an NI-TRP counterfoil issued by the visa office does not require referral to Immigration Secondary at the POE for the sole purpose of processing the TRP.

If the holder of an NI-TRP is referred to Immigration Secondary, an email message should be sent to IRCC's Case Management Branch and the issuing visa office.

For more information on NI-TRP, please refer to IRCC OB 463.

15.9 Designated authority to issue a TRP

The designated authority to issue a TRP could be found in the Instrument of Designation and Delegation (IL 3) and is listed below:

BSO

- A36(2), Criminality
- A39, Financial reasons
- A40, Misrepresentation
- A41, Non-compliance
- A42, Inadmissible family member

Superintendent

- A36(1), Serious criminality
- A38, Health grounds

IRCC NHQ only

- A34, Security
- A35, Human or international rights violations
- A37, Organized criminality

Cancelling a TRP

- Certain CBSA officials have now been added to the list of persons who are designated by the Minister to cancel TRPs. Previously, only IRCC officials had this authority. For the complete list of persons designated to cancel a TRP, refer to item 106 of the IRCC Instruments of Designation and Delegation (D & D) Instruments.
- For more details, please refer to OBO-2019-042.

15.10 TRP file folder retention and storage

File folders should be stored in a secure cabinet for two years and then destroyed using an approved shredder.

15.11 Validity of TRPs

Pursuant to R63, a TRP is valid until any one of the following events occurs:

- the permit is cancelled by the delegated authority under A24(1);
- the permit holder leaves Canada without obtaining prior authorization to re-enter Canada;
- the period of validity specified on the permit expires; or
- a period of three years elapses from its date of validity.

15.12 TRPs valid for re-entry to Canada

BSOs should be aware that a TRP holder from a country where a visa is required with prior authorization to re-enter Canada may seek entry to Canada without having obtained a facilitation counterfoil [IMM 1346 counterfoil, coded PA-1 or PC-1] from a visa office. In these cases, the TRP holder is to be granted entry to Canada following a favourable examination for identity and admissibility. The fact that they obtained passage to Canada without the facilitation counterfoil (PA-1 or PC-1 counterfoil) does not render the FN inadmissible. However, a TRP holder, if not exempt under R52(2), will be inadmissible if they fail to produce a valid passport or travel document.

Note: For more information on TRPs, see IRCC's manual *IP 1* and *PDI*, *Temporary Resident Permits*.

16 Persons allowed into Canada by law

16.1 Persons under removal order who are refused entry to another country

A person subject to an enforceable removal order who leaves Canada, but is refused entry into the country they departed to and are subsequently returned to Canada, by force of circumstances, shall be allowed to enter Canada pursuant to R39.

Although a BSO at Immigration Secondary shall allow these persons to enter Canada, they continue to be subject to removal as the removal order remains unenforced as per R240(1)(*d*). The BSO should ensure that the person is in possession of documentation confirming that they have been refused entry to the country to which they were seeking entry. If there has been a lengthy delay between the person's departure and return, the BSO should investigate to ensure that the person has not been authorized to legally enter another country. It is reasonable to expect that the person should be returning to Canada on the next available flight from the country they had attempted to enter.

If the BSO is satisfied that the person was not legally authorized to enter another country, the BSO should counsel the person that they are still under a removal order and that the payment of a deposit, the posting of a guarantee or any conditions imposed remain in effect.

The BSO may impose new conditions or, without a warrant, arrest and detain the person, other than a protected person under A55(2), for removal if the BSO is satisfied that the person is a danger to the public or would be unlikely to appear for removal, especially if the person had been in detention prior to departure.

For more information, see *ENF 10*, *Removals*.

16.2 Persons with certificates of departure who are refused entry to another country

If a person has been issued *a Certificate of Departure* form [IMM 0056B] on departing Canada and is not granted entry to another country, the BSO at Immigration Secondary should cancel the Removal (*Certificate of Departure*) in GCMS and create a Note indicating that that the person was refused entry to that country and was allowed back into Canada pursuant to R39(*a*). The GCMS Notes should state that the person was not authorized to legally enter another country and has not met the requirements of the removal order. Therefore, the officer should ensure that there is an enforceable removal order in GCMS (a new removal order may need to be generated). The order remains outstanding and the person is still required to leave Canada. The BSO may consider whether detention is appropriate or whether the person can and will voluntarily effect their departure. The BSO should also notify the removal officer, if it was an Inland case, of the situation via email.

For guidelines on Certificate of Departure cases, see section 28 of *ENF 10*, *Removals*.

Seizure of documents

If the person is in possession of any travel or identity documents, the BSO should consider whether it is appropriate to seize the documents to facilitate their future removal from Canada. The documents would be forwarded to the office handling the removal.

See section 8 of *ENF 12*, *Search, Seizure, Fingerprinting and Photographing*, for procedures relating to the seizure of documents.

16.3 *Mutual Legal Assistance in Criminal Matters Act* (MLACMA)

Under R39(*b*), persons returning to Canada under a transfer order made under the *Mutual Legal Assistance in Criminal Matters Act* (MLACMA) shall be allowed to enter Canada. This applies only to persons who, immediately before being transferred to a foreign state under the transfer order, were subject to an unenforced removal order.

The MLACMA and treaties implemented under its authority are used by prosecutors, police agencies and other government investigative agencies responsible for the investigation and prosecution of criminal offences. Assistance provided on a reciprocal basis may include activities such as locating and questioning witnesses, obtaining search warrants, locating suspects and fugitives from justice, obtaining evidence, and transferring persons in custody for the purposes of assisting in investigations or testifying in criminal proceedings.

The MLACMA, proclaimed on October 1, 1988, enables Canada to implement treaties, signed with foreign states that oblige Canada to provide legal assistance in the investigation, prosecution and suppression of criminal offences. The Minister of Justice is responsible for the implementation of treaties and for the administration of the MLACMA.

The provisions of the MLACMA prevail over those of IRPA, except for statutes limiting or prohibiting the disclosure of information. The effect of the MLACMA and any treaties that flow from it on the CBSA's operations are limited to three areas:

- facilitating the transfer of persons at POEs;
- taking enforcement action against persons who are allowed to enter Canada for the purposes of mutual legal assistance and who violate any of the conditions of an authorization to enter Canada granted by the Minister of Justice; and
- exchanging information.

The MLACMA allows for testimony, in a foreign state, by officers who, during the performance of their duties, encounter persons wanted for crimes in a foreign state or involved in criminal activity. Requests for officers to testify in the United States are usually made by the Office of International Affairs, which is a branch of the US Department of Justice, to the Canadian Department of Justice. The appropriate course to follow in these cases is set out in the MLACMA, the Canada-United States treaty implementing this Act and the related government policies and procedures.

Officers who are called to testify should be aware of the *Privacy Act*, which prohibits the disclosure of personal information unless an international agreement or arrangement exists. There is also a Statement of Mutual Understanding on Information Sharing (SMU) between IRCC, the U.S. Immigration and Naturalization Service (USINS), and the U.S. Department of State (DOS), which allows participants to assist each other in the administration and enforcement of their respective immigration laws by providing information that might otherwise be prohibited under the *Privacy Act*.

Whenever possible, the Minister of Justice will provide notice to the responsible immigration representative, of the place, date and time of arrival of a person coming to Canada for the purposes of mutual legal assistance. The representative will in turn notify the POE concerned to ensure that a BSO is present to facilitate that person's movement through the POE.

Authorizations to enter Canada

Under section 40 of the MLACMA, the Minister of Justice has the authority to authorize an inadmissible FN to enter Canada.

A BSO at the PIL must refer for a secondary examination, any person seeking to come into Canada under the authority of an Authorization to Enter Canada, issued by the Minister of Justice of Canada.

Persons arriving at POE and seeking to come forward under an authorization signed by the Minister of Justice do not come within the jurisdiction of the CBSA. Such persons are not subject to normal passport and visa requirements, nor can a BSO examine them to determine admissibility or detain them.

Law-enforcement officers will always escort incarcerated persons from one institution to the other. Persons who are not incarcerated in a foreign state and who are coming to Canada in compliance with a request made by a Canadian investigative or prosecuting authority will be met at the POE by a police officer.

In both cases, the escorting officer or the police officer will present a BSO at Immigration Secondary with a copy of the authorization issued by the Minister of Justice. The authorization will indicate the person's name, citizenship, the destination, the specific period of time during which the person is authorized to remain in Canada and any additional conditions that the Minister of Justice deems appropriate [subsection 40(1) of the MLACMA].

The conditions may include reporting to an Inland office during the person's stay and may be varied by the Minister of Justice, particularly with respect to the granting of any extension of the time period for which the person is authorized to remain in Canada.

When a BSO at Immigration Secondary receives a copy of the authorization to enter Canada granted by the Minister of Justice, the BSO must forward it directly to the regional representative responsible for enforcement. The regional representative will ensure that the authorization is sent on for monitoring purposes to the responsible CBSA office in whose area the person concerned is authorized to stay.

A person who comes into Canada under an authorization of the Minister of Justice, and who fails to comply with the conditions set out in the authorization is deemed, for the purposes of IRPA, to be a person who entered Canada as a temporary resident and remains after the period authorized for their stay [subsection 40(3) of the MLACMA].

Assistance and information

An inadmissible FN who is unescorted may approach a POE claiming to be coming to Canada for mutual legal assistance purposes. If so, and if no police officer is on site to meet the person, the BSO should immediately contact the International Assistance Group, Department of Justice Canada, Ottawa, to request confirmation and advice before proceeding with the case (telephone: 613-957-4758 or 613-957-4768).

Information regarding persons arriving in Canada under the MLACMA is considered sensitive. Interception by unauthorized persons may endanger the safety of the escort officer, inmate or other persons. It is imperative that all information regarding these cases be transmitted through secure channels.

16.4 Court transfer orders

A Canadian court can make a transfer order at the request of a foreign state. The Minister of Justice may approve the transfer of a sentenced inmate from a Canadian prison to a foreign jurisdiction where the inmate is required to testify in a foreign court or to assist otherwise in the investigation of a crime. The transfer order specifies the name and citizenship of the detainee, the place in Canada at which the term of imprisonment is being served and the date on or before which the detainee is expected to be returned to the original place of confinement in Canada.

A BSO at the PIL must refer for a secondary examination any person seeking to come into Canada on a transfer order of a Canadian court who is returned to Canada for completion of their sentence.

Persons returning to Canada under the authority of a transfer order are subject to examination.

Officers must check GCMS and assess whether the person is already subject to IRPA enforcement and should provide all relevant information to the CBSA Inland Enforcement officer managing the case. If the person is not subject to IRPA enforcement, but may be inadmissible, officers should gather relevant evidence and forward it to an CBSA Inland Enforcement Office closest to the correctional facility.

For further details on managing persons serving a sentence and IRPA enforcement options, refer to *ENF 22*, *Persons Serving a Sentence*.

16.5 Persons extradited to Canada from countries other than the U.S.

When examining a person who is coming to Canada under extradition proceedings from a country other than the U.S., a BSO should obtain (at a minimum) the following information for control purposes, either from the person being extradited or from the person's escort:

Status	**Required Information**
Canadian citizen	☐ person's name ☐ proof of citizenship
Permanent resident	☐ person's name ☐ date of birth ☐ country of citizenship ☐ date permanent resident status in Canada was obtained ☐ place where the trial is to be held
Foreign national	☐ person's name ☐ date of birth ☐ country of citizenship ☐ place of permanent residence ☐ place where the trial is to be held

If the extradited person is not a Canadian citizen, a BSO should forward a memorandum containing all information relevant to the person's entry requirements (including a copy of a TRP, if applicable) to the CBSA inland enforcement office nearest the place where the trial is to be held, with a copy to the Director of Enforcement in that region.

17 Examining persons who may be medically inadmissible

17.1 FNs seeking entry for medical treatment

When evaluating temporary resident applications for medical treatment in Canada, BSOs need to assess both the health and good faith of the applicant.

If a FN has a medical condition that could pose a danger to the public health or safety of Canadian residents, the BSO will determine if the FN should submit to an Immigration Medical Examination (IME) to ensure their health condition does not render them inadmissible to Canada under A38(1)(*a*) or A38(1)(*b*). Once the medical exam is performed, the results are sent to IRCC Migration Health Branch (MHB) who will issue an opinion regarding potential inadmissibility under A38(1).

When requesting a medical admissibility opinion, CBSA officers will refer the request to IRCC.MHBIMPN-RITDMDGMS.IRCC@cic.gc.ca. The request must include the following information:

- Request is for an IRCC MHB opinion of medical admissibility under IRPA.
- Client details such as full name, DOB, POB, UCI, etc.
- A narrative articulating the nature of the request.
- Signed Medical Consent and Authorization form from the client to allow sharing of medical information with IRCC.

MHB will offer a medical admissibility opinion based on the information provided, normally within three business days. The medical admissibility opinion may be used as evidence to support an A44(1) report and subsequently a finding of inadmissibility under A38(1) at an admissibility hearing at the ID.

If an applicant is seeking medical treatment that would cause displacement on a waiting list for Canadians, the application should be refused under A38(1)(*c*).

Persons coming to Canada for medical treatment are expected to produce evidence of an agreement with the treating physicians and institutions that clearly indicates the medical condition being treated, the proposed course of treatment and arrangements for payment.

The person must satisfy the BSO at Immigration Secondary that all associated expenses, including travel and accommodations costs, will be discharged without resulting in any cost to Canadian health or social services.

Applicants who provide satisfactory evidence that they will pay the costs of their treatment (usually through an agreement with the Canadian treating physician and medical institution) and who meet all other requirements for temporary residence, do not require a TRP to enter Canada.

Where it is determined that the applicant's circumstances and ability to pay have changed since the letter of agreement was issued, the officer may ask for evidence that the care-provider in Canada is aware of the new circumstances and that payment arrangements are not affected.

A FN who cannot satisfy the BSO that they will be able to pay for medical services and treatment may be inadmissible under A39.

For additional information, see *ENF 5*, *Writing 44(1) Reports*, for more information on procedures for dealing with A44(1) reports on inadmissible persons. See also *ENF 2*,

Evaluating Inadmissibility, for more information on determining inadmissibility as well as *ENF 1*, *Inadmissibility*.

Pursuant to section 22 of the *Canada/Quebec Accord*, Quebec's prior consent is required with respect to foreign visitors entering that province to receive medical treatment.

Foreign nationals who are coming to receive medical care treatment in a Quebec public health facility must apply for and obtain a Quebec acceptance certificate (CAQ). There are no situations where a foreign national would be exempt of this obligation.

For more information on this exemption, please refer to section 2.3 *Programme de séjour temporaire pour traitement médical* of the *Guide des procédures d'immigration* of the MIFI (available only in French).

For information on FNs coming to Canada for the purpose of giving birth, please refer to IRCC guidelines.

17.2 FNs living with HIV/AIDS and the excessive demands criteria

It is IRCC's policy that persons with HIV/AIDS do not represent a danger to public health. Therefore, a FN with HIV/AIDS seeking entry into Canada would not, in the absence of contrary evidence, be inadmissible pursuant to A38(1) and the BSO would not normally request a medical examination based on concerns about danger to public health or safety. However, persons living with HIV/AIDS may be medically inadmissible if they have an associated medical condition that is considered a public health risk such as active tuberculosis.

Another concern is the excessive demand that may be placed on health or social services by any applicant experiencing severe or chronic illness. As with any other FN making application to enter Canada, persons with HIV/AIDS would not normally be expected to place a demand on health services. It is therefore departmental policy that a diagnosis of HIV/AIDS is not in itself a barrier to visiting Canada. When making a determination, BSOs should only consider whether it is likely that the person will require hospitalization during their visit. The carrying of medication used in the treatment of HIV/AIDS is not grounds for denying temporary residence.

18 Options for dealing with inadmissibility and incomplete examinations

A BSO at Immigration Secondary has a variety of options available when an examination cannot be completed or when a person is believed to be inadmissible.

18.1 Further examination

Situations or circumstances may arise where an adjournment is necessary to ensure a proper examination by a BSO in Immigration Secondary. For example, a BSO may require

an interpreter or additional documents, information or evidence to determine admissibility. The facilities may be inadequate or personnel may not be readily available to deal with volumes.

A23 authorizes a BSO to allow a person to enter Canada for the purpose of further examination or for an admissibility hearing. R43(2) clarifies that persons who are authorized to enter Canada for further examinations do not acquire temporary resident or PR status.

Mandatory conditions to be imposed

Where the BSO adjourns an examination under A23, R43(1) requires that mandatory conditions be imposed:

- to report in person at the time and place specified for the completion of the examination or the admissibility hearing;
- to not engage in any work in Canada;
- to not attend any educational institution;
- to report in person to an officer at a POE, if the person withdraws their application to enter Canada; and
- to comply with all requirements imposed on them by an order or regulation made under the *Emergencies Act* or the *Quarantine Act*.

Persons whose examination has been deferred and who fail to report as required for continuation of their examination may be subject to an arrest warrant for examination. It is therefore very important that officers consider all relevant information and gather contact information prior to issuing A23. Remarks in the *Examination's Notes* tab should be done without delay and explain the BSO's reasoning for furthering the examination. In addition, FNs may also be reportable for non-compliance under A41(*a*) and R43(*a*) and the MD has the competency to issue the applicable removal order under R228(1)(*c*)(i). The A44 report cannot be concluded until the person is encountered at some point in the future. Therefore, BSOs should send the file to their nearest Inland Enforcement Office once the warrant is issued.

For more details, refer to shift briefing bulletin 2021-HQ-AC-07-16.

18.2 Direction to leave Canada

R40 states that an officer who is unable to examine a person who is seeking to enter Canada at a POE shall direct the person in writing to leave Canada. This does not apply to protected persons or refugee claimants. The decision to direct a person to leave is applicable in cases where a person cannot be properly examined (such as physical impairment due to alcohol or drugs).

The BSO must serve a copy of the *Direction to Leave* form [BSF 503] on the person concerned and on the transporter who brought them to Canada.

The direction ceases to have effect when the person appears again at a POE and a BSO proceeds to examine the person.

Please consult the CBSA Wiki for GCMS functional guidance.

18.3 Direct back

R41 authorizes an officer to direct a FN seeking to enter Canada from the U.S. to return to the U.S. if:

- no officer is able to complete an examination;
- the Minister is not available to consider, under A44(2), a report made with respect to the person;
- an admissibility hearing cannot be held by the Immigration Division; or
- the FN is prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act*.

See section 18.4 of this manual on how and when to use the direct back policy for refugee claimants at land POE under exceptional circumstances.

The FN will be issued a *Direction to Return to the United States* form [BSF 505] document. The date and location of the examination, the Minister's consideration of the A44(1) report, the admissibility hearing, or when an officer will be able to examine their application to enter Canada once they are no longer prohibited from entering Canada by an order or regulation made by the Governor in Council under the *Emergencies Act* or the *Quarantine Act* are specified on the document.

A person who has been directed to return to the U.S. pending an admissibility hearing by the Immigration Division and who seeks to come into Canada for reasons other than to appear at that hearing, is considered to be seeking entry. If such a person remains inadmissible for the same reasons, and if a member of the Immigration Division is not reasonably available, the person may be again directed to return to the U.S. to wait until a member of the Immigration Division is available. In these circumstances it is not necessary to write a new A44(1) report.

The BSO at Immigration Secondary should bear in mind that time may be required by the person, to allow for travel to the location where they must appear before a member of the Immigration Division and that the circumstances may warrant authorizing the person entry, at an appropriate time in advance of the scheduled date.

BSOs should write detailed remarks without delay in the *Examination's Notes* tab in GCMS concerning the reasons for issuing a direct back.

Please consult the CBSA Wiki for GCMS functional guidance.

18.4 Direct back and refugee claimants arriving at the land POEs from the U.S.

All efforts should be made to process refugee claimants at the time of arrival. Refugee claimants may only be directed back to the U.S. under exceptional circumstances. In cases where a direct back must occur for an exceptional circumstance, approval must be obtained from Travellers Branch, National Headquarters. Also, the *Record of Direct Back* must be completed and emailed to the Border Operations Directorate, Travellers Branch pursuant to the instructions provided below. It should be noted that lack of interpretation services

should not be considered "exceptional" or used as the basis for directing refugee claimant back to the U.S. See section 8.4 of this manual for guidelines on telephone interpretation.

Procedures to be followed before directing a refugee claimant back to the U.S.

Before directing a refugee claimant back to the U.S., BSOs are to fully consider the following options:

- If a BSO is not readily available to take the claim, notify the superintendent that it may be necessary to request assistance from another POE or to call an officer in on overtime.
- Complete the Initial Refugee Claimant Assessment (IRCA) process to determine whether the claimant is low risk and may be authorized to enter for further examination.
- If the claimant is not considered to be low risk, the full refugee intake process should be completed.
- Detain the refugee claimant, if grounds exist. If arrangements cannot be made to conduct the front-end security screening examination and grounds exist, the claimant may be detained according to current detention procedures.

Decision to direct a refugee claimant back to the U.S. under exceptional circumstances

Exceptional circumstances are defined as situations where all of the procedures outlined above have been considered and where an examination still cannot be conducted. Exceptional circumstances could also include sudden or unexpected surges of people or a situation where the health, security or well-being of the refugee claimant would be significantly impacted and it would not be appropriate for the claimant to wait at the POE or be detained. In 2020-2021, this was the case due to the COVID-19 pandemic.

The direct back procedure should not be used in the case of an unaccompanied minor.

Direct back procedure for refugee claimants under exceptional circumstances

Once a BSO has determined that exceptional circumstances exist, the instructions for directing the claimant back to the U.S., pursuant to R41, are as follows:

1. The BSO must obtain approval from the POE Superintendent before directing a refugee claimant back to the U.S.
2. Approval must be obtained from the Duty Executive, Operations Branch, before allowing a direct back to occur. The Duty Executive can be contacted via the Border Operations Centre (613-960-6001).
3. The refugee claimant must be provided with a scheduled appointment to return to the POE to have their refugee eligibility examination completed.
4. The Refugee Claim Application in GCMS should be completed and a further examination event should be created reflecting the details and date upon which the claimant is scheduled to return to the POE.

5. The refugee claimant should be issued a *Direction to Return to the United States* form [BSF 505] stating the date, time and location of the scheduled examination and the claimant is to be advised accordingly. At the POE where local arrangements are in place or can be made, the BSO or Superintendent should seek assurances from the U.S. Customs and Border Protection that the claimant can be made available to return to Canada for their scheduled examination.
6. The BSO must complete the attached *Record of Direct Back Template* (Appendix C) for all refugee claimants that are directed back to the U.S. The template must be sent within one business day of the direct back or on the next business day for late arrivals with the subject line reading "direct back" to the following two email addresses:
    - OPS_TRAVELLERS-VOYAGEURS@cbsa-asfc.gc.ca
    - CBSA.Traveller_Immigration_Prog-Prog_immigration_voyageurs.ASFC@cbsa-asfc.gc.ca

18.5 Detention for examination

Pursuant to A55(3)(*a*), a PR or FN may, on entry into Canada, be detained if the BSO at Immigration Secondary considers it necessary to do so in order for the examination to be completed.

For detailed procedures on A55(3)(*a*), refer to *ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention.*

18.6 Allowing the withdrawal of an application to enter Canada

Allowing a person to withdraw their application to enter Canada is an option a BSO at Immigration Secondary has to permit a FN, whom the BSO believes is inadmissible or if the FN took a wrong turn and had no intention to come to Canada, to leave Canada.

If a BSO examines a FN seeking entry and the person is believed to be inadmissible, the officer may allow the person to voluntarily withdraw their application to enter the country and leave Canada.

Under R42, the officer who examines a FN who is seeking to enter Canada and who has indicated that they want to withdraw their application to enter Canada shall allow the FN to withdraw their application, unless R42(2) applies.

R42(2) provides that a FN shall not be allowed to withdraw their application to enter Canada where a report under A44(1) is being prepared or has been prepared, unless the Minister does not make a removal order or refer the report to the ID for an admissibility hearing. In other words, once an officer writes an A44(1) report, the allowed to leave option may only be exercised at the MD level.

Before writing an inadmissibility report under A44(1), officers should determine whether the objectives of the IRPA are better served by allowing the person to voluntarily withdraw their application to enter Canada pursuant to R42.

If a person is allowed to leave Canada voluntarily, officers should counsel the person as follows:

- inform the person why they are believed to be inadmissible;
- inform the person that if they leave Canada voluntarily, they will be free to seek entry to Canada once the factor causing inadmissibility has been overcome; and
- inform the person of the possible consequences of an A44(1) report, including the possibility of an admissibility hearing and/or a removal order being made against them.

If a person is allowed to leave Canada voluntarily, the officer or MD must give the person an Allowed to Leave Canada form (IMM 1282B).

R42(3) provides that FNs who are allowed to withdraw their application to enter Canada must appear without delay at a POE to verify their departure from Canada.

Sometimes a person who is being allowed to withdraw their application to enter Canada is authorized to enter Canada pursuant to A23 when a flight is not immediately available to affect their departure.

No matter the situation, BSOs should write detailed remarks in the *Notes* tab of the Examination in GCMS without delay.

R37(*c*) provides that the examination of the FN ends only when the officer verifies their departure from Canada.

Please consult the CBSA Wiki for GCMS functional guidance:

- Allowed to Leave Canada by MD
- Allowed to Leave Canada by Officer

19 Examinations that may lead to prosecution

Immigration examinations relate to admissibility and, for the most part, the infractions identified during this process result in enforcement actions leading to removal. During the examination, BSOs may encounter serious offences that may warrant further investigation for the purposes of a criminal prosecution. It is important that BSOs are aware that the admissibility determination process does not include gathering evidence as part of a criminal investigation.

This section also addresses the arrest of Canadian citizens who are found to have committed an offence under IRPA.

19.1 Procedures

The BSO must make a determination of admissibility. In order to make a determination, BSOs collect information under the regulatory examination process. After the admissibility decision has been reached and if the BSO suspects a criminal offence under A117 to A131 has occurred, the officer must advise the person of their rights under the *Charter* and caution them before proceeding with any further examination including questioning the individual. Criminal Investigations Division (CID) should also be contacted before further examination.

Generally, if information is lawfully collected for the purpose of an admissibility examination, that information can be subsequently used as part of a criminal investigation or prosecution. The BSO must ensure they can clearly articulate to the court when the information was obtained for the regulatory purposes to make the determination of admissibility and when the officer started to examine further for evidence of a potential criminal offence while ensuring the individual's rights were not violated. The officer must be able to articulate how each question asked is relevant to their role in making an admissibility determination and that the individual was advised of their rights under the *Charter* and was cautioned once the BSO believed a criminal offence had occurred. Failure to do so can have a negative impact on the outcome of the case. For this reason it is imperative that the BSO take detailed notes. This is particularly important if the person willingly provides information after being cautioned.

In accordance with any accepted local procedures, and in consultation with their superintendent, BSOs should continue to use their discretion in deciding when to refer a case to the CID or local police for investigation but they must also be aware of the potential consequences of continuing an examination after the administrative process is complete and once a criminal offence is suspected. When in doubt, it is best to advise the individual of their rights and caution them regarding making any statements to protect the admissibility of those statements should the case end up being referred to CID.

Refer to section 4.1 of this manual for legislative powers and authorities to examine and seize.

19.2 *Criminal Code* offence discovered by a designated officer

Subsection 163.4(1) of the *Customs Act* authorizes the President to designate any officer for the purposes of Part VI.1 of the Act; this authority is usually delegated to the Regional Director General. These officers are referred to as "designated officers". Subsection 163.5(1) of the *Customs Act* states that a designated officer, when at a customs office and performing the normal duties of an officer, or acting in accordance with section 99.1 has, in relation to a criminal offence under any other Act of Parliament, the powers and obligations of a peace officer under sections 495 to 497 of the *Criminal Code*, and subsections 495(3) and 497(3) of that Act apply to the designated officer as if they were a peace officer. It should be noted that this does not apply to criminal offences under the *Customs Act* or the *Immigration Refugee Protection Act*, as the expanded authorities under subsection 163.5(1) of the *Customs Act* are not required for an officer to arrest for offences under those Acts.

As soon as a designated officer has reasonable grounds to believe that a person has committed an offence under the *Criminal Code* or any other Act of Parliament, the examination under IRPA is to be temporarily suspended.

A superintendent should be consulted immediately. The CID, the police agency of jurisdiction or the Regional Intelligence Officer must also be contacted for further guidance as soon as possible. The officer may arrest the individual in accordance with section 495 of the *Criminal Code*. The detainee must be immediately advised of their right to retain counsel and cautioned regarding making statements. PRs and FNs are also to be informed of their right to have the nearest representative of their government notified of their arrest and detention as per the *Vienna Convention*.

The immigration examination resumes once the person is released and taken to a CBSA officer. For further information, refer to sections 19.5 and 19.6 below.

19.3 Arrest and caution

Subject to the limitations set out in subsection 495(2) of the *Criminal Code*, the person may be arrested under subsection 495(1) if there are reasonable grounds to believe he or she has committed an offence. The individual must then be promptly informed of the reasons for the arrest and of the right to retain counsel as well as be cautioned regarding making statements. PRs and FNs must also be informed of their right to have the nearest representative of their government notified of their arrest and detention as per the *Vienna Convention*. Refer to the *CBSA Enforcement Manual*, Part 6, Chapter 1, *Arrest and Detention* for the policy and procedures.

19.4 Canadian citizens

On rare occasions, evidence of a Canadian citizen committing an offence under IRPA will be uncovered at the POE. Should the BSO decide to proceed with an arrest, they are to caution and arrest the Canadian under the authority of subsection 495(2) of the *Criminal Code* as noted in section 19.3 of this manual.

19.5 Note-taking

As officers may be required to provide testimony in court proceedings several months after a referral to the CID or police has been made, diligent note taking is essential to establish why certain actions were taken and what the predominant purpose of the officer's actions was at the time. It is important to note that it is the court's interpretation of the BSO's testimony of the events supported by the notes that will determine whether the information/evidence obtained during the administrative process is admissible in court. Therefore, notes should include the events leading to the referral to CID or the police and the time the person was placed under arrest and advised of their rights and cautioned. Comments and statements made by the subject must be recorded verbatim. Notes must also identify the officers and superintendent involved in the case, including those implicated in the chain of custody.

The chain of custody, or continuity of evidence, must be ensured in order to meet the rigorous evidentiary standards applied in criminal courts. Material evidence should be removed from the person's possession and taken into custody immediately upon detection. The seized evidence must be kept in view and under the control of the officer. When an assisting BSO watches over goods or evidence, this officer becomes part of the chain of custody and could be called as a witness: therefore, the assisting BSO should also maintain notes. Refer to the *CBSA Enforcement Manual*, Part 8, Chapter 1, *Notebooks*, for more information regarding the CBSA officers' policy for use of the notebooks.

19.6 Completing suspended examinations of FNs (refer to section 19.2)

A BSO may encounter circumstances where it is appropriate to suspend the immigration examination to allow a criminal process to proceed. The subject will be placed under arrest for the offence and advised of their rights and cautioned. The BSO must also issue a warrant for arrest pursuant to A55(1) with a Warrant for Arrest form [BSF499] and an *Order of the*

Canada Border Services Agency to Deliver Inmate form [BSF498] pursuant to A59 in order to ensure that the examination is completed once the person is released after the criminal proceedings. Inland Enforcement Investigations must be informed to ensure effective follow up.

For additional information, please refer to *ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention.*

20 Unauthorized border crossings

A BSO who becomes aware that a person is attempting an unauthorized border crossing should first notify the RCMP or police of jurisdiction. The primary responsibility for patrolling between the border rests with the RCMP. The CBSA Investigations Division should also be notified.

Officers shall not attempt to stop persons fleeing to or from Canada in high-risk situations (e.g. to establish roadblocks to stop port runners or to participate in vehicle pursuits). In these situations, officers are required to ensure that officer and public safety is maintained (e.g. open a lane and clear traffic from the area).

Some points to remember are the following:

- BSO should not attempt to investigate an unauthorized border crossing and should refer the unauthorized crossing to CID.
- BSOs shall follow the provision of the CBSA Directive on Use of Force and Reporting and the CBSA SOP on Use of Force and Reporting, when they believe that the use of force is justified in the course of administering or enforcing Program Legislation.
- BSOs who are trained and certified in defensive tactics and are in possession of defensive equipment are expected to manage situations up to such point that the BSO believes that the limit of their training and personal abilities has been attained. Where these limits have been reached, the BSO shall permit the individual to proceed into Canada and immediately notify the police force of jurisdiction.
- BSOs should use communication equipment to keep in contact with the POE, should they require assistance.
- BSOs may consider requesting that the CID lay changes under A124 if an investigation determines that a person has eluded examination or entered Canada by improper means.
- If the BSO has sufficient information relating to the identity of the person who failed to appear for examination (e.g. examination started but person left POE before end of examination), and the person is a foreign national, BSO should also issue an immigration arrest warrant for examination.

21 Media Cases

When high-profile, contentious or sensitive cases are identified or are in the national media, BSOs must follow the procedures outlined below to inform NHQ.

1. Inform and consult the immediate superintendent once it is suspected that the case meets the criteria of a high-profile, contentious or sensitive case.

- More information on the types of cases that are potentially high-profile is available on IRCC's Handling high-profile, complex, sensitive or contentious cases page.
- Superintendents are also to report significant events, as outlined in the Incident Reporting Criteria, to the Border Operations Centre (BOC) while respecting regional reporting protocols that are in place.

2. Inform NHQ by sending an email that includes
   - "**High-Profile Case**" followed by the subject's last name and given name in the subject line.
   - The applicant's name, date of birth, file number and/or client identification number (if applicable).
   - A case chronology, including case-specific details and a summary of the reason(s) the case is, or has the potential to be, high-profile.
   - Any action taken or recommendations to resolve the case (if applicable); and
   - Any other pertinent information.
   - The following **distribution list**:
     - Immigration Program Manager (overseas cases) or manager or supervisor (inland cases);
     - NHQ-NAT-High-Profile-Haut-profil@cic.gc.ca (which includes NHQ-Communications-Cases@cic.gc.ca ; the current Director General and Senior Director of Case Management Branch and the Office of the Assistant Deputy Minister);
     - Case-Management, CBSA-NHQ case-management@cbsa-asfc.gc.ca
     - Nat_National_Security_Coordination@cbsa-asfc.gc.ca; and
3. Use the Single Reporting Tool (SRT) to report a significant event to the BOC and follow up, as necessary, to keep information up to date and ensure case notes are detailed and able to feed into briefing documents, if required.
4. Refer any communication-related responsibilities to NHQ Communications. Any cases that have implications in Canada (including those cases that initiate overseas) also need to be coordinated with Communications in the affected region.

22 Disembarkation and Roving Teams (DART)

22.1 DART overview

Disembarkation screening refers to the rapid verification by BSOs that airline passengers possess travel documents. Under A15(3), an officer has the authority to board and inspect a vehicle and to examine and record documents carried by a person on board a vehicle.

The purpose of screening disembarking passengers is to identify and segregate persons not in possession of passports or travel documents from the normal flow of passengers. In addition, inadmissible travellers who may pose a risk or who are otherwise inadmissible can be identified through intelligence-based indicators such as identified trends, lookouts and Advanced Passenger Information/Passenger Name Record (API/PNR) information received from the National Targeting Centre's (NTC) Targeting Travellers unit (TT).

Disembarkation screening also enables a BSO to identify which airline has carried an improperly documented passenger to Canada and ensures that the CBSA can levy administration fees and removal costs against a liable transporter. When two international flights arrive within a brief period of time, for example, passengers from each flight may

intermingle at the PIL. This can make it difficult to determine which carrier brought an improperly documented passenger to Canada and to properly assess liability.

On-board inspections, disembarkation screening, pre-PIL roving and post-PIL activities are part of the examination continuum. At these preliminary checks, the DART officer does not do a full examination and does not make a decision to authorize or deny entry. Instead, the officer verifies that a passenger has the necessary documentation and refers undocumented and suspected inadmissible persons to Immigration Secondary for an in-depth examination. This does not usurp the authority of the PIL as DART referrals do not bypass the PIL.

22.2 DART mandate and objectives

As a part of the CBSA's mandate to manage access to Canada, the mandate of DART is to increase the CBSA's capacity to:

- identify improperly documented or otherwise inadmissible FNs;
- associate improperly documented FNs to commercial transporters to promote compliance with the CBSA's administrative programs;
- identify and interdict individuals who pose a threat to the health, safety and security of Canada including persons who pose a security threat, serious criminals, human smugglers, human and international rights violators, and persons engaged in trans-national organized crime; and
- analyze and contribute to the intelligence pool on illegal migration trends and patterns.

The objectives of DART are to:

- use intelligence, trend and statistical analysis and other innovative passenger assessment techniques (i.e., API/PNR referrals) to improve secondary examination referrals;
- identify, intercept and control passengers who pose a danger, security threat, or are a flight risk;
- monitor and promote transporter compliance by linking undocumented persons with transporters;
- assist in the collection of evidence for immigration admissibility reports and prosecutions;
- assist in the collection, analysis and dissemination of intelligence related to travel routes used by illegal migrants and smuggling networks;
- promote cooperation, coordination and the exchange of information with partner agencies;
- maintain a professional, responsive and visible presence to deter inadmissible persons from entering Canada; and
- remove fraudulent documents from circulation thereby preventing their future fraudulent use.

22.3 DART activities

DART activities can vary from one POE to another due to operational requirements, differing priorities and other considerations. Specific DART activities can include:

- inspection of airline passengers for possession of passports and travel documents and required visas;
- searches of aircraft for discarded or hidden documentation;
- searches of Customs Controlled Areas (CCA) for discarded or abandoned documentation;
- seizure of documents;
- roving in designated CCA to detect human smugglers and persons discarding documents;
- completing certain examinations and case files on high-risk cases such as suspected human smugglers;
- compilation and maintenance of intelligence data, statistics and daily logs;
- internal information-sharing within the CBSA (local office, other POEs, Criminal Investigations intelligence offices, overseas liaison officers [LO]);
- external information-sharing (Royal Canadian Mounted Police (RCMP), Global Affairs Canada (GAC), Office of the Solicitor General, airlines) depending on specific agreement with each partner;
- targeting and passenger assessment of flights;
- establishing transporter liability;
- interviewing passengers at Immigration Secondary;
- collection and analysis of officer case notes;
- GCMS and ICES searches/queries;
- use of internal communications systems; and
- analysis of statistical and other relevant records.

Although DART officers are BSOs, their primary function is to perform DART activities. When circumstances permit, however, or when a superintendent requires emergency support, DART officers should offer their assistance to the on-site superintendent.

For more information on the Customs Controlled Areas, please refer to *CBSA Enforcement Manual* part 6, chapter 9.

Minimal delay to travelling public

Disembarkation screening by DART teams should be completed as quickly and efficiently as possible. To ensure that the *bona fide* travelling public is not unduly disrupted or delayed, the POE superintendent should ensure that an appropriate number of officers are assigned to screen passengers, taking into consideration the different sizes of aircraft and passenger volumes.

22.4 Intelligence-based targeting of airline flights

DART officers propose and confirm flights to be screened with their on-site superintendent based on tactical intelligence identifying flights and persons of interest to the CBSA. Determining which flights to target for disembarkation screening is based on the following:

- lookouts and intelligence information;
- advance passenger information received from NTC's TT unit;
- trend analysis;
- flights of heightened interest to the CBSA;
- point of embarkation;

- number of passengers on board;
- size of the aircraft;
- estimated time of arrival of the next flight to be monitored; and
- number of officers available to conduct disembarkation checks.

While all carriers should be the target of periodic disembarkation screening, those carriers with a history of carrying undocumented passengers may be subject to more frequent screening.

Specific case information is received and analyzed by DART teams through:

- in-person client interviews at Immigration Secondary;
- officer case notes;
- FOSS history checks, GCMS searches and SSI reports;
- reports provided by the CBSA's Immigration Intelligence Branch;
- statistical reports;
- liaison officers located around the world who provide information on illegal migration and smuggling trends;
- NTC's TT officer that provides API and PNR information on arriving passengers; and
- other agencies such as the RCMP.

In a reciprocal manner, DART officers contribute to the intelligence pool with trend and illegal traffic information that is used by the liaison officer network to interdict inadmissible travellers abroad and deny them boarding on flights to Canada. Information gathered from DART intercepts is entered in the Support System for Intelligence (SSI) that is used by the CBSA's intelligence officers in Canada and abroad to monitor and analyse illegal migration and human-smuggling trends. Additionally, DART officers ensure that suspected human smugglers and others in possession of fraudulent documents are referred to the CID. Cases of potential human trafficking should be referred to the CID and Intelligence for further investigation and liaison with partners.

Intelligence support

The DART officers provide an integral operational link within the CBSA's intelligence and liaison officer networks overseas. These are major resources for DART teams and can provide valuable assistance in identifying human smuggler routings. The two-way exchange of information also provides the opportunity to interdict inadmissible persons abroad and deny them the opportunity to board flights to Canada.

Regional intelligence officers can provide a variety of services, which may include:

- document examination training;
- document analysis;
- emerging trend information; and
- SSI analytical reports.

Liaison officers are located in key locations around the world and play an integral part of the screening, identification and interception of improperly documented persons trying to enter Canada. Together with DART officers, they form part of the continuum of the passenger assessment process that begins abroad and continues on arrival in Canada. They are both key elements in Canada's multiple-border strategy.

API/PNR liaison

NTC's Targeting Travellers unit uses advance passenger information to identify known inadmissible persons and passenger name records analysis to assess individuals who may pose a potential risk prior to their arrival in Canada. This enables DART officers to use their limited resources more strategically to target flights and persons of interest.

This is key to the intelligence-based targeting of flights by DART officers. While NTC's TT unit provide strategic information about the arrival of persons linked to terrorist organizations, criminal activity and other factors that render them inadmissible, DART acts on this intelligence information to intercept inadmissible persons immediately on arrival. Passengers who pose security or flight risks can be quickly intercepted and maintained in a controlled environment pending their examination.

22.5 DART procedures

Notification to partners

With as much lead time as possible and in accordance with local procedures, DART officers should notify partners such as Transport Canada and RCMP officials of the flights they intend to screen and of other pre-PIL roving activities.

Pre-disembarkation procedures

DART officers should verify that proper communication (i.e., radio contact) has been established with the on-site superintendent before leaving the office to perform disembarkation checks. Superintendent should remain in continual contact for updates, emergencies and requests for assistance.

Boarding flights and gate checks

DART officers should, whenever possible, be gate-side at least five minutes before the flight's scheduled arrival time.

DART members will then make a final decision as to which level of disembarkation check is to be performed. The airline representative must be advised of the level of disembarkation.

Furthermore, a request should be made to the airline to ensure that an announcement is made on board the flight to prepare the passengers (levels I and II only). This announcement should clearly indicate to passengers that the CBSA will be doing a check to ensure that they possess the necessary documentation to enter Canada and that they should have their documentation ready for presentation. Only then will the disembarkation screening proceed.

Document screening is conducted on board the aircraft, at a point as close to the exit of the aircraft as possible, or wherever else deemed appropriate by the DART officer. Normally, officers will proceed down the aisle and allow passengers whose documents have been verified to leave the aircraft.

When boarding flights and conducting gate checks, DART officers should be mindful of the fact that they are in an excellent position to pass information along to the officers at the PIL. If a DART check of a passenger does not turn up any immigration concerns, but strong indicators are present that the particular traveller may be of interest to Customs, DART officers should make every effort to inform the officer at the PIL or an officer at Customs Secondary examination of these indicators to assist them in completing their examination.

Level I (boarding the flight): A minimum of two officers is required to do a check at this level.

DART members will conduct level-one disembarkation checks in the following manner:

- in a two-aisle aircraft, officers should stay parallel to each other in their respective aisles while doing document checks;
- in a single aisle aircraft, at least one officer checks documents on the left side of the aircraft and another officer, in single file with all other officers, completes the right side of the aircraft; and
- in a Boeing 747, at least one officer proceeds to "the bubble," while another officer checks documents of the passengers in first class. Once those sections have been completed, officers then proceed to economy class. It is preferable that at least three officers check this type of aircraft.

The officers inspect passports, travel documents and visas for authenticity. If any concerns arise regarding a particular document, the document may be held for further examination. If a person is suspected to be improperly documented, without documentation or otherwise inadmissible, they will be instructed to remain seated, and their documents will be held. In this instance, the flight attendant should be approached to determine if the passenger is travelling alone. If confirmed, the disembarkation check can be resumed. If another person accompanied the passenger, the documents of that passenger should be held as well. A request can be made to the flight attendant to ensure that the passenger and their travelling companion(s) remain seated until the completion of the check.

Airlines may be requested to hold persons on board an aircraft under the authority of A148(1)(*b*) and R261.

After the disembarkation check has been completed, the officer will:

1. search the improperly documented passenger's seat, any companion's seat and the immediate vicinity, including washrooms, to locate any documentation that may be hidden or discarded;
2. determine if the passenger is sitting in their originally assigned seat. If the person is not in their originally assigned seat, search that area as well;
3. complete a BSF 453 form confirming the passenger's presence (see section on improperly documented passengers below for procedures on completing the BSF 453 form); and
4. inform the flight director or crew of the conclusion of the check and thank them for their assistance.

Upon completion of the disembarkation check, DART members will:

1. escort the improperly documented arrival (IDA) to the crew counter in the PIL area so that the BSO at the PIL can complete the primary examination;
2. once the primary examination is complete, escort the IDA to Immigration Secondary; and
3. surrender any documentation and provide details of the case to the on-site superintendent .

DART members will not be obligated to report any individuals, but when circumstances allow, DART officers will offer their assistance to the superintendent .

If no passengers require an escort, but documents have been held, DART officers will proceed to the Immigration Secondary examination area as soon as practicable to explain the rationale for the seizure. If no documents have been held and there is no one to be escorted, team members can proceed directly to the next flight.

Level II (gate screening): A minimum of two officers is required to do a check at this level.

DART members will conduct level-two disembarkation checks in the following manner:

- stand facing each other in the area where the boarding finger meets the terminal building so that the disembarking passengers must pass between the officers; and
- confirm that each person has a passport, or other required documentation.

If a passenger presents satisfactory documentation, the officer will allow the passenger to proceed to the PIL.

Depending on the circumstances, the officer may instruct the passenger to wait in an area in plain view of at least one officer or continue to the PIL if one of the following situations occurs:

- a passenger is not in possession of any travel documents; (in this instance, the flight attendant should be approached to determine if the passenger is travelling alone and to confirm their seat number. A document search should be conducted as in level I);
- the officer is not satisfied with documents presented; or
- the officer suspects the person to be inadmissible for any other reason.

DART members will hold the document and, in the latter case, the passenger may be given a receipt. If required, officers may ask for the assistance of airline personnel to maintain visual contact with those persons instructed to wait.

Upon completion of a disembarkation check, DART members will:

1. escort the IDA to the crew counter in the PIL area so that the BSO at the PIL can complete the primary examination;
2. once the primary examination is complete, accompany the IDA to Immigration Secondary; and
3. surrender any documentation and provide details of the case to the on-site superintendent.

DART members will not be obligated to report any individuals but, when circumstances allow, DART officers will offer their assistance to the superintendent.

If no passengers require an escort, but documents have been held, officers will proceed to Immigration Secondary as soon as practicable to explain the rationale for the seizure. Holding documents during the course of an examination does not constitute a seizure action. If the person is to depart the POE without their document (i.e. A23) or go into detention, then it becomes a seizure and a BSF698 *Notice of Seizure of Travel and/or Identity Document(s)* must be completed.

If no documents have been held, and there is no one to be escorted, team members can proceed directly to the next flight.

Level III (flight observation): A check at this level is performed when only one officer is available.

This type of disembarkation screening is usually completed for low-risk flights, or when flight-arrival times are scheduled close together. This level of screening should also be considered when staffing levels prohibit officers from doing a level I, or level II disembarkation check or, in a special circumstance, where surveillance is required.

DART members will conduct this level of disembarkation check in the following manner:

1. Arrive at the gate five minutes prior to the estimated time of arrival of the flight.
2. Inform the airline representative at the gate that an officer will be observing the flight and will not be requiring passengers to present their passports as they disembark the aircraft. Also, they should specify that no announcement to the passengers should be made.
3. Position themselves at a suitable distance, while ensuring that there is a clear view of the passenger flow from only the targeted flight.
4. While observing the passengers, officers make suitable notes with regards to passengers who may be of interest to Immigration Secondary, and those accompanying them.
5. Officers may ask individual passengers for documentation if there is a strong suspicion that they may have improper documents, or no documents at all.
6. Generally, it is most beneficial to follow the passengers down to the PIL area. This will allow officers the opportunity for further observation and may prevent the destruction or discarding of documentation in garbage containers or washrooms.
7. If DART members are not proceeding directly to the Immigration Secondary area, they should inform the on-site superintendent of the outcome of the disembarkation. If required, DART members should relay any observations, their location and, if required, request assistance.
8. At the earliest convenient break in disembarkation checks, go to the Immigration Secondary area to link any identified improperly documented arrivals with the carrier used to convey them to Canada, referring to the notes taken while observing the disembarkation.
9. If an undocumented passenger who the DART officer observed disembarking a flight is encountered in the Immigration Secondary area, the DART officer should complete a BSF 453 form in accordance with procedures. If it is not practical to complete a BSF 453 form, the DART officer shall complete a statutory declaration as soon as possible.

Upon completion of all necessary paperwork, DART members may now advise the on-site superintendent and proceed to the next flight planned for disembarkation.

Roving DART activities

In addition to boarding flights and conducting gate checks, DART officers conduct roving exercises in the Customs Controlled Areas (CCA) area to identify other irregular activities such as the destruction or handing of documents to an escort or smuggler. DART officers engaged in pre-PIL roving may ask a BSO at the PIL for a specific person to be referred to Immigration Secondary. All DART referrals must pass through the PIL before being sent to Immigration Secondary. DART officers may engage in post-PIL activities when they have targeted suspected human smugglers or other suspected inadmissible persons when new information has come to light after the passenger has cleared the PIL.

Improperly documented passengers

If an improperly documented passenger is encountered, the officer should complete a *Confirmation by Transporter Regarding Passenger(s) Carried* form [BSF 453] at the earliest opportunity, either during disembarkation screening or as soon as the passenger has been escorted to the PIL and to the Immigration Secondary area. The local airline representative is also required to sign the form. If the representative refuses to sign, the DART officer should place a note on the form accordingly. If it is not practical to complete a BSF 453 form, the DART officer shall complete a statutory declaration stating which flight the IDA disembarked and outlining details about the lack of documentation.

Since passengers normally have documents at the time of boarding, it is possible that improperly documented passengers have hidden or destroyed their documents en route. Undocumented and other inadmissible passengers identified by DART must be presented at the PIL for completion of Customs' procedures and then escorted to the Immigration Secondary area for a complete examination.

Once IDAs have been identified, the DART member must ensure that:

1. The appropriate areas of the aircraft are searched for documentation.
2. The flight attendant and IDA have been queried as to any accompanying travellers;
3. An airline representative has signed a BSF 453, when possible, for the passenger's arrival on their airline, and thanked for their assistance.
4. Should a disembarkation check be performed and IDAs not be identified until their arrival in Immigration or Customs Secondary, a request can be made to the airline staff to visually identify that person and sign the BSF 453 form confirming their presence on their flight. Airline personnel cannot be compelled to sign a BSF 453 form. If airline personnel refuse to sign the BSF 453 form, a note should be made on the form accordingly. If it is not practical to complete a BSF 453 form, the DART officer shall complete a statutory declaration form [IMM 1392B].
5. The passenger is escorted, if necessary, to the Immigration Secondary area only after they have cleared the PIL and the on-site superintendent is informed.
6. The CCA are checked for possible smugglers.

Reporting improperly documented passengers

In all cases where an improperly documented person has been detected, a BSO should:

- create a physical file ensuring that all secured documents are placed in the file;
- take a photograph and fingerprints of the person and place copies in the file;
- place copies of any documents found in the person's possession in the file;
- ensure that the passenger, their carry-on luggage and their checked luggage are searched for documentation;
- obtain a flight manifest when possible;
- clearly make a note on the file to indicate whether disembarkation screening has been done so that the person entering SSI data may check "yes" in the disembarkation-screening field; and
- when entering SSI, check "yes" when asked "BSF 453 completed", if applicable or advise person entering SSI to do so.

Note-taking

DART officers should make note of the date, time and flight number in their notebooks or DART logs and record any information that may be relevant to the examination or prosecution of passengers. Keeping a written record of this information may be useful if the officer is later called to testify in court. More information on officer note-taking is available in *ENF 7, Immigration Investigations and IRPA s. 55 Arrest/Detention*.

22.6 Communication and cooperation with partners

Within the CBSA

The CBSA airport staff should keep one another, as well as their regional and national headquarters, informed of DART developments. All such communications should be maintained on the master regional and/or national headquarters' file.

With partners

The CBSA should consult Transport Canada, the RCMP and airline representatives at the POE regarding any changes to disembarkation screening procedures that affect the configuration or operation of local facilities. Good communication among partners is essential to ensure cooperation and to minimize disruption of airport operations and delays to passengers.

DART officers should provide feedback to agencies and individuals who have initiated a DART action, while keeping in mind privacy legislation. This would include timely updates and outcomes from referrals, lookouts or general information that was provided to the DART team. DART officers are encouraged to participate in orientation sessions with partners to further their understanding of the requirements of IRPA and its Regulations and to promote cooperation and the exchange of information. DART officers should be vigilant for opportunities to engage partners and participate in joint activities that would promote understanding and cooperation.

With the CBSA Immigration and Customs Enforcement Team (ICET)/ Flexible Response Team (FRT)

The CBSA has Immigration and Customs Enforcement Teams (ICET), also known as Flexible Response Teams (FRTs), that occasionally operate pre-PIL in a manner similar to the CBSA's DART teams. Both DART and ICET/FRT report to the Enforcement Division, which is run by the Chief of Enforcement Operations. DART and ICET/FRT should make every effort to communicate on a daily basis to enhance the understanding of each other's activities and to coordinate the targeting of flights whenever possible. While DART and ICET/FRT have different mandates and often target different flights, occasionally it will be operationally beneficial for both teams to target the same flights. In these instances, both teams are required to coordinate their activities to enhance effectiveness and to minimize delays to the travelling public. Among other things, ICET/FRT officers can assist with document verification and the search for documents aboard aircraft.

With airlines

It is essential that carriers understand and support disembarkation screening. POE superintendent should initiate and maintain frequent communications with local airline managers and clearly explain the purpose, procedures, and legislative foundation for disembarkation screening.

22.7 Suspected human smugglers

DART officers must accompany any suspected human smugglers to the PIL, then to the Customs Secondary area for a thorough search. DART officers should identify themselves to the BSO at the PIL and have the suspected human smuggler referred to both Immigration and Customs Secondary areas.

If evidence of human smuggling is discovered, the DART officer should immediately contact the Criminal Investigations Division. The DART officer should then escort the person to Immigration Secondary for an immigration examination to determine citizenship and admissibility.

If no evidence of human smuggling is discovered, the DART officer should accompany FNs to Immigration Secondary for examination to determine admissibility. Where the person provides satisfactory verbal or documentary proof that they are a Canadian citizen, the BSO authorizes the person to enter Canada at that point. It is not necessary to refer Canadian citizens to Immigration Secondary if the BSO is satisfied that they have that status. Documentation may be photocopied at Customs Secondary if necessary for further investigation or intelligence purposes.

DART officers should notify their superintendent of all cases of suspected human smuggling and forward the case information to their Criminal Investigations office and regional intelligence office.

22.8 Potential prosecutions

DART officers are instrumental in identifying and gathering evidence to prosecute human smugglers and traffickers. DART officers can play a key role in identifying, documenting, assessing, referring and assisting the RCMP or CBSA Criminal Investigations (depending on the charge) in the laying of charges under IRPA and the *Criminal Code*.

When there is a concern that charges should be considered, the BSO and/or the CBSA Enforcement Division should ensure that the CBSA Criminal Investigations and Intelligence are contacted and provided the details of the case. If the RCMP or CBSA Investigations conducts an investigation, the BSO and/or Enforcement Division should notify their superintendent or supervisor immediately.

BSOs must be familiar with the heightened evidentiary requirements for prosecutions. Documents for a criminal charge must be transferred and secured in a manner that is consistent with the *Canada Evidence Act*.

Chronicled statements must comply with the *Canadian Charter of Rights and Freedoms*. See section 7.1 of manual *ENF 12*, *Search, Seizure, Fingerprinting and Photographing*, relating to seizure, and the *Canadian Charter of Rights and Freedoms*.

Written declarations should be completed and confirmed with the CBSA Investigator or the investigating RCMP officer. In situations where a statement is taken from a passenger, the responsible officer should make every attempt to make the passenger available for the CBSA Investigator or the RCMP to interview. The declaration form is IMM 1392B.

22.9 Interviewing Canadian citizens, PRs and persons registered under the Indian Act

DART officers must be cognizant of the change in the legal obligation of the individual when dealing with PRs, persons registered under the *Indian Act* and Canadian citizens and conduct the interview accordingly. Any statement made in response to an officer's question may be inadmissible in court if the person has not been given the proper cautioning prior to making the statement.

DART officers should utilize these opportunities to inform partner agencies of Immigration Secondary's role with respect to the specific case and the reasons for the actions taken. This may include instances where no action is taken at that specific time. In these instances, DART officers must use the utmost care to ensure that the partner agency does not perceive Immigration Secondary as unwilling to act, but rather understands the inability to proceed due to legal restrictions.

When examining Canadian citizens, persons registered under the *Indian Act* and PRs, DART officers must:

1. confirm that the person concerned is in fact a Canadian citizen, persons registered under the *Indian Act* or PR;
2. receive permission from the person to conduct an interview, or to examine any documentation in their possession;
3. collect any evidence that may link the person to an improperly documented arrival;

4. if no evidence exists, then conclude the interview and thank them for their cooperation. If evidence of aiding and abetting exists, contact the CID immediately regarding the possible laying of charges. If the investigator attends, properly transfer all evidence relating to the charge to them. If the investigator does not wish to attend, then conclude the interview and thank the person for their cooperation; and
5. in all cases where evidence exists, a note should be added to GCMS detailing the occurrence. Also, all pertinent details should be relayed to Immigration Intelligence.

Evidentiary requirements may place DART officers in the best position to complete reports of this nature.

22.10 Training

All DART officers are required to be certified in Control and Defensive Tactics (CDT) training. In addition, DART officers should generally have a minimum of one year's experience as an examination officer at the POE. This is to ensure that the officers are fully aware of the CBSA's mandate, objectives, and policies and have a good working knowledge of operational procedures, internal communication systems and statistical analysis and have recent experience in interviewing clients.

DART officers also need to be aware of the principles and dynamics underlying and motivating human behaviour, the influences of cultural differences, attitudes and behaviour and of departmental interviewing techniques. DART officers are usually required to complete up to two weeks' training that may include courses on:

- DART orientation;
- airline responsibilities;
- fraud document detection;
- immigration intelligence orientation;
- Jetway training;
- evidence and criminal charges;
- CSIS profiles and interviewing techniques;
- cross-cultural awareness;
- anger management;
- first aid and CPR;
- note-taking;
- Customs Controlled Areas; and
- processing Indigenous travellers.

22.11 Uniforms and appropriate protective and defensive equipment

DART officers are required to wear their uniform while on duty in accordance with the Uniform Policy. DART officers are also required to wear appropriate protective and defensive equipment including protective vests, OC spray, baton, handcuffs and duty firearm (where applicable) when working outside of the secure office setting.

Any divergence from the standard uniform or equipment complement must be approved by local management and must be consistent with national guidelines.

22.12 Statistical and intelligence reports

For audit purposes, POEs must keep an accurate record of the flights where a disembarkation screening has taken place. The daily Action Reports should reflect the reason the flights were selected and the number of improperly documented passengers that were identified. These reports may be used as evidence by the Transporter Obligations Program's Industry Compliance Unit when assessing the fees to be levied on carriers.

DART superintendents are responsible for compiling (from the daily Action Reports) a monthly report of DART activity during the previous month. The monthly reports should contain statistics on the number of disembarkations performed, the number of improperly documented FNs intercepted, as well as other DART actions initiated through referrals by Intelligence, NTC's Targeting Travellers unit, the RCMP, the airlines or other sources.

NHQ Intelligence Branch will provide regular Intelligence reports to NHQ Ports and Border Management, regional headquarters and airport DART superintendent about overseas interceptions by Liaison Officers.

23 Alternate means of examination (AME)

R38 lists alternative means of examination that may be used instead of appearing at a POE for an examination by a BSO. Refer to *ENF 29*, *Alternative Means of Examination Programs* for more information.

23.1 Trusted Traveller Programs (TTPs)

TTPs are designed to expedite the border clearance process for pre-approved, low-risk travellers. TTPs such as CANPASS, NEXUS, FAST and CDRP are available to U.S. and Canadian citizens and PRs. Successful applicants are issued authorizations to present in an alternate manner such as photo identity cards. Persons holding these authorizations are still applying for entry, but their examination will be expedited as background checks regarding criminality and previous immigration and customs infractions have been completed.

See People Processing Manual, pt. 3 for more information on TTP.

24 Advance passenger information (API) and passenger name record (PNR)

24.1 API information

The Passenger Information (Customs) Regulations, as well as R269, obligate all commercial air carriers/commercial transporters to provide the CBSA with Advance Passenger Information (API) relating to all persons on board, or expected to be onboard, the commercial conveyance travelling to Canada prior to, and at, the time of departure from the last point of embarkation of persons before the conveyance arrives in Canada, despite the final destination or transit port. The information is sent electronically. This enables the NTC-TT officers to conduct pre-arrival targeting, security, criminality and FOSS history checks and GCMS searches on the travellers prior to their arrival in Canada.

API consists of the following data elements, mostly contained in the machine-readable zone (MRZ) of most passports and travel documents:

a) their surname, first name and any middle names, their date of birth, their citizenship or nationality and their gender;

(b) the type and number of each passport or other travel document that identifies them and the name of the country or entity that issued it;

(c) their reservation record locator number, if any;

(d) the unique passenger reference assigned to them, if any, by the person who is required to provide information or, in the case of a crew member who has not been assigned a unique passenger reference, notice of their status as a crew member;

(e) any information about the person in a reservation system of the person who is required to provide information or in a reservation system of the representative of such a person; and

(f) the following information about their carriage on board the commercial conveyance:

> (i) if the person is carried or is expected to be carried on board the commercial conveyance by air, the date and time of take-off from the last point of embarkation of persons before the commercial conveyance arrives in Canada or if the person is carried or is expected to be carried on board the commercial conveyance by water or land, the date and time of departure from the last point of embarkation of persons before the commercial conveyance arrives in Canada,
>
> iii) the last point of embarkation of persons before the commercial conveyance arrives in Canada,
>
> (iii) the date and time of arrival of the commercial conveyance at the first point of disembarkation of persons in Canada,
>
> (iv) the first point of disembarkation of persons in Canada, and
>
> (v) in the case of a commercial conveyance that carries persons or goods by air, the flight code identifying the commercial carrier and the flight number.

The API data elements are captured at the time of check-in when the machine-readable zone of the passport or travel document is swiped or entered manually.

24.2 PNR information

The Passenger Information (Customs) Regulations, as well as R269, obligate all commercial air carriers/commercial transporters to provide the CBSA with Passenger Name Record (PNR) information relating to persons on board the commercial conveyance travelling to Canada at the time of departure from the last point of embarkation of persons before the conveyance arrives in Canada, despite the final destination or transit port. The information is sent electronically and is matched, in PAXIS, with the API data provided. This enables the

NTC officers to conduct pre-arrival targeting, security, criminality and FOSS history checks and GCMS searches on the travellers prior to their arrival in Canada.

The PNR information available in a transporter's reservation system can be extensive, and the data elements captured will vary for each transporter. Some transporters do not have PNR systems in use for some flights and thus are not obligated to provide the data for those flights.

24.3 Disembarkation and Roving Team (DART)

Prior to a commercial vehicle's arrival in Canada, the NTC-TT unit will analyse the API and PNR information, enter required lookouts in ICES, and ensure that the BSOs and the DART receive detailed information on persons who may be inadmissible to Canada. The NTC-TT have the decision-making ability to flag a person, prior to their arrival at the PIL, for referral to Immigration Secondary.

25 Entering data on previously deported persons (PDP) into the Canadian Police Information Centre (CPIC)

The primary objective for entering data on PDPs into the CPIC is to enhance public safety and security by providing peace officers with the necessary information to form reasonable grounds that the person may be arrested without a warrant, as per A55(2)(*a*). The CPIC-PDP database will equip peace officers across Canada with information that a FN has been deported from Canada, has returned to Canada without authorization as required by A52(1) and, at the time of the person's removal, there were reasonable grounds to believe that the person is a danger to the public or is unlikely to appear.

After a name is queried in the CPIC and it is a direct match to a person found in the PDP database, the information on the CPIC will instruct law enforcement partners to contact the Warrant Response Centre (WRC) for further assistance.

Information on individuals in the CPIC-PDP database originates from FOSS/GCMS. For more information on this subject, see *ENF 10*, *Removals*.

25.1 POE procedures for completing the *Authorization to Return to Canada* (ARC) application

The completion of *Authorization to Return to Canada* (ARC) applications is normally the responsibility of visa offices. However, on occasion, the POE is required to deal with individuals where completion of an ARC application is necessary. Therefore, *Authorization to Return to Canada* application functionality in GCMS is accessible at POE and the authority to grant or deny the ARC has been designated at the POE to the Chief of Operations level (see IL 3, CIC IDD: Instrument of Designation and Delegation, item 88).

The *Authorization to Return to Canada* application functionality is used to record the processing and disposition (approval or denial) of an ARC, regardless of the type of removal order (i.e., exclusion order cases where written authority is required). When granting an ARC, an ARC application must be completed in GCMS.

Before a physical copy of the *Authorization to Return to Canada Pursuant to Subsection 52(1) of the Immigration and Refugee Protection Act* form [IMM 1203B] is issued, the applicable cost of $400 must be collected and, if CBSA/IRCC paid for their removal, recovery fees must be collected.

FNs must repay the following:

- $750 for removal to the U.S. or Saint-Pierre and Miquelon [R243(*a*)]; or
- $1,500 for removal to any other destination [R243(*b*)].

Recovery payment must be entered into the Travellers Entry Processing System (TEPS), and the K21 form must be completed using the code 48455, Repayment of Removal Costs, as the cost recovery type.

For more information on the repayment of removal costs, please refer to *ENF 10*, *Removals*.

There are currently no exemptions to the cost recovery fee for an ARC. When authorization to return to Canada has been denied, the officer must indicate the denial in the *Authority to Return to Canada* application in GCMS and issue a *Denial of Authorization to Return to Canada Pursuant to Subsection 52(1) of IRPA* form [IMM 1202B].

25.2 Completing an ARC application in GCMS

The *Authorization to Return to Canada application functionality* is accessible in GCMS. The person must be an existing client in FOSS/GCMS and a removal order or PDP document must exist. For more information on completing an *Authorization to Return to Canada* application in GCMS, refer to GCMS Help or the user guide on the CBSA GCMS Wiki.

An ARC can be completed by a BSO designated by the responsible manager to have GCMS access to create ARC documents.

Note: The rationale for the decision to Approve or Refuse must be fully explained in the *Notes* tab without delay.

The completed ARC application will be recorded in GCMS.

25.3 Amending an ARC decision in GCMS

In exceptional circumstances, there may be occasions where a BSO has issued an ARC and information is later revealed that the document was issued in error. BSOs should take note that once the *Decision* field has been completed and the document finalized, the ARC cannot be re-opened and amended. This is because a positive decision will have electronically removed the person's record from CPIC-PDP. It is therefore imperative for BSOs to be sure of their decision before completing the ARC in GCMS. The document can be edited until the *Decision* field has been filled. Should unanticipated circumstances occur requiring that the decision be changed after the ARC has been finalized, the following protocol must be followed:

To reverse a positive decision

An email must be sent to Warrant Response Centre (WRC) with a short explanation requesting to re-enable the PREV.DEP flag. Copy and paste the email sent to WRC into the *Notes* tab of the ARC.

To reverse a negative decision

A new ARC must be created, choose Approved in the Final Assessment menu, explain the reason for the reversal in the *Notes* tab. There is no need to advise the WRC.

25.4 Effect of ARC decisions on the PDP database

Where there is a PREV.DEP flag enabled in FOSS/GCMS, the effect of the ARC will be as follows:

- a decision to GRANT an ARC will disable the PREV.DEP flag in FOSS/GCMS, remove the person from the PIL "Hit List" and automatically remove the record from CPIC; or
- a decision to DENY an ARC will maintain the PREV.DEP flag in FOSS/GCMS, cause the client to remain on the PIL "Hit List" and maintain the record in CPIC.

25.5 Remedial action at POEs

Person is in possession of an ARC but PREV.DEP flag still enabled

BSOs at Immigration Secondary must be prepared to deal with a person who is referred from the PIL because a PREV.DEP flag appears against the person's name when queried. When a referred individual is in possession of an ARC and is still flagged as PREV.DEP in FOSS, the following remedial action must be taken:

- If an examination of FOSS historical notes and GCMS notes satisfies the BSO at Immigration Secondary that a positive ARC decision was made and the fees collected, but the visa officer neglected to create an ARC application in GCMS on which to record the decision, the officer, upon authorizing entry into Canada, must create an ARC application in GCMS in order to disable the PREV.DEP flag and remove the record from CPIC-PDP.
- If an examination of FOSS/GCMS notes indicates that the visa officer issued an ARC in error, without considering the need for written authorization to return to Canada, the decision to grant or deny such authorization rests with the BSO at Immigration Secondary.

Entry denied on other inadmissibility grounds

There may be circumstances where a BSO at Immigration Secondary will deny entry to Canada on new inadmissibility grounds to a previous deportee who has been authorized to return to Canada by a visa officer (and therefore the PREV.DEP flag will have already been disabled by the ARC). In such circumstances, BSOs should understand that the requirement

to obtain authorization to return to Canada has been overcome by the granting of the ARC and they should not be exploring ways in which they can re-enable the PREV.DEP flag.

26 *Foreign Missions and International Organizations Act* (FMIOA)

The *Foreign Missions and International Organizations Act* (FMIOA) extends privileges and immunities to foreign missions and certain international organizations that operate and/or hold meetings or conferences in Canada. Section 5 of the FMIOA provides that an order in council (OIC) can be signed by the Governor in Council with respect to certain international organizations. The OIC accords international organizations and their representatives privileges and immunities outlined in certain sections of the *Convention on the Privileges and Immunities of the United Nations* and the *Vienna Convention on Diplomatic Relations*. The OIC can remain permanently in force [such as the OIC that grants privileges and immunities to the International Civil Aviation Organization (ICAO) headquarters in Montreal] or can be signed to cover a specific meeting or conference of an international organization held in Canada (such as G8 meetings). Finally, the OIC can be signed to encompass all of the provisions in section 5 of the FMIOA, or can limit which privileges and immunities will be accorded.

On April 30, 2002, a new subsection of section 5 of the FMIOA came into force. Subsection 5(4) states that "In the event of an inconsistency or conflict between an order [OIC] made under subsection (1) and any of sections 33 to 43 of the *Immigration and Refugee Protection Act*, the order [OIC] prevails to the extent of the inconsistency or conflict." This means that representatives of international organizations covered by an OIC of the Governor in Council are not subject to the inadmissibility provisions of IRPA. These representatives are not to receive any additional documentation, such as TRPs. They shall be granted temporary resident status in the normal manner. If officers feel there is a need to further document the arrival of one of these representatives, a Client Note can be entered in GCMS.

NHQ will receive advance notification of all OICs of the Governor in Council, the regions and ports may be given alternate directions when applicable.

27 FOSS/GCMS enforcement flag amendments

27.1 Background

Thorough POE examinations are necessary to ensure the safety of all Canadian citizens, PRs and visitors to Canada. Secondary examinations are, for the most part, considered routine and should not be viewed as an accusation of wrongdoing on the part of the traveller.

Enforcement flags are generated when an immigration enforcement action was previously recorded in FOSS or in GCMS and is linked to the IPIL database. Upon seeking entry to Canada at the PIL, persons who have been the subject of previous enforcement actions may be automatically referred to Immigration Secondary due to an active enforcement flag contained in their FOSS/GCMS record. A person may discuss the issue with the POE officer the next time they seek entry into Canada.

Although FOSS/GCMS will always retain a traveller's immigration enforcement history, it is possible to amend these enforcement flags. The determination to request a flag amendment is made at the discretion of the BSO and cannot be guaranteed. All enforcement history remains intact in FOSS/GCMS, but the flag may be modified from the IPIL database so that it no longer generates a mandatory referral at the PIL. Furthermore, only past enforcement flags will be considered, ensuring that if any enforcement action were to take place in the future, the enforcement flag would automatically be reactivated.

27.2 Considerations

When determining an enforcement flag amendment, the following questions should be considered:

- How often does the traveller visit Canada?
- What was the infraction?
- Is there a history of enforcement actions?
- Was the traveller a minor at the time of the enforcement action?

27.3 Procedures for amending an enforcement flag

Individual officers should not contact the Operations Support Centre directly for an enforcement flag amendment. Officers must follow the procedures below:

1. Check FOSS history (all records) and GCMS records via GCMS Integrated Search to ensure that the client has only one unique client identifier (UCI). In cases where more than one UCI exists, household the UCIs by following the instructions in WIKI before amending an enforcement flag.
2. Conduct a CPIC/U.S National Crime Information Center (NCIC) check on each client that was previously reported for criminal inadmissibility to ensure that the client is no longer criminally inadmissible to Canada.
3. Where an Info Alert is the reason for the flag at IPIL, BSO who are MDs and superintendents have the authority to expire them by following Step 11 of the *Processing guide of an Info Alert*.
4. Where it is due to a Failed (negative) Admissibility Assessment in GCMS, BSOs must create a new Examination and Pass (positive) the Admissibility Assessment. Refer to the step-by-step on the Wiki page for procedures.

For more information on this, consult OBO-2020-011 and PRG-2017-38.

27.4 Enforcement flags on Canadian citizens and persons registered under the *Indian Act*

Normally, once a PR of Canada receives citizenship, IRCC grants the citizenship and this information is reflected in GCMS (or previously in FOSS as an NCB Type 11). Occasionally, BSOs will encounter travellers with immigration enforcement flags who have become citizens, but who are still being flagged due to a previous immigration enforcement flag. This is another instance where a BSOMD or superintendent can expire a FOSS Legacy Info Alert via GCMS.

With the coming into effect of Bill S-3 in 2019, some persons that were considered FN are now persons registered under the *Indian Act* and therefore enter Canada by right. All enforcement flags against these people should be amended as per the steps above.

Appendix A Memorandum of Understanding between IRCC and the CBSA

http://atlas/cab-dgsi/res/toolkit-outils/partnership-partenariat/wca-ece/federal/cic/index_eng.asp

Appendix B Quarantine Operations Centres

Public Health Agency of Canada (PHAC)

Quarantine Operations Centres

Effective May 1, 2019, PHAC centralized the management of border and travel health notifications and the assessment of ill travellers through the new PHAC Notification Line: **1-833-615-2384** and email **phac.cns-snc.aspc@canada.ca**. Service in both official languages will be available 24 hours a day, seven days a week.

For more information, refer to *People Processing Manual, pt 8, ch. 5.2, Quarantine - Liaison with the Public Health Agency of Canada.*

Appendix C Record of Direct Backs for Refugee Claimants at the Land Border

Record of Direct Backs for Refugee Claimants at the Land Border			
	1	2	3
Name of the refugee claimant (last name, given name)			
GCMS UCI ()			
POE			
Name of the superintendent who approved the Direct Back			
Reason for directing back under exceptional circumstances*			
Date and time of Direct Back dd/mm/yy – 00h00			

Scheduled date of return dd/mm/yy			
Remarks			

Have you considered the following arrangements before directing the refugee claimant back?

☐Making arrangements to reduce the waiting time for the refugee claimant by:

☐Invoking overtime hours for border services officers to process a claim

☐Calling in border services officers from a nearby POE

☐Using the telephone translation service

☐Detaining the claimant, if grounds to detain exist, to complete the examination

*Exceptional circumstances are defined as situations where all the procedures outlined above have been considered and an examination still cannot be conducted. The well-being of the claimant should be considered in conjunction with the impact on POE operations. When it has been determined that a case can be substantiated as an exceptional circumstance, the border services officer must obtain approval from the POE superintendent before directing a refugee claimant back to the United States.

Appendix D Temporary resident permit (TRP) annual compliance review and checklist

Annual TRP compliance review

In January of each year, Regional Programs Officers in each region will select 10 TRPs issued over the course of the previous calendar year. The TRPs will be reviewed for inclusion of the mandatory elements explained in section 15.5. The results of the review are to be submitted to HQ by the end of the January that the review is taking place. (ie. In January of 2025, select 10 TRPs issued throughout all of 2024. The results are to be submitted by the end of January, 2025).

Included in the review is a check that anyone making decisions under a delegated authority or performing the functions of a Minister's Delegate must have successfully completed the training prescribed to those positions before exercising their authority as per section and the Agency's National Training Standards.

The Apollo folder with the instructions and required material for the review can be found here: Annual TRP Compliance Review

TRP file checklist

A short form checklist to assist with ensuring file completion can be found here:

TRP Checklist

*****This is not used for the compliance review process noted above

This is Exhibit **"D"** referred to in the affidavit
of JOHN BAUER sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Operational bulletin 686 – December 24, 2024 (modified February 14, 2025)

This section contains policy, procedures and guidance used by IRCC staff. It is posted on the department's website as a courtesy to stakeholders.

Changes to who can apply at a port of entry : Interim instructions for officers

Effective date	Expiry date, if any
Immediately	N/A

Details

The intent of this bulletin is to clarify new restrictions to flagpoling at ports of entry (POEs).

On December 23, 2024, the President of the CBSA signed a designation package that limits certain services at Canada's POEs in accordance with their delegated authority under section 26.1 of the Immigration and Refugee Protection Regulations.

Effective December 24, 2024 at 00:01, the President has specified that POEs will no longer receive applications for work permits or study permits from foreign nationals who meet the definition of flagpoling.

Background

The designation package specifies that the following immigration services will not be provided to foreign nationals who meet the definition of flagpoling:

- collection of biometric information under section 12.3
- reception of an application for a work permit under subsection 198(1)
- reception of an application for the renewal of a work permit under section 201
- reception of an application for a study permit under section 214
- reception of an application for the renewal of a study permit under section 217

For the purposes of the designation, "flagpoling," is defined as:

when foreign nationals, who hold temporary resident status in Canada, leave Canada and after a visit to the United States or St. Pierre and Miquelon, re-enter for the purpose of obtaining immigration services at a port of entry including work and study permits.

The designation specifically exempts some groups who otherwise meet the definition of flagpoling. Those exceptions include:

- Citizens and lawful permanent residents of the United States of America
- Professionals and Technicians seeking to perform work pursuant to a Free Trade Agreement (FTA) as a:
    i. Professional pursuant to the agreement between the United States of America, the United Mexican States and Canada (GCMS administrative code T36)
    ii. Professional pursuant to the Canada-Chile Free Trade Agreement (GCMS administrative code F22)
    iii. Contractual service suppliers or independent professionals pursuant to Canada-Korea Free Trade Agreement (GCMS administrative code F32)
    iv. Professional pursuant to the Canada-Panama Free Trade Agreement (GCMS administrative code F42)
    v. Professional or technician pursuant to the Canada-Colombia Free Trade Agreement (GCMS administrative code F12)
    vi. Professional or technician pursuant to the Canada-Peru Free Trade Agreement (GCMS administrative code F52)
- Spouse or common-law partner of an applicant described under paragraphs (iii), (iv), or (v) above
- International truck drivers who hold a work permit, are required to depart Canada for the purpose of their employment and held maintained status as a result of applying for renewal prior to departure
- Those with a pre-existing appointment booked with the CBSA for permit processing as of the date that the designation comes into effect

Interpretive notes

- The designation package **only applies to foreign nationals who are flagpoling as defined above**. It does not apply to any other traveller cohort.

- The reference to “immigration services” in the definition **does not include visitor records (VR) and temporary resident permits (TRP)**.
- Foreign nationals who hold temporary resident status in Canada and are provisionally approved to work or study by IRCC will no longer be able to obtain their permit by flagpoling.
- Officers are reminded that TRV required foreign nationals who are in Canada without temporary resident status are ineligible to apply for a work or study permit by flagpoling as they would not be considered TRV-exempt under the provisions of section 190(3)(f) of the Immigration and Refugee Protection Regulations.
- Border services officers (BSOs) should be cognizant that the admission of a traveller on initial entry without processing a request for a work permit or study permit (where eligible) has consequences for the applicant, as it would now preclude them from flagpoling in the future to obtain their permit.
- As a result of these changes, some foreign nationals may find themselves outside of Canada with limited options. If an officer is not designated to accept an application under R26.1, this does not automatically make the applicant inadmissible to Canada. An officer must complete a full assessment, consider all of their options and make a decision. If an officer chooses to facilitate, they must be satisfied that the person will comply with the imposed general temporary resident conditions. As always, applicants should be fully counselled regarding the conditions of entry.
- BSOs may also choose to issue a temporary resident permit (TRP) to inadmissible foreign nationals should they feel it is justified in the circumstances. However, a TRP cannot overcome where an application may be accepted, in other words, that the POE is not designated to receive an application from a foreign national who is flagpoling.

- If there is a request for either a permit that was not issued on initial entry, or the correction of a permit that was issued, due to an error made by the CBSA, this request should not be considered flagpoling. The port of entry should review the request to determine if the permit can be issued or corrected on a case-by-case basis.
- Biometrics collection is only restricted for those who are making an application and who meet the definition of flagpoling. Collecting biometrics in enforcement cases is not subject to this restriction. In other words, biometrics should be collected as per the applicable policy when enforcement action occurs.

Note: A foreign national who flagpoles is seeking entry to Canada. When the foreign national's application cannot be processed, officers are reminded that, if the applicant is authorized into Canada, as per subsection 183(2) of the Immigration and Refugee Protection Regulations, the automatic authorized period is 6 months unless specified by an officer. For greater clarity, if a BSO does not stamp the passport and manually note the date to align with the existing permit "must leave by" date, the individual is authorized to remain in Canada for 6 months from their last entry.

Actions required by border services officers

Officers should familiarize themselves with these instructions.

Actions required by superintendents

Superintendents and managers will ensure that the above instructions are implemented immediately.

Date modified:

2025-02-14

Operational Bulletin 686 – Changes to who can apply at a port of entry : Interim instructions for officers

This section contains policy, procedures and guidance used by IRCC staff. It is posted on the department's website as a courtesy to stakeholders.

Effective date	Expiry date
Immediately	N/A

Summary

CBSA is instructed to stop accepting applications for certain work permits and study permits for temporary resident applicants at a port of entry. Updates to existing Program Delivery Instructions (PDIs) are forthcoming for IRCC and CBSA officers.

Issue

The purpose of this operational bulletin is to provide interim guidance to IRCC processing officers, and CBSA officers at the port of entry, who have the authority to process applications for work permits and study permits.

Background

In accordance with the changes announced on December 24, 2024 by CBSA/IRCC (Ending flagpoling for work and study permits at the border). Foreign Nationals with temporary resident status in Canada will no longer be able to leave the country and apply for an immigration document on re-entry to receive same-day service on their application. This comes as a means of alleviating burdens placed on border operations that are already under significant pressure.

Instructions

Officers are instructed to no longer process applications for temporary residence applications at a port of entry unless they meet the following exemptions:

- **Applicants who are citizens or permanent residents of the United States of America**
- **Professionals and Technicians under Free Trade Agreements (FTAs)**
    1. Professional under the free trade agreement with the United States of America and Mexico (T36);
    2. Professional under the free trade agreement with Chile (F22);
    3. Contractual service suppliers or independent professionals under the free trade agreement with South Korea (F32);
    4. Professional under the free trade agreement with Panama (F42);
    5. Professional or technician under the free trade agreement with Colombia (F12);
    6. Professional or technician under the free trade agreement with Peru (F52).
- **Spouses or common-law partners** of applicants under FTAs with South Korea (F32), Panama (F42), and Colombia (F12).
- **Truck Drivers-** who are required to depart Canada for the purpose of their employment and prior to their departure from Canada held a work permit or maintained status as a result of a pending application for work permit renewal. This does not include truck drivers operating solely within Canada.
- **Applicants with Pre-Scheduled CBSA Appointments**

Date modified:
2024-12-24

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

AFFIDAVIT OF HEATHER ELIZABETH NEUFELD

I, **Heather Elizabeth Neufeld**, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer in the Province of Ontario. I make this affidavit based on my professional experience.

Qualifications and Experience

2. I hold a common law degree from the Faculty of Common Law at the University of Ottawa and an LLM from the University of California, Berkeley. I was called to the Ontario bar in 2009

and the State Bar of California in 2016. My Law Society of Ontario (**"LSO")** licence number is 56618D and my State Bar of California licence number is 313739.

3. I attach my resume as **Exhibit "A"** to my affidavit.

4. My memberships include the Canadian Bar Association, the Refugee Lawyers' Association of Ontario, and the Canadian Association of Refugee Lawyers.

5. Since 2009, I have practiced exclusively Canadian immigration, refugee, and citizenship law. I initially practiced as an immigration and refugee lawyer at Community Legal Services of Ottawa, a legal aid clinic, for my first ten years of practice. In 2020, I joined the private bar, opening my own immigration and refugee law practice, Heather Neufeld Law. My practice encompasses all aspects of immigration, refugee, and citizenship law. A significant portion of my practice involves the representation of refugee claimants who seek asylum at the Canada-U.S. border under an exception to the *Canada-U.S. Safe Third Country Agreement* (**"*STCA*"**), as well as frequent consultations with individuals inquiring about their eligibility to make such claims and with U.S. attorneys inquiring about their clients' eligibility to enter Canada under the *STCA*.

6. My practice includes appearing before the Immigration and Refugee Board and the Federal Court of Canada. It also includes submitting immigration applications to Immigration, Refugees and Citizenship Canada (**"IRCC"**) and representing individuals in their dealings with the Canada Border Services Agency (**"CBSA"**), both in the context of preparation for refugee eligibility interviews at ports of entry, submission of reconsideration requests to CBSA concerning individuals found ineligible to make a refugee claim at the land border, and interacting with CBSA's Inland Enforcement branch concerning clients' possible removal from Canada.

7. I have also taught several courses in immigration and refugee law at the University of Ottawa's Faculty of Common Law, between 2017 and 2022. In 2017, I taught Immigration and Refugee Law, the Faculty of Common Law's main immigration law course. In 2020, 2021, and 2022, I taught Access to Justice – Refugee Claimants, a seminar-style elective course for first-year law students.

8. I have presented at numerous immigration and refugee law conferences over the past fifteen years, including the annual Ottawa Immigration Law Conference, as well as conferences hosted by the Canadian Association of Refugee Lawyers, the Canadian Council for Refugees, and Amnesty International. Presentations concerning *STCA*-related issues include: a June 26, 2025 webinar for the Canadian Association of Refugee Lawyers concerning refugee eligibility interviews and reconsideration requests under the Safe Third Country Agreement; "What's Happening at the Border?" presented at the Ottawa Immigration Law Conference in May 2025; "The Safe Third Country Challenge: Behind the Scenes" presented at the Refugee Law Office/Ottawa Immigration Law Conference, September 2020; and "The U.S.-Canada Safe Third Country Agreement: Safe for Whom?" Realizing Rights 2017: Human Rights and Constitutionalism, held at the University of Ottawa.

9. I keep apprised of Canada-U.S. border issues concerning refugee claimants through frequent interaction with Canadian colleagues, U.S. immigration law colleagues who practice in close proximity to the border, and by representing individuals who institute or attempt to institute refugee claims at Canadian land ports of entry. I also participate in a border-related listserv for Canadian and U.S. immigration lawyers and immigrant service providers on both sides of the border, as well as maintaining my membership in the American Immigration Lawyers' Association to stay well-informed of U.S. immigration related developments.

Mandate

10. I have been asked to offer evidence based on my professional experience representing individuals and families who undergo a refugee eligibility interview at a Canada-U.S. land border port of entry. My experience concerns representation of both individuals determined eligible to institute their refugee claim in Canada, and those found ineligible to do so and returned to the United States. I believe that, in total, I have represented at least 50 families undergoing a refugee eligibility interview at the Canada-U.S. border under an exception to the *STCA*.

***STCA* eligibility examinations under the *Immigration and Refugee Protection Act* ("*IRPA*")**

11. Unlike at air or sea ports of entry, individuals who seek asylum at Canada's land border, both at ports of entry and between ports of entry, are subject to the *STCA*, which requires asylum seekers to request asylum in the first safe country they enter, either the U.S. or Canada. Under ss. 101(1)(e) and 102(1) of the *IRPA* and s. 159.1 (4) of the *Immigration and Refugee Protection Regulations* (***"IRPR"***) read together, individuals only qualify to seek asylum at Canada's land border and have their claim referred to the Immigration and Refugee Board if they meet one of a specified list of exceptions which are found at s. 159.5 of the *IRPR.*

12. In my experience, the most frequently applicable exception to the *STCA* is the anchor relative exception – for an asylum seeker to have one of a specified list of family members in Canada with one of several permitted forms of status. The list of family members who may serve as an anchor relative is found in s. 159.1 of the *IRPR*. The status the family member must hold in Canada to qualify as an anchor relative is laid out in ss. 159.5 (a) through (d) of the *IRPR.*

13. Other exceptions to the application of the *STCA* which in my experience are far less frequently applicable are those permitting individuals to make their refugee claim at the land border if they are an unaccompanied minor (s. 159.5 (e)), hold a specified document such as a Temporary Residence Permit (s. 159.5(f)), do not require a visa to enter Canada (s. 159.5 (g)), or are seeking to re-enter Canada having met certain conditions (s. 159.5(h)). In addition, individuals charged or convicted of an offense punishable by the death penalty are also exempt from the *STCA* under s. 159(6) of the *IRPR*.

14. During the refugee eligibility interview at the land port of entry, in addition to confirming that a claimant meets all eligibility requirements to make a refugee claim in Canada under s. 101 of the *IRPA* – such as not having refugee protection in another country or having committed crimes which make them ineligible for refugee protection – the CBSA officer determines whether the individual meets one of the exceptions to the *STCA* discussed above. If they do not, they are returned to the United States and handed over to Customs and Border Protection (**"CBP"**).

15. In practice, the CBSA officer's assessment of whether the most common *STCA* exception of an anchor relative applies to an individual typically involves determining whether they have sufficiently established their relationship to the anchor relative in Canada. The officer must be convinced of the claimant's relationship to their anchor relative on a balance of probabilities.

16. IRCC's web site indicates that when sufficient documentary evidence of relationship is unavailable, an officer may accept the claimant's relationship to their anchor relative based on credible testimony alone. The IRCC website states: "…in some cases written documentation, such as birth, marriage certificates etc. may not be available. In such cases, credible testimony may be sufficient provided the officer is satisfied with respect to the claimed relationship."[1] But in my experience, as a matter of practice, it is necessary to provide birth certificates or other documents establishing family relationships, such as a government-issued "family book" that certain countries issue, to prove the family relationship on a balance of probabilities.

17. In addition, information on IRCC's web site indicates that when documentary evidence and the claimant's testimony are insufficient to establish the relationship to their anchor relative, the CBSA officer should "…attempt to confirm family relationships and that the relative has the necessary status in Canada…" by other means – such as interviewing the anchor relative, reviewing CBSA's data systems or those of the Immigration and Refugee Board, reviewing any statutory declarations, etc.[2]

18. The determination of whether a person qualifies as an anchor relative becomes more complex when no documents exist to link family members to one another. For example, in July 2025, I was consulted by a family where CBSA found the nephew to be ineligible under the *STCA* because he could not provide documents linking himself to his Canadian uncle, since his elderly

[1] IRCC, "Processing in-Canada claims for protection: The Safe Third Country Agreement", Online: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/canada/processing-claims-protection-safe-third-country-agreement.html.

[2] IRCC, "Processing in-Canada claims for protection: The Safe Third Country Agreement", Online: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/canada/processing-claims-protection-safe-third-country-agreement.html.

uncle and the nephew's mother had never been issued birth certificates in their home country, regardless of his efforts to rely on testimony (which the IRCC website states is admissible evidence), and after questioning the uncle about his nephew for only a few minutes.

19. During the refugee eligibility interview at the land port of entry, CBSA also asks claimants basic questions about their history, reviews claimants' documents to confirm their identity, and reviews immigration forms completed before arrival at the port of entry or while awaiting their eligibility interview.

20. There is no right to counsel for refugee eligibility examinations at ports of entry under the *IRPA*. In addition, CBSA policies specifically state that unless a person is detained, there is no right to counsel. I have reviewed and agree with statements made by Lorne Waldman in his affidavit dated August 19, 2025 on the right to counsel under the *IRPA* at paragraphs 21 to 23, and in CBSA policies at paragraphs 35 to 47.

Preparing Clients to undergo an *STCA* eligibility examination

21. I undertake several steps with clients before they travel to the Canada-U.S. port of entry to make their refugee claim. I undertake these steps in all cases when clients contact me while physically present in the United States before they approach the border. These "pre-arrival steps" include: preparing a package of supporting documents, completing forms, preparing my client and their anchor relative for the examination, and instructing them about the examination. I take these steps knowing that they in no way obviate the need for counsel to be present at an examination.

Supporting documents

22. I first review all supporting documentation that the client is able to gather in order to demonstrate their biological relationship to their Canadian anchor relative. For example, I review birth certificates or national ID cards that can demonstrate their relationship to their anchor relative. If birth certificates are not available, I counsel clients on the risk of denial without these official documents to prove relationship. I also discuss alternate forms of proof, such as photos, DNA testing, affidavits from other family members, etc.

23. I scrutinize all documents for any potential inconsistencies or errors that could raise concerns by the CBSA officer during an interview. For example, there may be slight differences in the spelling of names across documents or differences in surnames such as one document that lists only the first of the two surnames. These differences may lead CBSA to question the documents' authenticity. Likewise, if two birth certificates from the same country have slightly different formatting, I warn clients that CBSA may find this suspicious. I am particularly careful to point out any concerns that CBSA may have about an individual's documents because CBSA does not recognize a right to counsel which prevents my attendance at the interview to address any discrepancies and any other concerns about documents.

24. In order to ensure that the CBSA officer has access to all necessary documents to prove a family relationship with an anchor relative, I prepare a package of all documents to: demonstrate that the anchor relative has a form of Canadian legal status permitting them to serve as an anchor and resides in Canada, prove the client's identity, and show the family link between the client and their anchor. Since I cannot submit this documentation in person to CBSA on behalf of my clients – owing to the lack of the recognition of the right to counsel at the border – I submit this documentation to the port of entry by email in advance of the client's border appointment. I also instruct the client to present a duplicate physical copy of this document package when they arrive at the port of entry.

Forms

25. Knowing what application forms the client and their accompanying family members will be required to complete at the port of entry, I assist the client in completing these forms in advance of approaching the border. I do so for several reasons. One is that doing so allows me to confirm that the client understands all questions on the forms and that there are no gaps in the information they provide. I also undertake this task in advance because many clients have informed me that they believe the quality of interpretation they received at the port of entry was deficient. By working on the forms directly with the client, I can also speak with the client directly in either French or Spanish (languages in which I am fluent) or can ensure that a high-quality interpreter is available to assist us.

26. Another reason I assist clients to complete the application forms in advance of arrival at the border is in order to give them sufficient time to recall and/or gather information concerning dates of employment, past residential addresses and other pieces of information to which they may not have immediate access.

27. Completing the forms accurately is critical because discrepancies between the information on the forms and the client's verbal answers to questions posed by a CBSA officer may form the basis for a negative eligibility finding. For example, a discrepancy between the names and birth dates of family members listed on an individual's immigration forms and the answers they provide when questioned could lead to a finding that they have not established the anchor relative relationship and thus do not meet an *STCA* exception.

28. In addition, all forms completed for the eligibility interview are included in an individual's refugee claim file as CBSA sends them to the Immigration and Refugee Board if the person is found eligible and referred for a refugee hearing. If an individual provides information on their port of entry forms that contradicts information later provided on their Basis of Claim Form, this could give rise to a negative credibility finding by the Immigration and Refugee Board. As a result, completing the border forms carefully and accurately is extremely important. However, it is difficult for non-English-speaking individuals to do so while at the border and without sufficient time to think carefully about the answers they are providing.

Preparing for the examination

29. In addition to preparing documents and forms, I conduct detailed interviews of my client and their anchor relative before they travel to the port of entry. I undertake this task in order to ensure that the client and their relative are able to speak consistently about their immediate and extended family members, about one another's lives and about one another's personal documentation such as birth certificates. I feel particularly compelled to conduct these interviews and subject my client and their family member to mock port of entry questioning because of the lack of a right to counsel during their border interview.

Further instructions

30. Knowing that CBSA does not recognize a right to counsel at the border interview, I also inform my clients that, if they are found ineligible and are about to be returned to the United States, they should specifically ask CBSA to apply the *IRPA*'s "safety valves" to permit them entry into Canada on other grounds, such as on a temporary resident permit or on humanitarian grounds. The reason that I do so is because the Supreme Court in *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 indicated that CBSA officers can find an individual eligible under the *STCA* by applying a safety valve. As a result, I explain to the client that they must clearly describe any risk they face both in the United States and if refouled to their home country. I review these points with the client in advance since I will have no ability to make such requests on the client's behalf during their border processing.

31. It is my observation, based on numerous conversations with colleagues coupled with the number of individuals who have recently contacted me after being found ineligible despite having an anchor relative in Canada, that the CBSA has become stricter in 2025 in their assessment of eligibility to make a refugee claim under an *STCA* exception. In light of this changed reality, and given that CBSA does not recognize a right to counsel in interviews, I now send all clients to the port of entry with a detailed submission letter. In these submissions, I lay out the rationale for the *STCA* exemption, review what documents establish the anchor relative relationship and provide evidence concerning any risks the individual faces if returned to the United States, particularly including the risks of detention and *refoulement*. In the alternative, I also argue for a Temporary Resident Permit to enter Canada if eligibility is not granted, based on the concept of safety valves.

Limitations of the pre-arrival steps

32. Providing submissions, preparing a package of supporting documents, completing forms, preparing with my client and their anchor relative for the examination, and giving them instructions about the examination, are not adequate substitutes for being present as counsel at an individual's interview to advocate on their behalf, respond to any concerns the officer may have concerning documents, and put forward the reasons that the *STCA* exemption should be granted. Below, I explain the reasons that these pre-arrival steps do not substitute for the right to counsel at a border interview.

Limitations on contact with counsel at the port of entry

33. When clients for whom I have prepared packages are at the border for their eligibility examinations, until recently they have been able to send me text messages while they are in the waiting room before their interviews and are waiting for various steps to take place. It is my experience that clients are typically present at the border for at least six to eight hours if not much longer, and that they are interviewed at several points during this time span. As a result, clients have significant periods of time during which they are in the waiting room between interviews.

34. On multiple occasions throughout the past fifteen years, clients have sent me text messages while waiting at the port of entry to inform me that CBSA seems unsatisfied with their answers to questions or with their documentation. For example, a young woman from El Salvador messaged me that she believed she was about to be returned to the United States because she was unable to produce photo identification. These interactions are extremely stressful and frustrating for both me and my clients because of my inability to simply speak to the CBSA officer conducting the client's interview to clarify a concern that impacts eligibility determination.

35. It is my observation that, since the election of Donald Trump in the United States, my clients' ability to communicate with me while at the border has become more difficult. My experience in 2025 has been that CBSA has confiscated the electronic devices of all my clients at the Rainbow Bridge port of entry. This has rendered them unable to communicate with me at that port of entry at all during their refugee eligibility processing.

36. Although I include a *Use of Representative* form with the document package I submit to the port of entry on behalf of my clients, if I call the port of entry, I receive only general information, such as that my client is still being processed. The fact that I am registered as the individual's representative does not result in having my call transferred to the CBSA officer conducting the interview so that I can participate in it. When I call CBSA and ask to speak to the officer processing my client, the receptionist tells me that the officer may call me if they feel it necessary. I have received a call back from the officer less than five times in the past fifteen years.

37. In one recent example, in advance of my client going to the POE, CBSA agreed for me to be on the phone for a vulnerable client's STCA examination because the client suffers from cognitive and visual impairments, and seizure disorder. CBSA also agreed to let the anchor relative be present during the interview because of this issue. However, when I called in at the time of the examination, the officer dealing with the matter refused to let me be on the phone and told me that I needed to attend in person. This was impossible as I was in Ottawa and the client was at the POE in Fort Erie, roughly six to seven hours away by car. The officer's rationale was that she did not know who could hear my phone call.

38. If CBSA recognized a right to counsel, I could speak with CBSA to clarify their concerns and attempt to address them as the interview itself unfolds. I could also request time to quickly obtain and submit any additional supporting evidence CBSA might require to avoid an unnecessary finding of a client's ineligibility. To reiterate, no amount of assistance I can provide in advance of an interview – completing forms, preparing clients and anchor relatives for interviews, and providing instructions to clients – is a substitute for being present in an individual's interview to advocate on their behalf, respond to any concerns the officer may have concerning documents, and explain why the *STCA* exemption should be granted.

39. Since 2015, I have represented approximately ten individuals or families in reconsideration requests who CBSA incorrectly found to not meet the family member exception under the *STCA*. In all cases, I determined that CBSA either misunderstood or failed to consider supporting documentation confirming the family relationship which was before them. In all cases, had I been physically present and able to represent the individual at their port of entry interview, reconsideration would have been unnecessary, because I could have pointed to documents which CBSA failed to review, asked the client to explain in detail any slight discrepancies between spellings of names on identity documents, and/or requested an opportunity to quickly provide additional supporting evidence such as family photos or additional witnesses to the family relationship.

40. I was not retained as counsel in these ten cases until after the individual or family received a negative eligibility decision at the border. However, even had I been counsel in advance and

prepared a package of documents to present at the border, based on my experience, I believe that at least some of the negative decisions would likely have still been made. This is because, without the ability to represent the individual in their eligibility interview, it is not possible for me to draw an officer's attention to a document they overlooked, explain that a birth certificate had a marginal note providing a name correction, or point out that an officer's line of questioning was unclearly phrased and confused the claimant.

41. Seeking reconsideration of a negative refugee eligibility determination is particularly difficult given that there is no legislative basis for doing so. Rather, the reconsideration requests have been made possible based on Federal Court caselaw, as a discretionary remedy. There is no dedicated email address or individual to whom reconsideration submissions are to be directed, which makes having a request even examined extremely challenging.

42. My experience is that the only way to have a reconsideration request reviewed is to not only send it to the port of entry's general email address but also to the personal email address of any officer or superintendent working at that port of entry who I manage to identify. Doing so is very difficult since this contact information is not readily available and such emails can often only be found by canvassing other colleagues who have dealt with that port of entry in the past.

43. Even if a port of entry does confirm receipt of a reconsideration request, it is my experience that no standard timeline exists for receiving a response. The timeline may range from days to months.

44. While a reconsideration request is pending, an individual could be detained by the United States, having been turned back at the border and then possibly deported to their country of origin. I have personally had several clients be detained in the United States while awaiting their reconsideration decision.

45. When a reconsideration request is successful and a client can return to the port of entry, they again lack right to counsel at their redetermination interview. As a result, nothing prevents

errors and misunderstandings from transpiring a second time at a moment when the stakes are even higher.

46. One example of a reconsideration request illustrates how the right to counsel at the initial interview may have prevented the initial negative decision. The individual and her anchor relative had no knowledge of the *STCA* and the information they needed to present to demonstrate their relationship. Had I been present in the initial interview, I could have insisted that CBSA interviewed them both about their relationship. Moreover, I could have requested the chance to submit additional identity documents to prove the relationship while the refugee claimant was at the border, potentially avoiding a negative decision based on insufficient documentary proof of relationship. In that case, the documents we submitted with our reconsideration request were sufficient to prove the family relationship. Recognition of the right to counsel at the border could have prevented the need for reconsideration to begin with.

47. In a second reconsideration example, the CBSA officer made serious factual errors in the initial eligibility decision, based partially on their failure to read family members' complete birth certificates (which bore amendments explaining corrections to their names), and on the officer's mistaken belief that the refugee claimant was not listed as a sibling on her anchor relative's Basis of Claim Form. Had the right to counsel at the interview been recognized, counsel could have pointed out the marginal notes on the birth certificates correcting names and directed the officer to the inclusion of the claimant's name on her brother's Basis of Claim Form.

48. In this second case, despite submitting an extremely detailed reconsideration request with translated and authenticated birth certificates, a full copy of the Basis of Claim Form at issue, and an expert opinion on legal issues concerning the amendment of birth certificates in the claimant's home country, CBSA denied the reconsideration request in one sentence. The denial made no reference to any of the documents provided. This underlines how reconsideration requests are no substitute for the recognition of the right to counsel at the interview itself.

49. I then sought judicial review of the negative reconsideration decision. Pursuant to the terms of a subsequent Federal Court settlement, I was granted the exceptional right to be present at the

claimants' refugee eligibility redetermination interview at a land port of entry – the third time that CBSA had considered eligibility.

50. Given that the male claimant had been transferred to a U.S. federal detention centre after the family's initial denial, the female claimant and the couple's two children underwent their eligibility interview on May 5, 2025. I was physically present at the border for 13 hours with the claimants. During the eligibility interview, I was able to correct interpretation errors, make comments to the officer when his questions were phrased in an unclear fashion, point the officer to particular documents before him that responded to his concerns, and explain how other family members had gathered certain supporting documents to prove the anchor relationship while the claimant was in U.S. detention.

51. When the officer still had concerns, I advocated for an interview of one of the claimant's two anchor relatives to be conducted, resulting in CBSA doing so. The claimant and her children received a positive eligibility decision at the end of their redetermination interview.

52. The male claimant underwent his interview on May 19, 2025, after being released from detention on bond. Had the bond not been granted and posted, he would have been unable to return to the border. He could also have been deported prior to the ineligibility issue being resolved.

53. I attended the interview by phone and was in frequent communication with the claimant by text message before and after the interview. At the interview, I verbally intervened when the officer made incorrect assumptions about United States tax rules without evidence and wrongly assumed that certain legal concepts such as common law spouse were the same in a particular U.S. state as they are in Ontario; advocated for the officer to interview the anchor relative (which he refused to do); corrected interpretation errors; verbally summarized the significant amount of documentary evidence before the officer; and quickly contacted the claimant's other family members waiting outside the port of entry in order to have them provide physical copies of additional documents requested by the officer at the last minute.

54. None of these actions I took on behalf of my clients at their eligibility interviews would have been possible had I not been permitted the right to attend the interview and to speak to the officer as their counsel. As a result, they would have been incorrectly determined to be ineligible.

55. A third example involves reconsideration of two ineligibility decisions. In both cases, my clients were unrepresented at the time. They each had an anchor relative in Canada and provided CBSA with DNA results revealing a 99.9% chance in each case that the anchor relative was the client's sibling. In both cases, CBSA rejected the DNA results because the client failed to provide a "chain of custody" document from the laboratory that issued the DNA results to establish the steps taken from drawing blood, the testing it, to issuing the result. I had never heard of such a document, and when I reviewed CBSA's policies, I was unable to locate any mention of such a requirement. I represented one client in a reconsideration request and the Canada-U.S. Border Rights Clinic represented the other. Both requests were denied. I am now seeking leave to commence judicial review in both cases. Had I been counsel at the examination for each client, I would have insisted that CBSA allow the clients time to obtain the chain of custody document or suggested that they obtain the clients' consent to obtain it directly from the laboratory. This would have avoided both the reconsideration requests and obviate the need to file an application in the Federal Court.

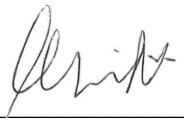
56. Apart from a reconsideration request, the only other way to address errors made by CBSA in a refugee eligibility interview is to file an application for leave and judicial review in the Federal Court within 15 days of the negative eligibility decision. However, even knowing whether there is merit to a judicial review is hindered by the fact that clients do not receive a copy of their entire file from CBSA when their applications are denied. In my experience, some clients receive a copy of the officer's notes justifying the reasons for denial, but others do not. Without a copy of the notes, it is difficult to determine whether a legal error exists which warrants seeking judicial review. In a recent 2025 case, I requested a copy of the full notes directly from CBSA by email but never received a response, even though I personally emailed the Director of Operations for the port of entry. Although one could theoretically make an ATIP request, the timeline for receiving any response would far exceed the timeline for submitting a judicial review notice.

57. In addition, the judicial review process cannot provide a timely remedy for a client who has been denied entry into Canada and returned to the United States. A client must wait many months to learn whether the Federal Court will grant leave to hear the case and, even if leave is granted, the time to a Federal Court hearing will likely be over a year from the granting of leave.

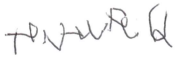
Seeking an expedited review cannot result in a decision quickly enough to prevent detention and deportation from the United States. In this sense, judicial review is of little assistance.

58. I make this affidavit in relation to this application for judicial review and for no improper purpose.

Declared remotely by Heather Elizabeth Neufeld at the City of Ottawa, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on August 21, 2025 in accordance with *O.Reg. 431/20, Administering Oath or Declaration Remotely*

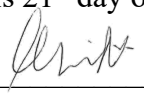


Maureen Silcoff
a Commissioner for Taking Affidavits



Heather Elizabeth Neufeld

This is Exhibit **"A"** referred to in the affidavit of
HEATHER ELIZABETH NEUFELD sworn
Before me this 21st day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

Heather Elizabeth Neufeld
39 Grange Avenue, Ottawa, ON K1Y 0N8
613-796-0959 • heather@heatherneufeldlaw.com

Bar Admissions

Ontario (called 2009)
State of California (admitted 2016)

Education and Awards

Master of Laws (LL.M.), June 2016 — Berkeley, California
University of California, Berkeley (High Honors)

Bachelor of Laws (LL.B.), June 2008 — Ottawa, Ontario
University of Ottawa (magna cum laude)
Specialization: International Law
Honors:

- University Gold Medal for the highest cumulative grade point average in the LL.B. Program
- George W. Ainslie Memorial Prize for highest cumulative grade point average in the LL.B. Program
- Carswell Prize for the highest annual grade point average during the third year of the LL.B
- Osgoode Society Prize for Canadian Legal History awarded to top students in the graduating classes
- Donald Scarth Thorson Award for the highest mark in "Statutory Interpretation"
- R. Michael Beaupré Memorial Prize for the highest standing in "Statutory Interpretation"
- Ranked Number 1 in 2008 graduating class; Top 1% in 2006–2007; Top 3% in 2005–2006
- McCarthy Tetrault Leadership Award for Academic Excellence and Community Service
- University of Ottawa Merit Scholarship for Academic Excellence
- Marusyk, Miller & Swain LLP Law School Entrance Scholarship for Academic Excellence

Certificate of Participation, Centre for Refugee Studies, June 2007 — Toronto, Ontario
York University (summer course taught by experts in refugee law)

Bachelor of Social Sciences, June 2005 — Ottawa, Ontario
University of Ottawa (summa cum laude)
Concentration in Political Science

Teaching Experience

Part-Time Professor, January 2020 – April 2022, — Ottawa, Ontario
University of Ottawa Faculty of Law
Access to Justice - Refugee Claimants (CML1105L)

Part-Time Professor, September 2017 – December 2017 — Ottawa, Ontario
University of Ottawa Faculty of Law
Immigration and Refugee Law (CML3397)

Professional Experience

Founding Lawyer, March 2019 – present — Ottawa, Ontario
Heather Neufeld Law

- Represent clients in all areas of immigration, refugee and citizenship law.
- Provide immigration-related legal advice to non-governmental organizations.

Staff Lawyer, June 2009 – December 2018 — Ottawa, Ontario
Community Legal Services of Ottawa

- Represent low-income clients in immigration and refugee matters, including: refugee hearings, humanitarian and compassionate grounds applications, Pre-Removal Risk Assessments, family class sponsorships, and judicial reviews before the Federal Court of Canada.
- Train and supervise law student interns assisting on immigration files through the University of Ottawa's Law School clinical program.
- Conduct public legal education trainings and presentations on immigration law issues for community agencies such as refugee-serving organizations and women's shelters.

Volunteer Foreign Attorney, September 2015 – July 2016 — Berkeley, California
East Bay Sanctuary Covenant

- Represented asylum applicants before the San Francisco Asylum Office and Immigration Court under the supervision of a California attorney.

Legal Intern, January 2016 – May 2016 — San Francisco, California
Center for Gender and Refugee Studies, UC Hastings College of the Law

- Prepared research memos on gang violence and gender-based persecution to support asylum applications from Central America.

Articles of Clerkship, August 2008 – June 2009 — Ottawa, Ontario
South Ottawa Community Legal Services

- Represented clients in all areas of law offered by the clinic: immigration, income maintenance, and landlord/tenant.

Refugee Law Researcher, April 2007 – August 2007 — Ottawa, Ontario
Professor Peter Showler, Director of the Refugee Forum

- Researched asylum law, policy, and procedures in Europe, Australia, and Canada

Legal Intern, October 2006 – April 2007 — Ottawa, Ontario
United Nations High Commissioner for Refugees (UNHCR)

- Researched and wrote a comprehensive report on the asylum systems of nine industrialized countries.

Legal Intern, June 2006 – August 2006 — Toronto, Ontario
Refugee Law Office of Legal Aid Ontario

- Represented a claimant in a successful refugee hearing and conducted legal research regarding Canadian refugee law issues.

Publications and Papers Presented

- Heather Neufeld and Caitlin Thomas. “STCA Determinations: High Stakes in an Enforcement-Driven Climate”. CARL Webinar (June 26, 2025).
- Heather Neufeld and Caitlin Thomas. “What’s Happening at the Border?”. Ottawa Immigration Law Conference (5 May 2025).
- Heather Neufeld and Keith MacMillan. “Refugee Claims Based on Gang Violence in Central America”. CARL 2021 Webinar Series on Country and Claimant Profiles (July 29, 2021).
- Heather Neufeld. "The Safe Third Country Challenge: BEHIND THE SCENES". The Refugee Law Office and Ottawa Immigration Conference present Current Issues in Refugee and Immigration Law (September 2020).
- Heather Neufeld. “Canada's Treatment of Central American Refugee Claims”. Canadian Council for Refugees Fall Consultation. Ottawa, ON (November 28, 2019).
- Heather Neufeld and Kate Webster. “Recent Developments in U.S. Asylum Law and Practice: What You Need to Know”. Canadian Association of Refugee Lawyers National Conference. Ottawa, ON (October 11, 2019).
- Heather Neufeld. “The US-Canada Safe Third Country Agreement: Safe for Whom?”. Realizing Rights 2017: Human Rights and Constitutionalism. University of Ottawa. Ottawa, ON (June 2017).
- Heather Neufeld. “Refugees Welcome?”. Amnesty International Human Rights Conference. University of Calgary, Calgary AB (June 2017).
- Heather Neufeld. “The US-Canada Safe Third Country Agreement: Where are We Now?”. Canadian Council for Refugees, Spring Consultation. Edmonton, AB (June 2017).
- Heather Neufeld. “Challenging the US-Canada Safe Third Country Agreement in the Time of Trump“. Canadian Association of Refugee Lawyers National Conference. Ottawa, ON (May 2017).
- Heather Neufeld. “Using Expert Witnesses in Support of Refugee Claims: Dos and Don’ts”. Immigration Law Conference. Ottawa, ON (April 2015).
- Aviva Basman and Heather Neufeld. “The Refugee Appeal Division: How Is It Working?” Canadian Council for Refugees Fall Consultation. Gatineau, QC (November 2014).
- Jamie Liew and Heather Neufeld. “Representing Vulnerable Claimants before the Immigration and Refugee Board”. Immigration Law Conference. Ottawa, ON (March 2014).
- Heather Neufeld. “Conflict between the *Hague Convention on International Child Abduction* and the *Refugee Convention*: The Case of Josette Rosenzweig”. Canadian Council for Refugees Spring Consultation. Hamilton, ON (May 2011).
- Heather Neufeld. “Gang Violence and Risk of Death: A Call for Reform of Canadian Refugee Law”. Forced Migration: Challenges and Change: Third Annual Conference of the Canadian Association of Refugee and Forced Migration Studies. McMaster University, Hamilton, ON (May 2010).
- Heather Neufeld. “Newcomer Women, Domestic Violence, and Sponsorship Breakdown: The Need for Legal and Policy Reform”. Canadian Council for Refugees Spring Consultation. Ottawa, ON (June 2010).
- Heather Neufeld. “Inadequacies of the Humanitarian and Compassionate Procedure for Abused Immigrant Spouses: A Proposal for Reform”. The Canadian Journal of Law and Social Policy, vol. 22 (2009).
- Heather Neufeld and Chantal Tie. “‘Limited Brutal Purpose’ Organizations Exclusion: Striking the Right Balance”. Law Society of Upper Canada 17th Annual Immigration Law Summit. Toronto, ON (November 2009).

Professional Activities

- Co-counsel for the public interest parties, Canadian Council for Refugees, Amnesty International and Canadian Council of Churches, in CCR et al v. MIRC et al, IMM-2977-17 (a Charter challenge to the operation of the US-Canada Safe Third Country Agreement). Federal Court of Canada, Federal Court of Appeal and Supreme Court of Canada. July 2017 – present.

- Testified before the Parliamentary Standing Committee on Citizenship and Immigration on behalf of the Canadian Council for Refugees. 5 March 2014: Conditional Permanent Residence and Domestic Violence: The Need for Policy Reform.
- Spoke at the Press Conference of the Justice for Immigrants and Refugees Coalition concerning Bill C-31's attack on refugee family reunification. 26 March 2012.
- Co-counsel for the intervener, Canadian Council for Refugees in *Issasi v. Rosenzweig* (concerning conflict between the *Hague Convention on International Child Abduction* and the *Refugee Convention*), Ontario Court of Appeal. November 2011 – June 2011.

Memberships

- *Canadian Council for Refugees*
  - Board Member, 2009 – 2013; Legal Affairs Committee member, 2012 – 2018.
- *Canadian Association of Refugee Lawyers*
  - Board Member, Fall 2017 – present
- *African Education Program*
  - Board Member, 2014 – 2018; Board Chair, 2018 – present
- *Women's Legal Mentorship Program*, University of Ottawa Faculty of Law
  - Mentor, 2011 – present

Languages

Spanish: fluent – speak, read, write, translate, and interpret
French: semi-fluent – speak/understand, read

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

AFFIDAVIT OF SHALINI KONANUR

I, Shalini Konanur, of the City of Richmond Hill, in the Province of Ontario, DO AFFIRM THAT:

1. I am a lawyer in the Province of Ontario. I make this affidavit based on my professional expertise and experience, except where otherwise stated.

Qualifications and Expertise

2. I hold a common law degree from the Osgoode Hall Law School. I was called to the bar in 2000. My Law Society of Ontario (**"LSO")** licence number is 42871Q.

3. I attach my resume as **Exhibit "A"** to my affidavit.

4. I am currently an elected Bencher of the LSO and a Member of the Law Society Tribunal. I also serve on the Human Rights Expert Panel of the Court Challenges Program. My memberships include the Women's Law Association of Ontario, the Canada Bar Association, the Ontario Bar Association, and the South Asian Bar Association – Toronto.

5. I am the recipient of a number of awards, namely South Asian Bar Association of North America – Public Interest Lawyer of the Year, Attorney General Victim Service Award of

Distinction, Women of Resilience Award – Women's Health in Women's Hands, Ontario Bar Association Award of Excellence in the Promotion of Women's Equality, Legal Aid Leader, Canadian Bar Association, Woman of the Year, Social Service Network of York Region, Female Lawyer of the Year, South Asian Bar Association – Toronto.

6. I have spent my entire legal career in Ontario's legal aid clinic system, practicing in rural and urban settings with diverse populations. Since 2008, I have been the Executive Director / Senior Staff Lawyer at the South Asian Legal Clinic of Ontario (**"SALCO"**). My responsibilities include management of SALCO, oversight of our staff legal counsel and other staff, and the direct provision of legal services. I maintain a full caseload alongside my other responsibilities.

7. SALCO was founded in 1999 by lawyers and community organizers in Toronto's South Asian community. SALCO's mandate includes the provision of *pro bono* front-line legal advice, brief services, and legal representation to low-income South Asians in Ontario. South Asians form one of Canada's fastest-growing racialized communities, largely because of immigration to Canada. South Asians are Canada's largest visible minority community. The 2021 Census reports that almost 2.6 million people reported being South Asian, representing one-quarter (26.7%) of the visible minority population and 7.1% of the entire Canadian population. In Ontario, South Asians are also the single largest visible minority group, accounting for 31.4% of visible minorities and 10.8% of Ontario's total population. Attached hereto as **Exhibit "B"** to my affidavit is a copy of the relevant portions of the Census Profile, 2021 Census, prepared by Statistics Canada.

8. Almost 47% of SALCO's overall caseload is within the area of immigration and refugee-related law. As of May 2025, SALCO has provided legal advice, brief services, and representation in 17,213 immigration and refugee-related matters under the *Immigration and Refugee Protection Act* (**"*IRPA*"**) over the past 17 years. Since 2004, SALCO has worked with approximately 4,866 clients who were seeking SALCO's support to make a refugee claim in Canada because they could not afford private representation. In those cases, 4,331 clients were served by SALCO staff in Hindi, Urdu, Punjabi, Bengali, and Tamil, because legal matters require absolute proficiency in English or French. Through its on-the-ground work, SALCO has developed expertise on the experience of racialized minorities accessing and interacting with the immigration and refugee-related systems.

9. I practice in several areas of law, including immigration and refugee-related law, which accounts for 60% of my practice. I have appeared in 14 immigration and refugee-related matters in courts across Canada, including the Federal Court of Canada, the Federal Court of Appeal, and the Immigration and Refugee Board (**"IRB"**). I have settled 84 cases at the Federal Court and IRB. I have experience dealing with humanitarian and compassionate applications, applications for temporary resident permits, sponsorship applications, applications for temporary resident visas, pre-removal risk assessments, and inadmissibility (criminal and medical).

10. I do not practice refugee law, meaning I do not represent clients in their refugee claims *per se* before the IRB or at the Federal Court. However, I support refugee claimants with legal advice about entering Canada, with temporary resident visas (e.g. study and work permits), applications for permanent residence after successful refugee claims, and pre-removal risk assessments for failed refugee claimants. I also support failed refugee claimants with other options for permanent residence as noted above.

11. I have also provided expert advice related to immigration and refugee law, racism, discrimination, and gender-based violence to multiple levels of governments, civil society organizations, the private sector, and internationally at the United Nations, as set out in my resume.

Mandate

12. I have been asked to offer expert evidence on the importance of the recognition of the right to counsel, outside the contexts covered by section 167(1) of the *IRPA*, to mitigate various barriers that individuals face in the immigration and refugee system. I am qualified to do so, as this topic falls within my area of expertise, which is based on my direct provision of legal services at SALCO, and on the experiences of other SALCO legal counsel which I have come to know through being supervisor as the Senior Staff Lawyer.

13. My affidavit mostly focuses on immigration and refugee-related applications considered by Immigration, Refugees and Citizenship Canada (**"IRCC"**), and inland and overseas interviews conducted by IRCC.

14. I am aware of my obligations as an expert and have read the *Code of Conduct for Expert Witnesses* set out in the schedule to the *Federal Courts Rules* and agree to be bound by it. A signed copy of the *Code of Conduct for Expert Witnesses* is attached as **Exhibit "C"** to my affidavit.

15. I have been informed by counsel that the Human Rights Panel of the Court Challenges Program provided funding to the Applicant for these proceedings. I was unaware of the funding application and not involved in the Panel's deliberations or decision to grant funding, because of a conflict-of-interest screen in relation to any applications submitted on behalf of clients by Sujit Choudhry, counsel for the Applicant in this matter.

IRCC's statements on legal counsel, web portals and unscrupulous representation

IRCC's statements on legal counsel

16. IRCC makes numerous statements, on its websites and forms, that individuals do not require legal representation. For example, the Use of a Representative Form (IMM 5476), which permits counsel to become counsel of record in immigration matters, contains a message that discourages the use of counsel. This form states at the top of the first page: "You do not need to hire a representative, it is your choice. No one can guarantee the approval of your application. All the forms and information you need to apply are available for free on the Immigration, Refugees and Citizenship Canada (IRCC) Website." I attach a copy of this form as **Exhibit "D"** to my affidavit.

17. IRCC's policies (as reflected on its website) also state, clearly and repeatedly, that it is not necessary to retain counsel for immigration applications, that application materials are publicly available online free-of-charge, and that applicants should be extremely cautious in deciding whether to hire counsel for an immigration application. For example, IRCC's website states:

a. applicants "don't need to hire a representative!" and whether to do so is an individual's choice; individuals can "get all the forms and instructions you need to apply for a visa, a permit or citizenship for free on this website"; and if people "follow the instruction, you should be able to fill out the forms and submit them yourself".[1]

b. "your application will not be given special attention nor can you expect faster processing or a more favourable outcome.[2]

[1] Immigration, Refugees and Citizenship Canada, "Learn about representatives" (last modified 14 January 2025), posted at: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/learn-about-representatives.html.

[2] Immigration, Refugees and Citizenship Canada, "Use of a Representative Form (IMM5476)" (last modified 1 May 2025), posted at https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/imm5476.html.

c. "If you decide to use an immigration representative, **be careful whom you ask for advice**."[3]

18. In my experience, such statements by IRCC have induced a significant number of SALCO's clients to not retain legal counsel in immigration and refugee-related matters, because IRCC has told them that doing so is not necessary and it would assist them in addressing any problems they might encounter.

IRCC web portals, application forms, and supporting documents

19. IRCC's increasing use of web portals for applications have also led a significant number of SALCO's clients to not retain legal counsel in immigration and refugee-related matters. These portals create the false impression that the information sought is clear to unrepresented applicants, and further, that IRCC's decision-making is based on the mechanical application of clear legal criteria to facts the applicants provide online. IRCC does not disclose that these legal criteria are complex, that it has adopted a particular administrative interpretation of them, that they can be interpreted in more than one way, and that they are subject to judicial interpretation – all of which may be at odds with its plain meaning to a layperson. The portal, forms and guides issued by IRCC do not provide sufficient information to allow an unrepresented individual to navigate the complexity of the portals.

20. In addition, applicants without legal counsel may misunderstand what documents they must upload to the portal in support of their applications, and not appreciate the negative consequences of providing incomplete and/or inaccurate documents.

21. I have reviewed the Affidavit of Jacqueline Bonisteel dated August 19, 2025 in this proceeding. I agree with her evidence that: portals and application forms require applicants to answer questions about security screening, personal history and education, family status and relationships, and the best interests of the child; that IRCC interprets the required information in a particular way that is not apparent on the portal itself; and that through their expertise and experience, legal counsel are aware of IRCC and judicial interpretations while laypersons very often are not, and therefore require the assistance of counsel. I add that individuals facing

[3] IRCC website, "Help Centre: Do I need a representative to help me apply" (last modified 4 April 2025), posted at: https://ircc.canada.ca/english/helpcentre/answer.asp?qnum=444&top=7 (emphasis in original).

linguistic, cultural, educational and/or mental health barriers, and/or who are victims of trauma arising from violence, have an even greater need for counsel, for all of the above reasons.

Unscrupulous representation

22. One of the consequences of IRCC's statements that representation is not necessary is that this message invites individuals to turn to unregulated representatives for assistance with applications to IRCC, instead of retaining counsel. Those representatives are not trained, lack expertise, and may be unscrupulous.

23. At least 60% of SALCO's intake in immigration and refugee-related matters consists of clients who have previously received unscrupulous representation by community members who hold themselves out as immigration consultants and charge fees, but are not members of the College of Immigration and Citizenship Consultants. They are unlicensed and therefore not subject to oversight by a regulatory body which would enforce professional standards through a complaints process.

24. My own clients have told me that these representatives have advised them to make applications that lack legal merit, and in some cases, to knowingly make misrepresentations to IRCC. By contrast, lawyers are under professional and legal obligations to base their legal advice on an assessment of the merits, to not counsel clients to knowingly make misrepresentations and never make misrepresentations themselves, and are subject to rigorous oversight by provincial and territorial law societies, such as the Law Society of Ontario.

The gap between IRCC's written policies and their administrative interpretation

25. Within the context of immigration policies themselves rapidly evolving, there is often a gap between IRCC's written policies and how IRCC's interprets those policies internally and administers them. IRCC does not publish information about how it interprets many written policies. Lay persons therefore do not have any way of obtaining this information. By contrast, legal counsel can infer this information from IRCC's practices and decisions in relation to their clients, and accordingly advise future clients regarding their eligibility under these policies, including what information they must provide with their applications.

26. The following example illustrates this point. IRCC has issued a policy to provide temporary resident permits (**"TRPs"**) for victims of family violence. I attach this policy as **Exhibit "E"** to

my affidavit. To be eligible, applicants must have temporary status in Canada. IRCC's administrative interpretation of what constitutes temporary status has evolved. Initially, IRCC interpreted temporary status to encompass holders of visitors' visas. IRCC then changed its interpretation to exclude holders of visitors' visas. There was no change in the text of the policy. Nor did IRCC publish either its initial or subsequent administrative interpretations of the policy. Rather, legal counsel at SALCO gleaned this information from IRCC's negative decisions in relation to multiple clients with visitors' visas.

27. In the absence of any published information from IRCC, even legal counsel may not have identified the shift in IRCC's administrative interpretation. In my opinion, a layperson – especially one who faces one or more of the barriers set out below, as most of SALCO's clients do – would have had no way to acquire this information on their own, without legal counsel.

Linguistic barriers

28. Counsel can mitigate linguistic barriers faced by individuals with immigration and refugee-related applications.

29. Most of SALCO's clients – including my own – face linguistic barriers. All but a tiny handful of SALCO's clients lack a sufficient command of English or French to properly read, understand, and complete instructions on IRCC forms and portals. Indeed, 90% of SALCO's clients do not speak functional English or French, and at best have a passing ability to speak English.

30. IRCC's instructions on forms and portals, and accompanying guides, are only in English and French. IRCC's correspondence to applicants is also only in English and/or French. Because of linguistic barriers, SALCO's clients find these materials confusing and complex, to the extent that they cannot even appreciate what is being asked of them. IRCC does not provide any official translations of these materials in the languages in which the overwhelming majority of SALCO's clients are fluent.

31. Sometimes, SALCO's clients, on their own initiative, have used AI tools to translate these materials. Based on my review of the AI translations provided by clients, it is my opinion that these translations are legally inaccurate, and clients should not rely on them to surmount their lack of literacy in English or French.

32. Because of these linguistic barriers, SALCO's clients often do not understand how to properly complete forms or portals, or to respond to correspondence from IRCC without legal representation. Moreover, in my experience, SALCO's clients are very likely to inadvertently provide inaccurate or incomplete answers to questions. A common error is to inadvertently provide incomplete address and/or work history, because clients do not understand what information needs to be listed. Another is to inadvertently provide incomplete or inaccurate answers to questions designed to determine criminal inadmissibility, because clients do not understand what it means to have been arrested or charged with an offence.

33. It has also been my experience that IRCC may conclude, based on incomplete and/or inaccurate answers arising from linguistic barriers, that individuals have engaged in misrepresentation, notwithstanding that any errors were inadvertent. The consequences of a finding of misrepresentation can be very severe – including the denial of an application. It is only after IRCC has alleged misrepresentation that those individuals approach SALCO for the first time for legal representation.

34. An example from my practice illustrates this problem. Prior to coming to SALCO, a client had misunderstood a question about education history on an application form because of linguistic barriers. In their country of origin, a different term is used to describe "high school". They received a procedural fairness letter from IRCC to respond to an allegation of misrepresentation.

35. Having legal representation from the outset can prevent these problems. SALCO's counsel can sit down with clients, explain the forms to them in their own language, and complete the forms to ensure they contain accurate and complete information, to avoid inadvertent misrepresentation. In the example in the previous paragraph, had I assisted the client from the outset, they would have provided an accurate answer and IRCC would have had no reason to issue the procedural fairness letter. Moreover, if a procedural fairness letter is nonetheless issued, counsel can assist a client in properly responding to it.

Cultural barriers

36. Legal counsel can mitigate cultural barriers. SALCO's clients often defer to IRCC, because of their trust in Canadian government institutions more generally. Many of them come from countries where governments are corrupt, authoritarian, ineffective, adversarial and/or unhelpful. They assume that since Canada is a constitutional democracy governed by the rule of law – one of

the reasons many apply to immigrate to Canada – IRCC is invariably competent and non-adversarial and will assist clients in navigating its processes if any challenges arise.

37. I have observed how these attitudes manifest themselves in interviews both inland and overseas, which my colleagues at SALCO and I are sometimes permitted to attend with our clients, support clients to attend on their own, or learn about from clients after a negative decision is rendered. We have observed, or later realized, that our clients may often not advocate for themselves in those interviews to challenge questions posed by IRCC officers, and the narratives that underlie them, which may rely on myths and stereotypes. The consequence of failing to challenge that narrative is that the officer may rely on it to refuse an application.

38. These problems also occur in spousal sponsorship interviews. In particular, overseas applications, which we learn about afterward from clients and reading notes from the Global Case Management System provided as Rule 9 reasons in applications for appeal or judicial review. Most often, it is men with legal status in Canada who have sponsored their wives. At interviews, IRCC officers usually question women on the genuineness of their marriages, sometimes aggressively – for example, by asking about their husband's banking information or choice of toothpaste. Even when clients have been prepared by counsel, they sometimes do not know how to respond to an aggressive line of questioning and shut down. This behaviour may be a product not only of cultural but also linguistic and educational barriers. If clients do not push back, the IRCC officer may incorrectly assume they are being untruthful or withholding information. In addition, officers may not that as cultural matter, women do not have access to financial information about their husbands. Our clients have trouble explaining that it is not normal for them to know this information.

39. Another context where I have observed a similar pattern is in IRCC interviews of victims of human trafficking applying for TRPs. They sometimes face skeptical questioning from IRCC officers. For example, I have observed IRCC officers ask victims why they never called the police, either in their country of origin or in Canada, if trafficking had genuinely occurred. As for spousal sponsorship interviews, clients sometimes do not how to respond to an aggressive line of questioning and shut down, even when they have been prepared by counsel. This behaviour may be a product not only of cultural, linguistic and educational barriers, but also trauma from violence. Again, if clients do not push back, the IRCC officer may incorrectly assume they are being untruthful or withholding information.

40. Full participation by counsel can mitigate these cultural and other barriers. They can help advocate for clients at interviews in response to aggressive and skeptical questioning. They can forward an appropriate and responsive narrative on behalf of clients. They can provide complete answers, or supplement incomplete answers. They can challenge immigration officers' narratives in an effort to course correct and avoid a negative decision based on a misunderstanding. For example, in the case of human trafficking, counsel can ensure a client explains that they may not have called police in Canada because they lack formal status in this country, and/or may have not contacted police in their country of origin because of corruption and/or a lack of trust.

Educational barriers

41. Educational barriers are another challenge which counsel can mitigate. The overwhelming majority of SALCO's clients are not highly educated. For 2024, 70% of my own clients have completed only up to high school. Many of my clients have only completed up to grade 10. The data for other legal counsel at SALCO are comparable. Moreover, these data are representative across years.

42. A significant problem posed by educational barriers in immigration and refugee-related matters is the complexity of this area of law. This complexity arises from the fact that IRCC has been issuing TPPs pursuant to section 25.2 of the *IRPA* with increasing frequency to create new programs that are not found within the *IRPA* or the *Immigration and Refugee Protection Regulations* (**"*IRPR*"**), but which have the same legal status as the *IRPR*. I attach as **Exhibit "F"** to my affidavit the list of current TPPs listed on the IRCC website. As a consequence of these TPPs, the legal framework for immigration and refugee-related applications is fluid and constantly evolving. This exacerbates the impact of educational barriers on applicants without legal counsel in two ways: understanding which program may be applicable, and the requirements for that program.

43. An example from my practice illustrates this problem. One of my clients arrived in Canada as an international student and attempted on their own to explore legal pathways to obtain permanent residence. They could not do so, because of the impact of TPPs had rendered the legal landscape too complex for them to navigate on their own. I was able to assist them and identify the correct TPP under which they were eligible. *Ipso facto*, someone with less education would be even less able to handle these issues on their own.

44. Counsel can mitigate these educational barriers. They can ensure that applicants provide accurate and complete forms with all the required supporting documentation, and can advise clients of the consequences of incomplete or inaccurate answers. In addition, counsel can provide expert legal advice regarding the applicability and terms of any relevant TPPs.

Mental health barriers

45. Counsel can also mitigate barriers arising from mental health. In my own practice, I have frequently encountered clients with undiagnosed mental health disabilities. I am not a mental health professional. But over the course of two decades of practice in legal clinics, I have often referred clients whom I suspected of having an undiagnosed mental health disability to a social worker, who in turn can assist them in obtaining a diagnosis and receiving treatment. Based on this experience, I now have a reasonable suspicion if an individual has a mental health disability.

46. Diagnosis of a mental health disability can be advantageous to an applicant. For example, they can explain to IRCC their past behaviour, or why becoming a permanent resident is necessary to avoid hardship in their country of origin based on a lack of mental health treatment or to avoid discrimination due to a mental health disability. However, because of those very mental health disabilities, clients are unable to present evidence and submissions themselves to IRCC.

47. Mental health disabilities pose other barriers. In my experience, it takes three to four times longer to obtain information from clients with mental health disabilities and complete forms for them. Moreover, these clients are more likely to be confused, shut down, or have emotional responses such as crying, fear, or anger, than clients without mental health disabilities.

48. Counsel can mitigate barriers arising from mental health disabilities. For example, I suspected a current client was schizophrenic. Through my efforts, they were diagnosed by a psychiatrist. With this information in hand, I could complete an application for permanent residence on humanitarian and compassionate grounds, with an explanation for the lack of details regarding the lack their education and work history, because they cannot recall that information in a linear and complete way. Counsel can also help clients avoid misrepresentations.

49. I observe the same pattern of behaviour by individuals with mental health disabilities in inland interviews. I note that neither the *IPRA* nor the *IRPR* provides for designated representatives in non-IRB processes, such as interviews, for persons with mental health disabilities. The role of

counsel is profoundly important in interviews, because they can ensure information is presented as accurately and completely as possible on behalf of clients whose mental health disabilities prevent them from effectively answering those questions themselves, and can prevent clients from engaging in inadvertent misrepresentations caused by those disabilities.

Trauma caused by violence

50. Counsel can also mitigate the barriers arising from trauma caused by violence. My colleagues at SALCO and I work with a significant volume of women who faced violence in countries of origin and have come to Canada as students or temporary workers, and have not instituted gender-based refugee claims.

51. After arriving in Canada, those women may seek to extend their existing legal status or apply for another immigration program, but the trauma they experience makes it extremely difficult for them to complete an application.

52. If their application involves consideration of their past violence, the process of completing forms and participating in inland interviews often retraumatizes them, because they are required to provide a narrative of the violence they have experienced over and over again. They may not share all necessary information, even though being a victim of violence is a legally valid basis for securing longer term status in Canada.

53. Even if they share this information, IRCC officers in an inland interview often assume that victims of violence will take certain steps, such as calling the police, speaking to family or community members, contacting health care services, or fleeing abusive relationships. Because of their trauma and other cultural considerations, clients may both have been unable to take these steps and/or explain why they did not. This behaviour, and their inability to explain it, may undermine their credibility in interviews and undermine their cases.

54. An example illustrates this point. SALCO was referred a client from SickKids. The client was a mother to a newborn. She had recently arrived in Canada after living with a violent spouse for several years in their country of origin. The client had two options regarding her immigration status in Canada: apply for either humanitarian and compassionate consideration or a TRP. Both options involved presenting a clear narrative of her traumatic experiences, supported by corroborative evidence. I spent countless hours with this client to gain her trust to so that she would

disclose sensitive information. This allowed me to piece together elements of her past into a chronological narrative focused on information relevant to her immigration application.

55. In such situations, counsel is crucial to understanding and articulating the client's past traumatic experiences, completing forms, and gathering corroborative evidence. Although IRCC trains offers to be sensitive to experiences of gender-based violence, it is counsel, not officers, who complete the forms and gather evidence. A properly prepared application reduces the chance of a negative decision based on a misunderstanding or lack of information.

Efficiency gains for IRCC from recognizing the right to counsel

56. Counsel can not only mitigate the various barriers set out above, but also can enhance the efficiency of immigration and refugee-related matters. Forms or portals that contain inaccurate and/or incomplete information generate additional workload for IRCC – for example, procedural fairness letters and any subsequent steps. Accurate and complete forms, conversely, avoid the need for these additional steps by IRCC, such as procedural fairness letters, appeals and proceedings before the IRB, and applications for judicial reviews in the Federal Court.

57. I make this affidavit for no improper purpose.

DECLARED REMOTELY at the City of Richmond Hill)
in the Province of Ontario before me at the City of Toronto)
in the Province of Ontario, on August 21, 2025 in)
accordance with O. Reg. 431.20, Administering Oath)
or Declaration Remotely.)

Shalini Konanur

Maureen Silcoff
a Commissioner for Taking Affidavits

This is Exhibit **"A"** referred to in the affidavit
of SHALINI KONANUR sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Shalini Konanur

221 Strathearn Avenue
Richmond Hill, Ontario
Canada, L4B 3C3
Tel: 416-526-3484
shalini.konanur@salco.clcj.ca

PROFILE

Shalini brings over 25 years of experience in Ontario's legal aid clinic system, beginning as a law student with the Community & Legal Aid Services Program (CLASP) at York University and Parkdale Community Legal Services. Her career spans both rural and urban settings, with a deep focus on poverty law and its intersections with age, gender identity, race, disability, religion, ethnic origin, and socio-economic status. Throughout, she has been a steadfast advocate for advancing human and constitutional rights for low-income, racialized communities.

Currently, Shalini serves as the Executive Director and senior lawyer at the South Asian Legal Clinic of Ontario (SALCO), a not-for-profit clinic dedicated to providing legal services to low-income South Asian communities. Under her leadership, SALCO has become a recognized leader in Ontario's legal aid clinic system, known for its innovative and culturally responsive approaches to legal service delivery. The clinic addresses a wide range of legal areas, including immigration, income security, employment, housing, interpersonal violence, and public legal education, and spearheads unique initiatives such as the Forced Marriage Project.

Under Shalini's guidance, SALCO has earned a strong reputation for its grassroots, community-driven model, systemic advocacy, and impact through test case litigation—reaching as high as the Supreme Court of Canada. She has also championed the expansion of legal access through satellite services in underserved regions.

A dedicated advocate both professionally and in her volunteer work, Shalini has committed her life to uplifting marginalized and racialized communities. Her work is driven by a passion for social justice, with a particular focus on systemic racism, poverty, immigration, gender-based violence, discrimination, and access to justice for racialized and Indigenous peoples.

EDUCATION

2000	Call to Bar, Law Society of Upper Canada
1995-1998	L.L.B., Osgoode Hall Law School
1992-1995	B.A., York University

APPOINTMENTS / BOARD INVOLVMENT

2025-2027	Law Foundation of Ontario – Board of Trustees
2025-2026	Equity and Indigenous Affairs Committee, Law Society of Ontario – Co-Chair
2024-2025	Court Challenges Program (Canada) – Expert Human Rights Panel, Expert Panelist
2023-2025	Law Society of Ontario, Elected Bencher (board member)
2023-2025	Domestic Violence Death Review Panel (Ontario), Expert Member
2021-2025	Law Commission of Ontario, Board of Governors Director (term ended June 2025)
2020-2025	Action Canada for Sexual Health and Reproductive Rights (formerly Planned Parenthood Canada), Board Member, Vice-Chair, and Chair (ended July 2025)
2017-2018	Settlement Assistance and Family Support Services, Vice-Chair/ Board Member
2014-2018	Sandgate Women's Shelter, Vice-Chair, Board of Directors
2010-2016	Board of Directors, Bloor Information and Life Skills, Chair, Vice-Chair

AWARDS / DISTINCTIONS

2025	South Asian Bar Association of North America – Public Interest Lawyer of the Year
2025	Rosemary Brown Racial Justice Award
2021	Attorney General Victim Service Award of Distinction
2019	Women of Resilience Award – Women's Health in Women's Hands
2017	Ontario Bar Association Award of Excellence in the Promotion of Women's Equality
2014	Legal Aid Leader, Canadian Bar Association
2013	Woman of the Year, Social Service Network of York Region
2013	Female Lawyer of the Year, South Asian Bar Association – Toronto

PUBLICATIONS / WRITTEN MEDIA (HIGHLIGHTS)

2018-2025	Canadian Centre for Policy Alternatives: Alternated Federal Budget: Co-Author of Chapters on Immigration and on Racism
2025	The Local: Immigration Issue: "Caught in a Wave of Anti-Indian Hate", Contributor
2024	CBC: "South Asian newcomers to Canada say online hate is taking a toll", Contributor
2023	Desi News: Dismantling Systemic Racism One Case at a Time: discussing work that focuses on systemic racism in Canada's legal systems and the unique challenges faced by racialized communities, Contributor
2022	Toronto Star: "A teen helped translate for her mother with police, legal aid and social services. Her account exposes barriers immigrant women face while escaping domestic violence", Contributor
2022	Toronto Star: "Commissioner for Emergencies Act inquiry 'thoughtful' and 'decisive'", Contributor
2022	Toronto Star: "Liberal government's budget still lacking in gender-based analysis: advocates", Contributor
2021	Toronto Star: "Federal government must allow those with precarious immigration status to receive Canada Child Benefits", Co-Author

2021	Campaign 2000 Report (2021) – "No One Left Behind: Strategies for an Inclusive Recovery", highlighting the disproportionate impact of poverty on racialized communities, especially immigrants and refugees, Contributor
2021	Roadmap for the National Action Plan on Gender-Based Violence: Co-author of section on Social Infrastructure
2021	Toronto Star: "Canada's immigration rules kept families apart even before COVID-19. Now, as immigrants suffer from the pandemic, family reunification seems impossible", Contributor
2020	The Impact of COVID-19 on South Asian Communities in Canada, Co-Author
2019	Colour of Poverty – Colour of Change Updated Fact Sheets on the Impact of Systemic Racism and Discrimination on Life Outcomes for Racialized and Indigenous People in Canada, Co-Author
2019	Toronto Star: "The national conversation we really need about racism in Canada", Contributor
2018	The Hill Times: "Women's rights not often given much thought by global leaders, let alone at G7", Co-Author
2017	Updated National Toolkit on Forced Marriage in Canada, Co-Author
2015	Globe and Main: "A 'race lens' for the labour market? Welcome to 2015, Ms. Wynne", contributed to this article
2015	Conditional Permanent Residence: A practical guide to abuse exemptions (Co-Author)
2015	Perpetuating Myths, Denying Justice: "Zero Tolerance for Barbaric Cultural Practices Act" (Co-Author)
2013	Who, If, When To Marry: The Incidence of Forced Marriage in Ontario (Co-Author)
2013	Preliminary Issues in Human Rights Complaints in Ontario: Interlocutory Requests and Interim Remedies
2013	Toolkit on Elder Abuse in the South Asian Community (Contributor)
2012	Changes in Immigration are Devastating for South Asian Canadians
2008-2025	Additional co-authorship or contributor to articles / news reporting related to immigration gender-based violence, access to justice and poverty law published in the Toronto Star, National Post, Globe and Mail, Precedent Magazine, South Asian Focus, The Weekly Voice, and Asian Connections, Al Jazeera (U.S.), South Asian Generation Next, City T.V. news, Omni South Asian: Punjabi Edition (not highlighted here)

SPEAKING ENGAGEMENT / ORAL MEDIA (HIGHLIGHTS)

2025	National Conference – Canadian Network for Equity and Racial Justice
2025	South Asian Bar Association of North America: 2025 Conference: The Importance of Public Interest and Social Justice Lawyering
2025	Ontario Association of Black Paralegals: Documentary on Race Equity in the Law
2025	Rotman School of Business – Martin Luther King Day address
2024	Ontario Council of Agencies Serving Immigrations – Leader's Conference – Updates and Issues in Immigration Law
2024	Peel Family Mediation Conference – Femicide and the Domestic Violence Death Review Panel
2024	Federal Court Training – Asian Heritage Month

2024	South Asian Bar Association Women Lawyer's Forum
2024	Federal of Asian Canadians: 2024 Conference: Inspiring Leadership and Inclusion: Innovations for Social Impact and Community Building
2023	The Society of Ontario Adjudicators and Regulators: SOAR Women in Leadership: Women Leaders are Books of Wisdom
2023	Elder Abuse Interventions: Reducing Harm & Building Connections
2023	Law Society of Ontario: 17th Annual Family Law Summit: The Intersection of Family and Immigration Law
2022	Ontario Superior Court of Justice's Spring Education Seminar "Judging in a Culturally Complex Society"
2022	Law Society of Ontario: A2J Week 2022: AI, human rights and access to justice
2021	Asian Canadians see flaws in federal anti-racism strategy", CBC
2021	"Federal government must allow for immigrants and refugees to receive Canada Child Benefits", The Toronto Star
2021	Maytree: Five Good Ideas for racial justice change-making
2020	Federal Town Hall with PM and Cabinet Minister: The Impact of COVID-19 on South Asian and other racialized women.
2020	United Nations – Committee on the Rights of Children: Canada Review
2020	PCH / Canadian Heritage: National Forum on Racism and Discrimination in Housing
2019	Superior Court of Justice Ontario Continuing Education: Panel on Working With People from Racialized Communities
2019	Ontario Bar Association: Women Lawyers Forum: Family Law and Racialized Clients
2019	The LAWYERD Podcast: Shalini Konanur on Poverty Law
2018	G7 – W7: Advancing a Feminist Agenda with the G7 Summit
2018	Colour of Poverty Racial Justice Forum: Promoting a Racial Justice Agenda in Ontario
2018	White Privilege Conference: Economic Apartheid for Canada's racialized communities
2018	United Nations – Canada's Universal Periodic Review
2017	United Nations – Committee on the Elimination of Racial Discrimination
2016	Keynote Speaker, "Silent No More" Conference, Atlantic Provinces Services Providers and Police, Halifax, Nova Scotia
2015	Speaker, It's Never Okay: 2015 Summit on Sexual Violence, Ontario, Women's Directorate and the Premier's Office
2015	Expert Speaker on forced marriage, ISANS Halifax
2015	Keynote Speaker, OCASI (Ontario Council of Agencies Serving Immigrants) International Women's Day
2015	Speaker, Community Inclusivity Council of York Region's Diversity, Equity, & Inclusivity Symposium 2015: Truth, Reconciliation & Engagement
2012-2015	Speaker, Family Violence Conference. Toronto, Oshawa, Ottawa, Ontario
2013	Speaker, Ryerson Diversity Institute, Improving Diversity in Canada's Judiciary
2013	Speaker, Ontario Bar Association Institute on Human Rights, Toronto, Ontario
2012	Keynote Speaker - Diversity in the legal system, Ismaili Arbitration Board of Canada
2012	Osgoode Hall Law School: Judicial Diversity as a tool in access to justice (diversity on the bench)
2011	Panellist, METRAC – Action on Violence, Access to Justice project
2011	Speaker, United Nations Conference on Abused Woman, Toronto, Ontario

2008-2025 Addition media appearances on the Agenda with Steve Paiken, CBC, Radio Canada, Global Television, the National, South Asian Newsweek, CTV, Omni News: South Asian Edition, and TamilVision TV, TVOneCanada, Global 16x9
2008-2025 Additional speaking engagements not highlighted here

RELEVANT WORK EXPERIENCE

2022-Present **Queen's University – Faculty of Law**
Adjunct Professor, Graduate Diploma in Immigration and Citizenship Law

- Delivers engaging, practice-oriented online instruction in immigration and citizenship law and ethics
- Facilitates online discussions and support interactive, synchronous and asynchronous learning environments
- Assesses and provides timely, constructive feedback on assignments and evaluations
- Collaborates with the Program Director and instructional team to ensure course content remains current, accurate, and aligned with regulatory and policy developments.

2008-Present **South Asian Legal Clinic of Ontario (SALCO) Toronto, Ontario**
Executive Director / Lawyer

GENERAL

- Provides strategic leadership and oversight for SALCO, ensuring alignment with its vision and mandate through long-term planning and continuous organizational development.
- Manages a diverse and active legal caseload, with expertise in immigration law, income support programs (Ontario Works, ODSP, CPP Disability, OAS), Criminal Injuries Compensation, Employment Insurance, workers' compensation, human rights law, employment standards, tenancy law, forced marriage, and human trafficking. Represents clients at various provincial and federal courts and tribunals.
- Delivers public legal education across Ontario and Canada, focusing on key issues such as immigration, intimate partner violence, elder abuse, income security, housing rights, and employment law—averaging 40–50 speaking engagements annually.
- Advocates for systemic change by representing SALCO in appellate test cases and engaging with media to raise awareness of legal issues affecting low-income South Asian communities.
- Actively participates in law reform efforts that reflect and advance SALCO's mandate (see highlights below).
- Builds and maintains strategic relationships with SALCO's Board of Directors, Legal Aid Ontario, funding bodies, other legal clinics, community organizations, media, and the communities served.
- Ensures organizational compliance with applicable legislation, Board and funder policies, and Law Society regulations by balancing direct legal services with broader systemic advocacy and community engagement.
- Leads and mentors a multidisciplinary team, including staff lawyers, community legal workers,

administrative staff, articling students, and volunteers.
- Remains informed of developments in poverty law and emerging community needs to guide casework, public education, and advocacy priorities across SALCO and its seven satellite clinics in the GTA.

LAW REFORM HIGHLIGHTS

- **Test Case Program:** Shalini started and continues to manage SALCO's test case program. She has appeared in or supported SALCO (as the client) in several test cases including:

    - *Ahluwalia v. Ahluwalia*, SCC File No. 41061 (Supreme Court of Canada)
    - *Dunmore v. Mehralian,* SCC File No. 41108 (Supreme Court of Canada)
    - *Wong v. Her Majesty the Queen*, 2018 SCC 25 (Supreme Court of Canada)
    - *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 (Supreme Court of Canada)
    - *Attorney General of Canada on behalf of the Republic of India v. Surjit Singh Badesha, et al*, 2017 SCC 44 (Supreme Court of Canada)
    - *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (Supreme Court of Canada)
    - *R v. N.S.*, 2012 SCC 72 (Supreme Court of Canada)
    - *India v. Badesha*, 2017 SCC 44, [2017] 2 S.C.R. 127
    - *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789
    - *Canada (Attorney General) v. Mavi*, 2011 SCC 30 (Supreme Court of Canada)
    - *Revell v. Canada (Citizenship and Immigration)*, 2019 FCA 262 (Federal Court of Appeal)
    - *Saju Begum v. Minister of Citizenship and Immigration*, 2017 FC 409 (Federal Court)
    - *Alvin Brown v. Canada (MCI)*, 2017 FC 710 (Federal Court)
    - *Canadian Council on Social Development v. Canada (Attorney General)*, 2012 FC 1530 (Federal Court)
      Canadian Council on Social Development et al. v. Canada (Attorney General), 2012 FC 1530, [2012] 424 F.T.R. 102
    - *Nyarko v. Minister of Citizenship and Immigration Canada (Federal Court of Canada)*, Court File No: IMM-8022-11
    - *Brown v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 710
    - *Canada Border Services Agency et al. v. Shanthakumar et al.* (Ontario Court of Appeal File Nos. COA-24-CV-1131 & COA-24-CV-1197) (Ontario Court of Appeal)
    - *A.A. v. Z.M.* (Ontario Court of Appeal File No. COA-24-CV-1001) (Ontario Court of Appeal)
    - *Fair Voting BC et al. v. Attorney General of Canada* (Ontario Court of Appeal File No. COA-24-CV-0058) (Ontario Court of Appeal)
    - *Bakhtiari et al. v. British Columbia (Minister of Finance)* (British Columbia Court of Appeal File No. CA49298) (British Colombia Court of Appeal)
    - *Khorsand v. Toronto Police Services Board et al.*, 2024 ONCA 597 (Ontario Court of Appeal)

- *Imperial Oil v. Haseeb*, 2023 ONCA 680 (Ontario Court of Appeal)
- *R. v. Morris*, 2021 ONCA 680 (Ontario Court of Appeal)
- *Peel Law Association v. Pieters*, 2013 ONCA 396 (Ontario Court of Appeal)
- *R v. Peart*, 2017 ONSC 782 (Ontario Superior Court)
- *Metcalf v. Scott*, 2011 ONSC 1292 (Ontario Superior Court)
- *Ministry of Community Safety and Correctional Services (Ontario Provincial Police) and Phil Nowiski v. De Lottinville (Ontario Superior Court of Justice, Divisional Court*
- *Khatkur v. Peel District School Board*, 2012 HRTO 472, *Grewal v. Peel District School Board*, 2021 HRTO 683, and *Goel v. Peel District School Board*, 2011 HRTO 1157 (Human Rights Tribunal of Ontario)
- *Grewal v. Peel District School Board* 2021 HRTO 683,
- *Carasco v. University of Windsor* 2012 HRTO 195
- *Demarku v. Minister of Citizenship and Immigration (Immigration and Refugee Board)*

- **Human Rights:** Extensive experience with individual and intervention cases before Ontario's Human Rights Tribunal, addressing discrimination through both human rights and constitutional frameworks. Currently serves on the Ontario Human Rights Commission's Community Advisory Committee and is a member of the Federal-Provincial-Territorial Table on Human Rights, where government and civil society collaborate to address Canada's domestic and international human rights obligations.

- **Policing Reform:** Member of the Toronto Police Service Anti-Racism Advisory Panel, advocating for South Asian communities and the implementation of the Andrew Loku Inquest recommendations. Focuses on anti-racism accountability mechanisms, including the collection of race-based data. Also serves on the Provincial Community and Social Services Engagement Table reviewing Ontario's policing legislation, and is actively working with the Ministry of the Attorney General to improve protections for individuals with precarious or no immigration status—particularly in the context of human trafficking.

- **Anti-Racism Advocacy:** Contributed to the Provincial Consultative Group for Ontario's Anti-Racism Directorate, advising on the implementation of the strategic plan addressing anti-Black racism, Islamophobia, anti-Semitism, and racism against Indigenous communities. Collaborated with the federal Anti-Racism Secretariat through submissions, forums, and public speaking engagements on systemic racism's impacts on racialized communities.

- **Colour of Poverty – Colour of Change (COPC):** Founding Steering Committee member of COPC, which addresses racial disparities in poverty, justice, housing, health, immigration, education, and employment. Led the release of a fact sheet series and represented COPC in high-level advocacy meetings with Ontario's Poverty Reduction Strategy team, the Premier's Office, federal and provincial officials, and Legal Aid Ontario.

- **United Nations Engagement:** Participated in UN General Assembly sessions and committees reviewing Canada's human rights performance. Made multiple submissions on racism, poverty, and violence, and represented concerns before key UN bodies including the Committee on the Elimination of Racial Discrimination, the Universal Periodic Review, the Commission on the Status of Women, and the Committee on the Rights of the Child.

- **Poverty Law & Campaigns:** Active in national campaigns addressing the racialization of poverty and advocating for universal access to income supports regardless of immigration status (e.g., CCB, OAS, COVID supports). Serves on advisory committees for Campaign

  2000, Dignity for All, and LEAF's Basic Income Initiative. Regularly contributes submissions and oral advocacy through COPC on income security and poverty policy reform

- **Gender-Based Violence:** Former participant in the provincial Roundtable on Violence Against Women; currently advising provincial ministries on legislative and policy changes related to intimate partner violence, elder abuse, forced marriage, and human trafficking. Developed a provincial toolkit on *Human Trafficking and the Law in Ontario*. Consulting with WAGE (Women and Gender Equality Canada) on the National Action Plan to address Gender-Based Violence. Advisory member to the Canadian Mental Health Association on support for families of homicide victims.
- **Forced Marriage Project:** Co-led the only data-driven study on forced marriage in Ontario. Authored Canada's only report on the issue: *Who, If, When to Marry*. Successfully lobbied for legal and policy reforms, developed nationally-used toolkits and training materials, and continues to consult federally on improving systemic supports for forced marriage survivors. Recently delivered training for a national frontline service provider initiative.

2002-2008 Mississauga Community Legal Services, Mississauga, Ontario
Staff Lawyer

- Provided litigation and advocacy in a wide range of poverty law areas, including human rights, employment standards, wrongful dismissal, immigration, social assistance (Ontario Works, ODSP), CPP, OAS, Criminal Injuries Compensation, and landlord-tenant law.
- Delivered frequent public legal education seminars on topics such as immigration, social assistance, employment rights, access to legal aid, housing, powers of attorney, and family law.
- Served on multiple community-based committees focused on low-income and vulnerable populations, including the Peel Poverty Action Group, Peel Young Mothers Resource Committee, Ontario Works/ODSP Action Committee, and the "Working in the Trenches" domestic violence initiative.
- Established the clinic's immigration law practice and led extensive outreach efforts to diverse communities and community-based organizations.
- Founded the clinic's first satellite office and launched a family law drop-in service—an innovative model later adopted by Legal Aid Ontario.
- Expanded the clinic's public legal education programming by 60%.
- Designed and launched the clinic's first website and produced its newsletter.

2001-2002 Renfrew County Legal Clinic, Renfrew, Ontario - Staff Lawyer

- Practiced poverty law in rural and remote communities across Ontario, addressing legal issues

in Ontario Works, ODSP, CPP, WSIB, landlord-tenant disputes, debtor-creditor matters, human rights, and long-term care.
- Delivered public legal education sessions on employment standards, tenant rights, and social assistance programs.

- Actively engaged in community advocacy through participation in the Renfrew County Coalition on Abused Women, Renfrew County Coalition Against Poverty, and the Social Justice Network.
- Contributed to the development of the clinic's website and helped launch its public legal education program.

1997–1998 Community and Legal Aid Services Programme (CLASP), Osgoode Hall Law School – Toronto, Ontario - Summer Student & Division Leader – Worker's Rights

- Practiced employment law at a student legal aid clinic, including cases involving human rights discrimination, employment standards violations, wrongful dismissal, and WSIB claims.
- Led the Worker's Rights division, supervising student volunteers in client intake and casework.

1997 Parkdale Community Legal Services – Toronto, Ontario

- Practiced in employment law, including employment standards, employment insurance, and WSIB appeals.
- Organized a community campaign opposing changes to employment standards legislation
- Mobilized low-income workers to provide deputations to the Ontario government on proposed legislative changes.

This is Exhibit **"B"** referred to in the affidavit
of SHALINI KONANUR sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Statistics Canada Statistique Canada

Census Profile, 2021 Census of Population

Profile table

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Visible minority						
Total - Visible minority for the population in private households - 25% sample data [117]	36,328,480	17,937,165	18,391,315	100.0	100.0	100.0
Total visible minority population [118]	9,639,205	4,712,790	4,926,415	26.5	26.3	26.8
South Asian	2,571,400	1,324,120	1,247,275	7.1	7.4	6.8
Chinese	1,715,770	808,745	907,035	4.7	4.5	4.9
Black	1,547,870	754,100	793,765	4.3	4.2	4.3
Filipino	957,355	427,755	529,600	2.6	2.4	2.9
Arab	694,015	362,845	331,170	1.9	2.0	1.8
Latin American	580,235	281,030	299,200	1.6	1.6	1.6
Southeast Asian	390,340	184,120	206,220	1.1	1.0	1.1
West Asian	360,495	181,795	178,695	1.0	1.0	1.0
Korean	218,140	101,855	116,285	0.6	0.6	0.6
Japanese	98,890	42,315	56,575	0.3	0.2	0.3

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men+	Women+	Total	Men+	Women+
Visible minority, n.i.e. [119]	172,885	83,310	89,580	0.5	0.5	0.5
Multiple visible minorities	331,805	160,790	171,010	0.9	0.9	0.9
Not a visible minority [120]	26,689,275	13,224,375	13,464,900	73.5	73.7	73.2
Ethnic or cultural origin						
Total - Ethnic or cultural origin for the population in private households - 25% sample data [121]	36,328,475	17,937,165	18,391,310	100.0	100.0	100.0
Canadian	5,677,205	2,836,675	2,840,530	15.6	15.8	15.4
English	5,322,830	2,600,245	2,722,580	14.7	14.5	14.8
Irish	4,413,120	2,102,610	2,310,505	12.1	11.7	12.6
Scottish	4,392,200	2,131,620	2,260,580	12.1	11.9	12.3
French, n.o.s. [122]	3,985,945	1,964,695	2,021,250	11.0	11.0	11.0
German	2,955,695	1,449,465	1,506,230	8.1	8.1	8.2
Chinese	1,713,870	806,365	907,500	4.7	4.5	4.9
Italian	1,546,390	774,250	772,140	4.3	4.3	4.2
Indian (India)	1,347,715	691,535	656,185	3.7	3.9	3.6
Ukrainian	1,258,635	612,455	646,175	3.5	3.4	3.5
Dutch	988,585	489,045	499,545	2.7	2.7	2.7
Polish	982,820	472,290	510,525	2.7	2.6	2.8

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Québécois	981,635	490,130	491,510	2.7	2.7	2.7
British Isles, n.o.s. [123]	938,950	462,420	476,530	2.6	2.6	2.6
Filipino	925,490	414,915	510,570	2.5	2.3	2.8
French Canadian	906,315	441,610	464,705	2.5	2.5	2.5
Caucasian (White), n.o.s. [124]	691,260	347,080	344,175	1.9	1.9	1.9
First Nations (North American Indian), n.o.s. [125]	632,340	304,220	328,120	1.7	1.7	1.8
Métis	560,335	271,985	288,350	1.5	1.5	1.6
European, n.o.s. [126]	551,910	278,060	273,850	1.5	1.6	1.5
Russian	548,140	260,075	288,065	1.5	1.4	1.6
Norwegian	466,500	224,290	242,210	1.3	1.3	1.3
Welsh	455,720	216,490	239,230	1.3	1.2	1.3
Portuguese	448,305	222,770	225,535	1.2	1.2	1.2
American	353,495	172,240	181,255	1.0	1.0	1.0
Spanish	342,040	160,475	181,570	0.9	0.9	1.0
Swedish	334,505	156,840	177,665	0.9	0.9	1.0
Hungarian	320,150	155,755	164,395	0.9	0.9	0.9
Acadian	305,170	145,500	159,675	0.8	0.8	0.9
Pakistani	303,260	154,435	148,825	0.8	0.9	0.8
African, n.o.s. [127]	301,955	148,335	153,625	0.8	0.8	0.8

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Jewish	282,015	141,530	140,490	0.8	0.8	0.8
Punjabi	279,950	145,620	134,330	0.8	0.8	0.7
Vietnamese	275,530	131,075	144,445	0.8	0.7	0.8
Arab, n.o.s. [128]	263,710	138,210	125,500	0.7	0.8	0.7
Greek	262,140	132,975	129,160	0.7	0.7	0.7
Jamaican	249,070	119,265	129,805	0.7	0.7	0.7
Asian, n.o.s. [129]	226,220	107,785	118,435	0.6	0.6	0.6
Cree, n.o.s. [130]	219,855	105,825	114,030	0.6	0.6	0.6
Korean	217,650	101,805	115,845	0.6	0.6	0.6
Romanian	215,885	103,720	112,165	0.6	0.6	0.6
Lebanese	210,605	107,990	102,615	0.6	0.6	0.6
Iranian	200,465	100,790	99,675	0.6	0.6	0.5
Christian, n.i.e. [131]	200,340	99,800	100,540	0.6	0.6	0.5
Danish	196,945	96,220	100,725	0.5	0.5	0.5
North American Indigenous, n.o.s. [132]	194,840	94,035	100,810	0.5	0.5	0.5
Sikh	194,640	101,255	93,385	0.5	0.6	0.5
Austrian	189,535	92,740	96,800	0.5	0.5	0.5
Belgian	182,175	90,150	92,030	0.5	0.5	0.5
Haitian	178,990	84,510	94,490	0.5	0.5	0.5
Hindu	166,160	87,665	78,495	0.5	0.5	0.4

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Mexican	155,495	77,435	78,055	0.4	0.4	0.4
Mennonite	155,095	77,735	77,360	0.4	0.4	0.4
Swiss	145,570	72,015	73,555	0.4	0.4	0.4
Finnish	144,055	69,270	74,785	0.4	0.4	0.4
Sri Lankan	132,410	65,175	67,240	0.4	0.4	0.4
Croatian	130,820	64,915	65,905	0.4	0.4	0.4
Japanese	129,425	56,850	72,580	0.4	0.3	0.4
South Asian, n.o.s. [133]	120,125	60,575	59,550	0.3	0.3	0.3
Mi'kmaq, n.o.s. [134]	111,605	53,700	57,905	0.3	0.3	0.3
Northern European, n.o.s. [135]	110,735	54,730	56,005	0.3	0.3	0.3
Muslim	105,620	54,095	51,525	0.3	0.3	0.3
Egyptian	105,245	55,230	50,020	0.3	0.3	0.3
Latin, Central or South American, n.o.s. [136]	104,765	51,375	53,395	0.3	0.3	0.3
Tamil	102,170	51,165	51,005	0.3	0.3	0.3
Icelandic	101,990	50,370	51,620	0.3	0.3	0.3
Colombian	100,555	47,995	52,560	0.3	0.3	0.3
Moroccan	99,980	50,835	49,150	0.3	0.3	0.3
Czech	98,925	47,495	51,430	0.3	0.3	0.3
Syrian	98,250	49,385	48,865	0.3	0.3	0.3

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Guyanese	97,210	46,270	50,940	0.3	0.3	0.3
Afghan	96,810	48,255	48,550	0.3	0.3	0.3
Black, n.o.s. [137]	94,585	44,335	50,250	0.3	0.2	0.3
Serbian	93,360	46,945	46,410	0.3	0.3	0.3
Ojibway	92,220	44,610	47,600	0.3	0.2	0.3
Newfoundlander	91,670	45,665	46,005	0.3	0.3	0.3
Hong Konger	81,680	39,485	42,195	0.2	0.2	0.2
Ontarian	80,555	39,675	40,880	0.2	0.2	0.2
Persian	80,340	41,415	38,925	0.2	0.2	0.2
Trinidadian/Tobagonian	77,405	37,655	39,750	0.2	0.2	0.2
Turkish	76,745	39,955	36,795	0.2	0.2	0.2
Inuit, n.o.s. [138]	76,675	37,315	39,365	0.2	0.2	0.2
Bangladeshi	75,425	39,085	36,335	0.2	0.2	0.2
Algerian	73,770	38,035	35,740	0.2	0.2	0.2
Brazilian	71,755	34,670	37,085	0.2	0.2	0.2
Nigerian	69,540	34,680	34,860	0.2	0.2	0.2
Armenian	68,850	34,105	34,745	0.2	0.2	0.2
Slovak	68,210	33,475	34,740	0.2	0.2	0.2
Eastern European, n.o.s. [139]	66,780	31,525	35,255	0.2	0.2	0.2
Somali	65,555	31,555	33,995	0.2	0.2	0.2

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men+	Women+	Total	Men+	Women+
Taiwanese	64,020	29,280	34,740	0.2	0.2	0.2
Iraqi	59,300	29,865	29,435	0.2	0.2	0.2
Salvadorean	59,280	29,150	30,130	0.2	0.2	0.2
African Caribbean	59,050	26,385	32,670	0.2	0.1	0.2
East or Southeast Asian, n.o.s. [140]	58,870	27,845	31,025	0.2	0.2	0.2
West or Central Asian or Middle Eastern, n.o.s. [141]	58,840	30,560	28,280	0.2	0.2	0.2
Caribbean, n.o.s. [142]	57,195	25,715	31,475	0.2	0.1	0.2
Algonquin	56,070	27,025	29,040	0.2	0.2	0.2
West Indian, n.o.s. [143]	52,085	23,685	28,395	0.1	0.1	0.2
Lithuanian	52,040	24,510	27,530	0.1	0.1	0.1
South African	49,840	24,885	24,955	0.1	0.1	0.1
Australian	46,765	24,165	22,595	0.1	0.1	0.1
Palestinian	45,905	23,930	21,975	0.1	0.1	0.1
Chilean	45,685	22,520	23,165	0.1	0.1	0.1
Congolese	45,260	22,000	23,260	0.1	0.1	0.1
Nova Scotian	44,720	21,700	23,025	0.1	0.1	0.1
Ethiopian	42,545	20,675	21,875	0.1	0.1	0.1
Hispanic, n.o.s. [144]	42,405	20,105	22,300	0.1	0.1	0.1
Peruvian	42,295	19,925	22,370	0.1	0.1	0.1

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men+	Women+	Total	Men+	Women+
Yoruba	42,075	21,740	20,330	0.1	0.1	0.1
Cambodian (Khmer)	41,950	19,835	22,115	0.1	0.1	0.1
Berber	41,700	22,325	19,370	0.1	0.1	0.1
Albanian	41,620	21,050	20,570	0.1	0.1	0.1
Maltese	40,670	20,210	20,455	0.1	0.1	0.1
Macedonian	39,440	19,500	19,940	0.1	0.1	0.1
Slovenian	38,595	18,785	19,815	0.1	0.1	0.1
Western European, n.o.s. [145]	38,520	18,935	19,585	0.1	0.1	0.1
New Brunswicker	37,670	18,235	19,435	0.1	0.1	0.1
Gujarati	36,970	19,580	17,385	0.1	0.1	0.1
Eritrean	36,290	18,185	18,110	0.1	0.1	0.1
African Canadian	35,395	17,140	18,250	0.1	0.1	0.1
Israeli	35,345	18,410	16,940	0.1	0.1	0.1
Mohawk	33,330	16,485	16,845	0.1	0.1	0.1
Czechoslovakian, n.o.s. [146]	33,135	15,355	17,775	0.1	0.1	0.1
Bulgarian	33,085	16,235	16,850	0.1	0.1	0.1
Albertan	32,575	16,525	16,055	0.1	0.1	0.1
Ghanaian	31,720	15,650	16,065	0.1	0.1	0.1
Barbadian	31,440	15,265	16,175	0.1	0.1	0.1

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men+	Women+	Total	Men+	Women+
African American	31,430	15,700	15,730	0.1	0.1	0.1
Yugoslavian, n.o.s. [147]	30,565	14,635	15,930	0.1	0.1	0.1
Tunisian	30,465	16,585	13,875	0.1	0.1	0.1
Slavic, n.o.s. [148]	30,220	15,225	14,995	0.1	0.1	0.1
Cuban	30,065	14,830	15,235	0.1	0.1	0.1
Bosnian	28,490	14,320	14,170	0.1	0.1	0.1
Venezuelan	28,395	13,220	15,175	0.1	0.1	0.1
Innu/Montagnais, n.o.s. [149]	28,225	13,490	14,735	0.1	0.1	0.1
Latvian	28,140	13,515	14,620	0.1	0.1	0.1
Bengali	26,675	13,830	12,850	0.1	0.1	0.1
Cameroonian	26,535	12,960	13,580	0.1	0.1	0.1
Guatemalan	26,460	13,920	12,540	0.1	0.1	0.1
Indonesian	26,330	11,910	14,415	0.1	0.1	0.1
Laotian	25,875	12,500	13,375	0.1	0.1	0.1
Ilocano	25,575	11,860	13,715	0.1	0.1	0.1
Northern Irish	25,200	12,495	12,710	0.1	0.1	0.1
Celtic, n.o.s. [150]	24,420	12,265	12,155	0.1	0.1	0.1
British Columbian	24,325	12,230	12,095	0.1	0.1	0.1
Ecuadorian	24,255	11,510	12,745	0.1	0.1	0.1
Franco Ontarian	24,110	11,540	12,570	0.1	0.1	0.1

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men+	Women+	Total	Men+	Women+
Argentinian	23,500	11,665	11,840	0.1	0.1	0.1
Estonian	23,455	11,080	12,375	0.1	0.1	0.1
Kurdish	23,130	12,670	10,460	0.1	0.1	0.1
Fijian	23,020	11,040	11,980	0.1	0.1	0.1
Jatt	22,785	11,695	11,090	0.1	0.1	0.1
North American, n.o.s. [151]	22,785	11,680	11,105	0.1	0.1	0.1
Coptic	22,570	11,405	11,165	0.1	0.1	0.1
Thai	22,275	8,525	13,750	0.1	0.0	0.1
Dominican	22,125	10,615	11,510	0.1	0.1	0.1
Nepali	21,975	11,215	10,765	0.1	0.1	0.1
Kabyle	20,565	10,595	9,975	0.1	0.1	0.1
Assyrian	19,685	9,730	9,955	0.1	0.1	0.1
Igbo	19,305	9,890	9,415	0.1	0.1	0.1
Byelorussian	18,850	9,055	9,795	0.1	0.1	0.1
Dene, n.o.s. [152]	18,745	9,030	9,710	0.1	0.1	0.1
Blackfoot, n.o.s. [153]	18,545	8,975	9,570	0.1	0.1	0.1
Abenaki	18,420	8,545	9,870	0.1	0.0	0.1
Moldovan	18,190	8,850	9,340	0.1	0.0	0.1
Iroquois (Haudenosaunee), n.o.s. [154]	17,955	8,625	9,330	0.0	0.0	0.1

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
New Zealander	17,755	9,275	8,470	0.0	0.1	0.0
Sudanese	17,485	8,825	8,665	0.0	0.0	0.0
Breton	17,465	8,710	8,755	0.0	0.0	0.0
Pennsylvania Dutch	17,315	7,300	10,020	0.0	0.0	0.1
Malaysian	17,050	7,935	9,115	0.0	0.0	0.0
Plains Cree	16,570	8,255	8,310	0.0	0.0	0.0
North African, n.o.s. [155]	16,315	8,565	7,750	0.0	0.0	0.0
Huron (Wendat)	15,910	7,715	8,195	0.0	0.0	0.0
Saskatchewanian	15,780	7,505	8,280	0.0	0.0	0.0
Buddhist	15,660	7,485	8,175	0.0	0.0	0.0
Gaspesian	15,650	7,290	8,360	0.0	0.0	0.0
Norman	15,340	8,155	7,190	0.0	0.0	0.0
Southern or East African, n.o.s. [156]	15,055	7,180	7,875	0.0	0.0	0.0
Ivorian	15,010	7,255	7,755	0.0	0.0	0.0
Saulteaux	14,265	6,730	7,535	0.0	0.0	0.0
Anishinaabe, n.o.s. [157]	14,260	6,525	7,735	0.0	0.0	0.0
Burundian	14,110	6,810	7,295	0.0	0.0	0.0
Tigrinya	13,910	7,435	6,470	0.0	0.0	0.0
Nicaraguan	13,840	6,730	7,120	0.0	0.0	0.0
Mauritian	13,755	7,020	6,730	0.0	0.0	0.0

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Kenyan	13,565	6,510	7,055	0.0	0.0	0.0
Oji-Cree	13,525	6,610	6,915	0.0	0.0	0.0
Vincentian	13,245	5,800	7,445	0.0	0.0	0.0
Jordanian	13,225	7,055	6,170	0.0	0.0	0.0
Manitoban	13,095	6,530	6,565	0.0	0.0	0.0
Cape Bretoner	13,065	6,175	6,885	0.0	0.0	0.0
Rwandan	12,890	6,150	6,740	0.0	0.0	0.0
Grenadian	12,890	5,965	6,930	0.0	0.0	0.0
Malayali	12,490	6,580	5,910	0.0	0.0	0.0
Chaldean	12,115	6,080	6,035	0.0	0.0	0.0
Sinhalese	12,080	5,905	6,170	0.0	0.0	0.0
Mayan	11,710	5,980	5,730	0.0	0.0	0.0
Honduran	10,920	5,370	5,550	0.0	0.0	0.0
Cherokee	10,825	5,080	5,745	0.0	0.0	0.0
Qalipu Mi'kmaq	10,750	5,130	5,620	0.0	0.0	0.0
Indo-Caribbean	10,490	4,710	5,775	0.0	0.0	0.0
Flemish	10,275	4,950	5,325	0.0	0.0	0.0
United Empire Loyalist	10,015	4,975	5,045	0.0	0.0	0.0
Senegalese	9,955	5,115	4,840	0.0	0.0	0.0
Azerbaijani	9,915	5,165	4,750	0.0	0.0	0.0
Sicilian	9,835	5,135	4,695	0.0	0.0	0.0

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Pashtun	9,825	5,195	4,625	0.0	0.0	0.0
Malay	9,795	4,725	5,065	0.0	0.0	0.0
Goan	9,700	4,710	4,990	0.0	0.0	0.0
Bantu, n.o.s. [158]	9,455	4,705	4,755	0.0	0.0	0.0
Tibetan	9,350	4,650	4,700	0.0	0.0	0.0
Zimbabwean	9,165	4,435	4,725	0.0	0.0	0.0
Burmese	9,150	4,385	4,760	0.0	0.0	0.0
Mongolian	9,090	4,240	4,850	0.0	0.0	0.0
Azorean	8,970	4,235	4,735	0.0	0.0	0.0
Atikamekw	8,400	4,270	4,125	0.0	0.0	0.0
Bamileke	8,315	4,220	4,090	0.0	0.0	0.0
Indo-Guyanese	8,310	3,765	4,545	0.0	0.0	0.0
Ugandan	8,285	3,910	4,375	0.0	0.0	0.0
Oromo	8,255	4,425	3,830	0.0	0.0	0.0
Tanzanian	8,140	3,945	4,195	0.0	0.0	0.0
Yemeni	8,115	3,995	4,130	0.0	0.0	0.0
Central African	8,080	3,830	4,250	0.0	0.0	0.0
Libyan	7,945	4,265	3,680	0.0	0.0	0.0
Basque	7,745	4,030	3,710	0.0	0.0	0.0
Uruguayan	7,660	3,870	3,790	0.0	0.0	0.0
Akan, n.o.s. [159]	7,640	3,835	3,805	0.0	0.0	0.0

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Central or West African, n.o.s. [160]	7,635	3,690	3,950	0.0	0.0	0.0
Igorot	7,535	3,305	4,230	0.0	0.0	0.0
Fulani	7,480	3,865	3,620	0.0	0.0	0.0
Woodland Cree	7,415	3,615	3,800	0.0	0.0	0.0
Guinean	7,390	3,700	3,695	0.0	0.0	0.0
St. Lucian	7,285	3,340	3,945	0.0	0.0	0.0
Prince Edward Islander	7,225	3,355	3,875	0.0	0.0	0.0
Maliseet	7,220	3,515	3,705	0.0	0.0	0.0
Beninese	6,810	3,630	3,180	0.0	0.0	0.0
Telugu	6,670	3,730	2,945	0.0	0.0	0.0
Roma	6,545	3,225	3,320	0.0	0.0	0.0
Costa Rican	6,500	3,265	3,230	0.0	0.0	0.0
African Nova Scotian	6,480	2,945	3,535	0.0	0.0	0.0
Malagasy	6,255	3,085	3,170	0.0	0.0	0.0
Kashmiri	6,165	3,020	3,145	0.0	0.0	0.0
Singaporean	6,060	2,755	3,305	0.0	0.0	0.0
Karen	6,050	3,065	2,985	0.0	0.0	0.0
Edo	5,985	2,995	2,995	0.0	0.0	0.0
Tajik	5,980	2,965	3,015	0.0	0.0	0.0
Amhara	5,945	3,010	2,930	0.0	0.0	0.0

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men+	Women+	Total	Men+	Women+
Paraguayan	5,925	2,855	3,075	0.0	0.0	0.0
Religion						
Total - Religion for the population in private households - 25% sample data [161]	36,328,480	17,937,165	18,391,315	100.0	100.0	100.0
Buddhist	356,975	157,435	199,540	1.0	0.9	1.1
Christian	19,373,325	9,131,320	10,242,005	53.3	50.9	55.7
Christian, n.o.s. [162]	2,760,760	1,319,760	1,440,995	7.6	7.4	7.8
Anabaptist	144,145	70,095	74,050	0.4	0.4	0.4
Anglican	1,134,315	515,270	619,045	3.1	2.9	3.4
Baptist	436,940	200,325	236,615	1.2	1.1	1.3
Catholic	10,880,360	5,193,345	5,687,010	29.9	29.0	30.9
Christian Orthodox	623,010	301,055	321,955	1.7	1.7	1.8
Jehovah's Witness	137,255	59,505	77,750	0.4	0.3	0.4
Latter Day Saints	87,725	41,365	46,360	0.2	0.2	0.3
Lutheran	328,045	150,115	177,925	0.9	0.8	1.0
Methodist and Wesleyan (Holiness)	100,655	46,640	54,020	0.3	0.3	0.3
Pentecostal and other Charismatic	399,025	180,870	218,155	1.1	1.0	1.2
Presbyterian	301,400	136,440	164,960	0.8	0.8	0.9

Characteristic	Canada [Country]					
	Counts			Rates		
	Total	Men +	Women +	Total	Men +	Women +
Reformed	79,870	39,250	40,620	0.2	0.2	0.2
United Church	1,214,185	531,740	682,445	3.3	3.0	3.7
Other Christian and Christian-related traditions	745,650	345,540	400,110	2.1	1.9	2.2
Hindu	828,195	430,135	398,060	2.3	2.4	2.2
Jewish	335,295	164,220	171,070	0.9	0.9	0.9
Muslim	1,775,715	904,205	871,510	4.9	5.0	4.7
Sikh	771,790	394,345	377,445	2.1	2.2	2.1
Traditional (North American Indigenous) spirituality	80,685	38,460	42,230	0.2	0.2	0.2
Other religions and spiritual traditions	229,015	97,645	131,370	0.6	0.5	0.7
No religion and secular perspectives	12,577,475	6,619,395	5,958,080	34.6	36.9	32.4

Source: Statistics Canada, 2021 Census of Population.

How to cite: Statistics Canada. 2023. (table). *Census Profile*. 2021 Census of Population. Statistics Canada Catalogue no. (number) 98-316-X2021001. Ottawa. Released November 15, 2023. https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/index.cfm?Lang=E (accessed May 20, 2025).

Note(s):

This is Exhibit **"C"** referred to in the affidavit
of SHALINI KONANUR sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

FORM 52.2 **Court File: IMM-12116-25**

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

Certificate Concerning Code of Conduct for Expert Witnesses

I, Shalini Konanur, having been named as an expert witness by the Applicant, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to *the Federal Courts Rules* and agree to be bound by it.

Dated August 21, 2025

Shalini Konanur
South Asian Legal Clinic of Ontario
45 Sheppard Avenue East, Suite 106A
Toronto, ON M2N 5W9
Phone: (416)-487-6371

SOR/2010-176, s. 12.

This is Exhibit **"D"** referred to in the affidavit
of SHALINI KONANUR sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

USE OF A REPRESENTATIVE

You do not need to hire a representative, it is your choice. No one can guarantee the approval of your application. All the forms and information that you need to apply are available for free on the Immigration, Refugees and Citizenship Canada (IRCC) Website.

By filling out this form, you are appointing a representative to conduct business on your behalf throughout the application process. Your representative will be able to complete or update your application and act on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA). You may only have **one** representative at a time per application. If you appoint a new representative, the previous representative will no longer be authorized to conduct business on your behalf and receive information on your application.

Note: You must use this form to appoint a paid or unpaid representative to conduct business with IRCC or the CBSA on your behalf. You must also use this form: 1. to notify IRCC if your representative's contact information changes, 2. if you wish to cancel the appointment of your current representative and represent yourself, 3. if you wish to cancel the appointment of your current representative and appoint a new representative or, 4. to withdraw yourself as the representative on the application

I am:

- ◯ appointing a representative. **Complete Sections A, B and E.**
- ◯ updating contact information of an appointed representative. **Complete Sections A, B and E.**
- ◯ cancelling the appointment of a representative. **Complete Section A, C and E.**
- ◯ cancelling the appointment of a representative and appointing a new representative. **Complete Section A, B, C and E.**
- ◯ withdrawing role as a representative. **Complete Section A, D and E.**

SECTION A: APPLICANT INFORMATION

1. Your full name

Family name (Surname) (as shown on your passport or travel document)

Given name(s) (as shown on your passport or travel document)

2. Your date of birth (YYYY-MM-DD)

3. Your email address

If you do not have an email address, provide either your telephone number or your address

4. Application Information

Type of application (permanent residence, extension of study permit, etc.)

Application number *(if known)*

5. Unique Client Identifier (UCI) number *(if known)*

SECTION B: APPOINTMENT OF REPRESENTATIVE

- I authorize the following individual to serve as my representative, as the primary point of contact on my application, and to conduct business on my behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency. **Note**: Even if a representative is being paid or compensated by someone other than you (the applicant), the representative is still considered to be a paid representative.
- I authorize Immigration, Refugees and Citizenship Canada and Canada Border Services Agency to release information from my application and that of my dependent children under 18 years of age to my representative. This authorization is in accordance with the *Privacy Act*.
- I am aware that any information which would be subject to exemption, if I had the right of access under the *Privacy Act* or the *Access to Information Act*, will likely not be released.

6. Your representative's full name

Family name (Surname)

Given name(s)

7. Your representative (Select one option):

(i) is UNPAID and is a

- ◯ Friend or family member
- ◯ Member in good standing of the College of Immigration and Citizenship Consultants (CICC)

  Membership ID number
- ◯ Member in good standing of a Canadian Provincial or Territorial law society or student-at-law

  Which Province/Territory? | Membership ID number (if applicable)
- ◯ Member in good standing of the Chambre des notaires du Québec

  Membership ID number
- ◯ Other (please specify)

OR

(ii) is, or will be, PAID and is a member in good standing of

- ◯ The College of Immigration and Citizenship Consultants (CICC)

  Membership ID number
- ◯ A Canadian Provincial or Territorial law society or student-at-law

  Which Province/Territory? | Membership ID number (if applicable)
- ◯ The Chambre des notaires du Québec

  Membership ID number

8. Your representative's contact information

Name of firm or organization (if applicable)

If student-at-law, write the name of the supervising lawyer | Supervising lawyer membership ID

Mailing address

Apt/Unit | Street no. | Street name

City/Town | Province/State/Territory | Country or territory | Postal code/ZIP

Telephone number

Country Code | Area Code and Telephone number

Fax number (if applicable)

Country Code | Area Code and Telephone number

E-mail address (if applicable)

By indicating your representative's e-mail address, you are hereby authorizing Immigration, Refugees and Citizenship Canada to send your personal information to this specific email address.

9. Your representative's declaration:

- I declare that the information in Section B is truthful, complete and correct.
- I understand and accept that I am the person appointed by the applicant to conduct business on the applicant or sponsor's behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

Signature of representative | Date (YYYY-MM-DD)

(if applicable) Signature of supervising lawyer | Date (YYYY-MM-DD)

SECTION C: CANCEL THE APPOINTMENT OF A REPRESENTATIVE

I, the applicant, withdraw my authorization for this person to serve as my representative, to receive information on my application and to conduct business on my behalf with Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

10. Representative's full name

Family name (Surname) | Given name(s)

Name of firm or organization (if applicable)

The applicant's email provided in section A will be used for further communication from Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

SECTION D: WITHDRAWING ROLE AS A REPRESENTATIVE

I, the representative, withdraw myself as the applicant's representative.

11. Representative's full name

Family name (Surname) | Given name(s)

Name of firm or organization (if applicable)

The applicant's email provided in section A will be used for further communication from Immigration, Refugees and Citizenship Canada and Canada Border Services Agency.

(if applicable)I have been unsuccessful in obtaining the applicant's agreement and/or signature on this form (Section E), and attest to having taken reasonable steps to do so.

Signature of representative | Date (YYYY-MM-DD)

SECTION E: YOUR DECLARATION

12. Your declaration

- I declare that I have fully and truthfully answered all questions on this form and any attached application (if applicable).
- I also declare that I have read and understood all the statements on this form, having asked and obtained an explanation for every point that was not clear to me.

Signature of applicant or Parent/Legal Guardian for a person under 18 years of age	Date (YYYY-MM-DD)
If a sponsorship application: Signature of spouse or common-law partner	Date (YYYY-MM-DD)

Warning! It is a serious offence to give false or misleading information on this form.

Personal information provided on this form is collected by Immigration, Refugees and Citizenship Canada (IRCC) under the authority of the *Immigration and Refugee Protection Act* (IRPA) and of the Citizenship Act. The personal information of the applicant is used for identification and authorization purposes. The personal information of the immigration representative is used to verify that the representative is authorized to offer representation services according to the provisions of IRPA and of the Citizenship Act.

The personal information of both the applicant and the representative may be disclosed to other federal government institutions, non-governmental and inter-governmental organizations, regulatory bodies, investigative bodies, and provincial/territorial governments for the purposes of validating identity, information, and supporting an investigation.

Personal information of both the applicant and the representative may be used for other purposes including research, statistics, program and policy evaluation, internal audit, compliance, risk management, strategy development and reporting.

Failure to complete the form in full will result in a delay to processing. The *Privacy Act* gives individuals the right of access to, protection, and correction of their personal information. If you are not satisfied with the manner in which IRCC handles your personal information, you may exercise your right to file a complaint to the Office of the Privacy Commissioner of Canada. The collection, use, disclosure and retention of your personal information is further described in IRCC's Personal Information Bank - IRCC PPU 013, 042, 054, 068.

This is Exhibit **"E"** referred to in the affidavit
of SHALINI KONANUR sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Government of Canada / Gouvernement du Canada

Immigration options for victims of family violence

Exit this page quickly: Go to google.ca

To exit this page quickly:

Go to google.ca

If your abuser monitors your computer, delete your browsing history.

If someone is threatening or abusing you, get help right away. Please call 9–1–1 or your local police in an emergency.

- Do you currently live in Canada and are waiting for a decision on your permanent resident application?
- Are you facing family violence from your spouse or common-law partner?
- Are you afraid to leave your abusive spouse or common-law partner for fear that you may lose your immigration status?
- Has your temporary status expired?

Temporary resident permit for victims of family violence

Changes to temporary resident permit length and fees

As of February 4, 2025, you can now get a temporary resident permit (TRP) for victims of family violence for at least **12 months**.

We'll also be waiving fees not only for the initial TRP, but also for new TRPs, work permits, study permits and biometrics.

We can help protect you by giving you a special permit to stay in Canada. It's called a **temporary resident permit (TRP)** for victims of family violence. It will give you temporary resident status in Canada so you can escape your situation and think about your next steps. You can also get this permit for your children if they are in Canada.

What you should know:

- In Canada, you **do not have to testify** against your abuser to get temporary resident status.

- We can issue your first TRP for at least 12 months. Depending on your situation, you might be able to apply for another TRP at the end of the first period.
- You don’t have to pay fees for your first TRP, or for a new TRP if you apply for another one. You also don’t have to pay biometrics fees.
- If you get a family violence TRP, you can
  - get coverage for trauma counselling and health care benefits
  - apply for a fee-exempt work permit or study permit

How to apply for a TRP

To apply for a family violence TRP

- fill out a paper application for a TRP (PDF, 595 KB)
  - Include supporting evidence about your situation or abuse.
- send your application to the IRCC Vulnerable Persons Unit at the address below, and make sure you **write the letters “FV”** on the outside of the envelope to help us quickly identify your application:

  IRCC – Vulnerable Persons Unit
  5343 Dundas Street West, Suite 105
  Toronto, ON M9B 6K5

Track your application

If you’re submitting a paper application, we recommend you use a postal or courier service with tracking so you have proof your application was delivered.

Find out how to check if your application has been received

If you are a victim of family violence

- you can speak to an agent about your immigration status or learn about TRPs
  - Contact our Client Support Centre.
  - They can tell you about your options.
- call 2-1-1 to find community, social and health services
- find more services and information to deal with violence and abuse
- find more resources

▶ **How to contact the Client Support Centre**

If your description of your situation or abuse shows that you may be eligible, an immigration officer will contact you to give you information about a temporary resident permit.

If needed, they will put you in contact with support groups that help victims of family violence.

Benefits of a TRP

You may need a TRP for any of these reasons:

- to escape the abuse of your spouse or common-law partner
- to give you time to decide whether you want to leave Canada or consider other immigration options
- to help make sure you are not separated from your children in Canada while you decide your next steps
- to earn a living without fear of family violence (using a work permit)

If you want to stay in Canada permanently

We're speeding up the processing time for individuals in urgent situations of family violence who apply for permanent residence based on humanitarian and compassionate grounds. This will reduce delays between the time we receive an application and when we make an eligibility decision. This means that we'll process applications for these individuals faster, with the goal of removing them from abusive situations as quickly as possible.

You're only eligible for an expedited eligibility decision if

- you're experiencing family violence **in Canada** by a spouse or common-law partner, **and**
- you're dependent on your abusive spouse or common-law partner to keep your status

Below are situations of family violence that meet the eligibility criteria. If one of these situations applies to you, you may be able to apply for permanent residence based on humanitarian and compassionate grounds:

1. You're in Canada and seeking permanent residence that is dependent on staying in a genuine relationship with an abusive spouse or common-law partner. You're dependent on staying in that abusive relationship to keep your status in Canada.
2. You're a foreign national who can't be assessed for permanent residence because your abusive sponsor has withdrawn their family class application.
3. You have been falsely told by an abusive spouse or common-law partner that they have submitted a family class application and it is in process, but in fact, they have not submitted an application.
4. You're a temporary resident who wants to apply for permanent residence through a genuine relationship, but
    a. that relationship has become abusive, **and**
    b. you may not yet have an application in process

Make sure you clearly describe your situation of family violence in your application.

How to apply

To apply for processing under family violence:

1. Choose the “FV – In Canada – Humanitarian and compassionate considerations” category when you apply online through the Permanent Residence Portal.
2. Write the letters “FV” on your application cover letter.
3. Email us at VancouverBro@cic.gc.ca. Make sure to
    - write the letters “FV” in the subject line
    - request “FV” processing and include your client account email address in the body of the email

If you’re in a situation of family violence and already have an application in process, you can tell us about it. We’ll consider it in processing your application. Contact the office that has your application, or contact our Client Support Centre at 1-888-242-2100.

Resources

▶ **Other Government of Canada links**

▶ **Provincial and territorial resources**

▶ **Other resources**

Date modified:
2025-03-11

This is Exhibit **"F"** referred to in the affidavit
of SHALINI KONANUR sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Immigration, Refugees and Citizenship Canada

Public policies

- Temporary public policy to facilitate continued access to open work permits and study permits for foreign nationals in Canada who arrived under the Canada-Ukraine authorization for emergency travel measures – Extension | **4 July 2025**
  - Temporary public policy to facilitate continued access to open work permits and study permits for foreign nationals in Canada who arrived under the Canada-Ukraine authorization for emergency travel measures - Archived | **21 August 2024**
- Temporary public policy for foreign nationals in Canada affected by wildfires | **3 July 2025**
- Temporary public policy for foreign emergency services personnel entering Canada to support response to wildfires | **3 July 2025**
- Temporary public policy for foreign nationals with approved temporary resident visas under the Gaza special measures and who remain outside of Canada as of April 22, 2025 | **12 June 2025**
- Temporary public policy to exempt foreign nationals in Canada from certain requirements when changing employment | **27 May 2025**

    - Temporary public policy to exempt foreign nationals in Canada from certain requirements when changing employment during the coronavirus (COVID-19) pandemic | **6 May 2020**

- Temporary public policy to facilitate the sponsorship of Sudanese refugees by Groups of Five and Community Sponsors | **01 April 2025**
- Temporary public policy to facilitate issuance of permanent resident visas through the Home Care Worker Immigration pilots for certain out-of-status or unauthorized home care workers in Canada | **21 March 2025**
- Temporary public policy to exempt home care workers who have made an application for a permanent resident visa through the Home Care Worker Immigration pilots from certain temporary residence requirements | **21 March 2025**
- Updated temporary public policy for nationals of Iran in Canada as temporary residents | **28 February 2025**
    - Temporary public policy for nationals of Iran in Canada as temporary residents – Extension - Archived | **29 February 2024**
    - Temporary public policy for nationals of Iran in Canada as temporary residents - Archived | **23 February 2023**
- Updated temporary public policy to further facilitate permanent residence to certain foreign nationals affected by the conflict in Sudan with family in Canada | **16 February 2025**
- Revised - Updated temporary public policy for family members who fled conflict in Sudan | **05 February 2025**
    - Temporary public policy for family members who fled conflict in Sudan - Extension – Archived | **02 May 2024**
    - Temporary public policy for family members who fled conflict in Sudan - Archived | **04 May 2023**

- Temporary public policy for nationals of Sudan in Canada as temporary residents – Further extension | **05 February 2025**
    - Temporary public policy for nationals of Sudan in Canada as temporary residents - Extension – Archived | **14 December 2023**
    - Temporary public policy for nationals of Sudan in Canada as temporary residents - Archived | **29 April 2023**
- Public Policy concerning the payment of application fees for a temporary resident permit, work permit, study permit, and biometric fees for victims of human trafficking | **4 February 2025**
- Public Policy concerning the payment of application fees for a temporary resident permit, work permit, study permit, and biometric fees for victims of family violence | **4 February 2025**
- Updated temporary public policy to exempt certain permanent residence applicants from work permit requirements | **16 December 2024**
    - Temporary public policy to exempt certain permanent residence applicants from work permit requirements - Archived | **21 April 2022**
    - Temporary public policy to exempt certain permanent residence applicants from work permit requirements - Archived | **4 July 2021**
- Subsequent updated temporary public policy to grant permanent residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system | **28 November 2024**
    - Updated temporary public policy to grant permanent residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system – Archived | **22 January 2024**
- Subsequent updated temporary public policy concerning the fees for applicants of the updated temporary public policy to grant permanent

residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system | **28 November 2024**

  - Updated temporary public policy concerning the fees for applicants of the updated temporary public policy to grant permanent residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system – Archived | **22 January 2024**

- Temporary Public Policy to facilitate issuance of permanent resident visas for certain foreign nationals outside Canada who are members of the families of Canadian victims of Ukraine International Airlines flight PS752 | **1 November 2024**
- Temporary Public Policy to facilitate permanent residency for certain foreign nationals inside and outside Canada who are members of the families of victims of Ukraine International Airlines flight PS752 approved to work or study in Canada | **1 November 2024**
  - Temporary public policy to facilitate issuance of permanent resident visas for certain foreign nationals outside Canada who are members of the families of Canadian victims of recent air disasters | **5 April 2022**
  - Temporary public policy to facilitate permanent residence for in-Canada families of Canadian victims of recent air disasters | **12 May 2021**
  - Public policy concerning foreign national family members of victims of Ukrainian International Airlines Flight PS752 | **16 January 2020**
- Temporary public policy to exempt certain Indigenous persons and their family members from temporary residence

requirements | **1 October 2024**

- Temporary public policy to exempt certain Indigenous Persons and their family members from the requirement to pay fees for processing temporary residence applications and for the collection of biometric information | **10 October 2024**
- Amended temporary public policy to exempt certain foreign nationals in Canada from the immigration medical examination requirement | **04 October 2024**
    - Temporary public policy to exempt certain foreign nationals from the immigration medical examination requirement - Archived | **12 October 2022**
- Temporary public policy to facilitate work permits for prospective Provincial Nominee Program candidates | **27 August 2024**
- Temporary public policy for foreign nationals who applied under the Canada-Ukraine authorization for emergency travel measures and whose applications were pending as of February 4, 2024 – Extension | **21 August 2024**
    - Temporary public policy for foreign nationals who applied under the Canada-Ukraine authorization for emergency travel measures and whose applications were pending as of February 4, 2024 - Archived | **8 April 2024**
    - Temporary public policy for foreign nationals who applied under the Canada-Ukraine authorization for emergency travel measures and for new temporary resident applicants – Archived | **22 August 2023**
    - Temporary public policy to renew the Canada-Ukraine Authorization of Emergency Travel from April 1, 2023 - Archived | **03 April 2023**

    - Temporary public policy to exempt Ukrainian nationals from various immigration requirements in support of the Canada-Ukraine authorization of emergency travel - Archived | **17 March 2022**

- Temporary public policy for foreign nationals in Canada affected by wildfires in 2024 | **22 July 2024**
- Temporary public policy for foreign emergency services personnel entering Canada to support response to wildfires in 2024 | **22 July 2024**
- Updated temporary public policy for foreign nationals who are family members of Canadian citizens and permanent residents who left Israel or the Palestinian Territories on or after October 7, 2023 - Extension | **12 June 2024**
    - Temporary public policy for foreign nationals who are family members of Canadian citizens and permanent residents who left Israel or the Palestinian Territories on or after October 7, 2023 - Archived | **18 March 2024**
- Updated temporary public policy for nationals of Israel and the Palestinian Territories who are in Canada as temporary residents - Extension | **12 June 2024**
    - Temporary public policy for nationals of Israel and the Palestinian Territories who are in Canada as temporary residents - Archived | **18 March 2024**
- Temporary public policy to exempt certain Hong Kong residents who have applied for permanent residence from work permit requirements | **27 May 2024**
- Updated Temporary Public Policy to Facilitate Temporary Resident Visas for Certain Extended Family affected by the Crisis in Gaza | **27 May 2024**

- Temporary public policy for Haitian nationals in Canada as temporary residents - Extension | **19 November 2024**
    - Temporary public policy for Haitian nationals in Canada as temporary residents – Archived | **23 May 2024**
- Temporary Public Policy for foreign nationals who are family members of Canadian citizens and permanent residents who fled violence in Haiti – Extension | **19 November 2024**
    - Temporary Public Policy For Foreign Nationals Who Are Family Members Of Canadian Citizens And Permanent Residents Who Fled Violence In Haiti – Archived | **23 May 2024**
- Temporary public policy to facilitate the sponsorship of specific refugees previously sponsored by a Sponsorship Agreement Holder | **30 April 2024**
- Temporary public policy concerning the resettlement of women in Mexico who are survivors of sexual and gender-based violence | **8 March 2024**
- Updated: Temporary public policy to facilitate permanent residence to certain foreign nationals affected by the conflict in Sudan with family in Canada | **23 February 2024**
- Subsequent temporary public policy to continue to facilitate access to permanent resident status for out-of-status construction workers in the Greater Toronto Area (GTA) – Second extension | **3 July 2024**
    - Subsequent temporary public policy to continue to facilitate access to permanent resident status for out-of-status construction workers in the Greater Toronto Area (GTA) – Extension | **3 January 2024**
    - Subsequent temporary public policy to continue to facilitate access to permanent resident status for out-of-status construction

workers in the Greater Toronto Area (GTA) - Archived | **20 January 2023**

- Temporary public policy to further facilitate access to permanent resident status for out-of-status construction workers in the Greater Toronto Area (GTA) - Archived | **24 May 2021**
- Temporary public policy for out-of-status construction workers in the Greater Toronto Area - Archived | **8 July 2019**

- Amended temporary public policy to lift the limitation that eligible study permit holders can work without a work permit no more than 20 hours per week off-campus during regular academic sessions | **14 December 2023**
- Second temporary public policy to lift the limitation that eligible study permit holders can work without a work permit no more than 20 hours per week off-campus during regular academic sessions | **14 December 2023**
- Temporary public policy to continue port of entry facilitation for certain temporary resident visa holders | **7 December 2023**
  - Temporary public policy to facilitate the processing of temporary resident visa applications in inventory - revoked | **7 December 2023**
- Temporary public policy to facilitate the issuance of permanent resident visas to certain Colombian, Haitian and Venezuelan nationals with family in Canada | **04 December 2023**
- Temporary public policy for the issuance of permanent resident visas for families of Afghan nationals who came to Canada under previous public policies – Additional intake cap increase | **08 November 2023**
  - Temporary public policy for the issuance of permanent resident visas for families of Afghan nationals who came to Canada under

previous public policies – intake cap increase - Archived | **12 October 2022**

- Updated temporary public policy for the issuance of permanent resident visas for families of Afghan nationals who came to Canada under previous public policies - Archived | **23 June 2022**
- Temporary public policy for the issuance of permanent resident visas for families of Afghan nationals who came to Canada under previous public policies - Archived | **25 October 2021**

- Temporary public policy for nationals of Morocco affected by the earthquake of September 8, 2023 - Archived | **26 October 2023**
- Temporary public policy to grant permanent residence to certain Ukrainian nationals with family in Canada | **23 October 2023**
- Temporary public policy regarding temporary resident applications for certain individuals who were under the legal responsibility of the child protection system | **6 October 2023**
- Temporary public policy for the resettlement of additional Afghan nationals with a significant and/or enduring relationship to Canada – Extension | **29 September 2023**
  - Temporary public policy for the resettlement of additional Afghan nationals with a significant and/or enduring relationship to Canada – Update and clarification | **31 March 2023**
  - Temporary public policy for the resettlement of additional Afghan nationals with a significant and/or enduring relationship to Canada | **8 June 2022**
  - Temporary public policy for the resettlement of Afghan nationals with a significant and/or enduring relationship to Canada (updated November 10, 2021) | **10 November 2021**
  - Temporary public policy for the resettlement of Afghan nationals with a significant and/or enduring relationship to Canada (updated

August 22, 2021) | **22 August 2021**

- Temporary public policy for the resettlement of Afghan nationals with a significant and/or enduring relationship to Canada | **9 August 2021**

- Temporary public policy for extended families of former language and cultural advisors - Extension | **18 September 2023**
  - Temporary public policy for extended families of former language and cultural advisors - Archived | **30 January 2023**
- Consecutive public policy to facilitate the immigration of certain sponsored foreign nationals excluded under paragraph 117(9)(d) or 125(1)(d) of the Immigration and Refugee Protection Regulations | **11 September 2023**
- Updated: Temporary public policy creating two pathways to permanent residence to facilitate the immigration of certain Hong Kong residents | **15 August 2023**
- Temporary public policy for foreign nationals directly affected by the floods in Nova Scotia | **11 August 2023**
- Temporary Public Policy to further facilitate nationals of Türkiye and Syria affected by the earthquake of February 6, 2023 | **28 September 2023**
  - Temporary Public Policy for nationals of Türkiye and Syria affected by the earthquakes of February 6, 2023 | **11 August 2023**
- Temporary public policy to exempt holders of certain American H-1B work visas from work permit requirements | **16 July 2023**
- Temporary public policy to facilitate the processing of ‘super visa’ temporary resident visa applications in inventory | **29 June 2023**
- Temporary public policy to allow foreign nationals with valid work permits to study without a study permit | **27 June 2023**

- Public policy concerning foreign nationals in Canada affected by Wildfires during the Summer of 2023 | **14 June 2023**
- Temporary public policy exempting certain applicants applying under the spouse or common-law partner in Canada class or the Family Class from work permit requirements | **26 May 2023**
- Public policy to facilitate issuance of permanent resident visas under the federal Economic Mobility Pathways Pilot | **1 May 2023**
- Public policy to facilitate issuance of permanent resident visas under the federal Economic Mobility Pathways Pilot - Extension | **13 June 2025**
- Updated public policy to support the Economic Mobility Pathways Pilot – Phase 2 | **11 May 2023**
    - Updated public policy to support the Economic Mobility Pathways Pilot – Trusted Partners | **18 November 2022**
    - Update to the public policy to support the Economic Mobility Pathways Pilot (EMPP) – Phase 2 – Archived | **3 March 2022**
    - Public policy to support the Economic Mobility Pathways Pilot (EMPP) – Phase 2 – Archived | **3 September 2021**
- Temporary public policy to facilitate the issuance of permanent resident visas for physicians providing publicly funded medical services in Canada | **25 April 2023**
- Temporary public policy to further facilitate the issuance of an open work permit to certain former or current post-graduation work permit holders | **6 April 2023**
    - Temporary public policy to facilitate the issuance of an open work permit to certain former or current post-graduation work permit holders - Archived | **28 July 2022**

- Temporary public policy for Ukrainian nationals in and outside of Canada applying for temporary and permanent resident documents - Archived | **03 April 2023**
    - Temporary Public Policy for Ukrainian nationals in and outside of Canada applying for temporary resident documents - Archived | **14 March 2022**
- Public policy to extend the exemption of lower-risk Ukrainian nationals applying under CUAET measures from he biometrics collection requirement - Archived | **03 April 2023**
    - Public policy to exempt lower-risk Ukrainian nationals applying under CUAET measures from the biometrics collection requirement - Archived | **25 April 2022**
- Temporary public policy to exempt certain visitors in Canada from immigration requirements - Archived | **17 February 2023**
    - Temporary public policy to exempt certain visitors in Canada from immigration requirements during the coronavirus (COVID-19) pandemic - Archived | **24 August 2020**
- Temporary public policy for Afghan nationals applying for temporary resident status | **30 December 2022**
    - Temporary public policy for Afghan nationals applying for temporary resident status - Archived | **28 February 2022**
    - Temporary public policy for Afghan nationals in Canada applying for a work or study permit - Archived | **23 December 2021**
- Temporary public policy to lift the limitation that eligible study permit holders can work without a work permit no more than 20 hours per week off-campus during regular academic sessions | **22 November 2022**

- Public Policy facilitating entry into Canada for short term work | **22 November 2022**
- Updated public policy to support the Economic Mobility Pathways Pilot – Phase 2 | **18 November 2022**
- Temporary public policy to exempt refugee claimants, in Canada, from certain requirements for open work permit issuance | **16 November 2022**
- Temporary public policy to facilitate the sponsorship of Afghan refugees by groups of five and community sponsors | **29 September 2022**
- Temporary Public Policy for the resettlement of certain vulnerable Afghan nationals | **20 September 2022**
- Temporary public policy for the issuance of permanent resident visas for foreign nationals, who have been refused under the "Temporary Resident to Permanent Resident Pathway" | **21 April 2022**
- Temporary Public Policy to facilitate the resettlement of Afghan Sikhs and Hindus [REDACTED] as part of Operation Afghan Safety | **8 April 2022**
- Temporary public policy to facilitate permanent residence for certain citizens of Afghanistan [REDACTED] | **7 April 2022**
- Temporary public policy for the resettlement of certain Afghan nationals selected by the Minister of IRCC – Hazara Afghan nationals | **23 December 2021**
- Temporary public policy concerning applications for permanent residence as a member of the family class whose sponsor must meet a minimum income requirement in 2021 | **23 December 2021**
- Temporary public policy to exempt certain in-Canada foreign nationals from the Immigration Medical Examination requirement | **23 December 2021**

- Temporary public policy for foreign nationals directly affected by the floods in British Columbia | **16 December 2021**
- Temporary public policy for the resettlement of certain Afghan nationals | **22 November 2021**
- Temporary public policy for the resettlement of certain Afghan nationals selected by the minister of IRCC under Operation Afghan Safety | **22 November 2021**
- Amended temporary public policy to facilitate permanent residence for certain citizens of Afghanistan issued temporary resident permits | **25 October 2021**
- Expanded temporary public policy for the resettlement of certain locally engaged staff of the North Atlantic Treaty Organization | **18 October 2021**
- Updated: Temporary public policy to exempt prospective refugee claimants, in Canada, from the requirement to make a claim to an officer, in person, subsequent alternative service delivery model | **6 October 2021**
- Temporary public policy for the resettlement of Afghan nationals from within Afghanistan identified by Frontline Defenders and Protect Defenders | **30 September 2021**
- Temporary public policy for the resettlement of certain locally engaged staff of the North Atlantic Treaty Organization | **19 September 2021**
- Temporary public policy for foreign nationals being airlifted from Afghanistan – Archived | **25 August 2021**
- Temporary public policy for Afghan nationals in Canada and outside Canada | **25 August 2021**

- Subsequent public policy to facilitate the immigration of certain sponsored foreign nationals excluded under paragraph 117(9)(d) or 125(1)(d) of the Immigration and Refugee Protection Regulations – Archived | **14 August 2021**
    - Public Policy to facilitate the immigration of certain sponsored foreign nationals excluded under paragraph 117(9)(d) or 125(1)(d) of the Immigration and Refugee Protection Regulations - Archived | **5 July 2019**
- Temporary public policy to facilitate the granting of permanent residence for foreign nationals in Canada, outside of Quebec, who used an alternative format to apply to the Temporary Pathway to Permanent Residence and whose applications were received in excess of the application intake cap | **9 August 2021**
- Temporary Public Policy to facilitate the resettlement of Afghan Sikhs and Hindus – Principal Applicant [REDACTED] | **6 August 2021**
- Temporary public policy for the resettlement of Afghan nationals in Afghanistan | **22 July 2021**
- Temporary public policy for the resettlement of locally engaged staff of the embassy of Canada to Afghanistan | **22 July 2021**
- Temporary public policy to facilitate the granting of permanent residence for foreign nationals in Canada, outside of Quebec, with a recent credential from a Canadian post-secondary institution who applied in excess of the application intake cap | **28 June 2021**
- Temporary public policy to exempt certain in-Canada foreign nationals from the immigration medical examination requirement | **28 June 2021**
- Temporary public policy to exempt certain Hong Kong residents from work permit requirements | **27 January 2023**

    - Updated: Temporary public policy to exempt certain Hong Kong residents from work permit requirements | **8 June 2021**

- Temporary public policy creating two pathways to permanent residence to facilitate the immigration of certain Hong Kong residents | **8 June 2021**
- Temporary Public Policy to facilitate the resettlement of Afghan Sikhs and Hindus [REDACTED] | **28 May 2021**
- Temporary public policy to further facilitate access to permanent resident status for out-of-status construction workers in the Greater Toronto Area (GTA) | **24 May 2021**
    - Temporary public policy for out-of-status construction workers in the Greater Toronto Area - Archived | **8 July 2019**
- Temporary public policy to facilitate the granting of permanent residence for caregivers who applied under the Home Child Care Provider Class or Home Support Worker Class in 2020 | **3 May 2021**
- Temporary public policy to facilitate the granting of permanent residence for foreign nationals in Canada, outside of Quebec, with recent Canadian work experience in essential occupations | **12 April 2021**
- Temporary public policy to facilitate the granting of permanent residence for French-speaking foreign nationals in Canada, outside of Quebec, with recent Canadian work experience in essential occupations | **12 April 2021**
- Temporary public policy to facilitate the granting of permanent residence for foreign nationals in Canada, outside of Quebec, with a recent credential from a Canadian post-secondary institution | **12 April 2021**

- Temporary public policy to facilitate the granting of permanent residence for French-speaking foreign nationals in Canada, outside of Quebec, with a recent credential from a Canadian post-secondary institution | **12 April 2021**
- Updated: Temporary public policy to exempt certain visitors in Canada from immigration requirements during the coronavirus (COVID-19) pandemic | **1 April 2021**
- Temporary public policy to exempt certain Hong Kong residents from work permit requirements | **1 February 2021**
- Updated: Temporary public policy to exempt certain out-of-status foreign nationals in Canada from immigration requirements during the coronavirus (COVID-19) pandemic | **20 December 2020**
- Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic | **9 December 2020**
- Temporary public policy to grant permanent residence to certain foreign nationals selected by Quebec working in the health care sector during the COVID-19 pandemic | **9 December 2020**
- Public Policy on Work Experience Eligibility Requirement for the Rural and Northern Immigration Pilot | **6 November 2020**
- Temporary public policy concerning applications for permanent residence as a member of the family class whose sponsor must meet a minimum income requirement in 2020 | **29 September 2020**
- Temporary public policy to exempt in-Canada protected persons from the Immigration Medical Examination requirement when applying for permanent residence | **10 September 2020**

- Temporary public policy to exempt certain out-of-status foreign nationals in Canada from immigration requirements during the coronavirus (COVID-19) pandemic | **7 July 2020**
- Temporary public policy to exempt prospective refugee claimants, in Canada, from the requirement to make a claim to an officer, in person | **9 April 2020**
- Temporary public policy to exempt from the requirement to present a permanent resident visa to an officer | **9 April 2020**
- Public policy to reinstate an interim pathway for caregivers – Archived | **8 July 2019**
    - Public policy to provide an interim pathway for caregivers – Archived | **23 February 2019**
- Public Policy concerning the payment of application fees for an initial temporary resident permit and an initial work permit for victims of family violence | **14 June 2019**
- Public policy concerning work permit restrictions for Designated Country of Origin Asylum Claimants | **17 May 2019**
- Public policy concerning individuals who partook in a 1-year International Business Management program and a 4-month Freight Forwarding and Logistics program at the same public college | **29 October 2018**
- Temporary Public Policy Regarding Excessive Demand on Health and Social Services – Archived | **1 June 2018**
- Temporary public policy regarding requests to process children aged 19 to 21 as dependants | **24 October 2017**
- Public policy facilitating entry into Canada for short-term work | **28 August 2017**

- Public policy concerning foreign nationals in Canada affected by the wildfires in British Columbia | **18 August 2017**
- Public policy to exempt applicants for permanent residence from certain age-based requirements between invitation to apply and application | **28 July 2017**
- Temporary public policy to facilitate the sponsorship of Syrian and Iraqi refugees by Groups of Five and Community Sponsors – Archived | **19 December 2016**
    - 2016 – Archived | **20 September 2016**
    - 2015 – Archived | **19 September 2015**
- Temporary public policy concerning the application of the cumulative duration limit | **13 December 2016**
- Public policy concerning individuals refused post-graduation work permit access between September 1, 2014 to March 15, 2016 – Archived | **20 September 2016**
- Temporary public policy concerning failed refugee claimants subject to the 12-month bar on requests for humanitarian and compassionate consideration following the lifting of the temporary suspension of removals (TSR) on Haiti and Zimbabwe – Archived | **4 February 2016**
- Public policy concerning economic class permanent residence applicants and express entry candidates whose language proficiency cannot be tested in all four language skill areas due to a physical or mental disability | **1 January 2015**
- Public policy concerning work permit requirement exemptions for caregivers | **30 November 2014**
- Temporary public policy concerning Tibetans living in the state of Arunachal Pradesh in India | **17 March 2011**

- Public Policy Under A25(1) of IRPA to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class | **26 August 2005**

Date modified:
2025-07-04

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

AFFIDAVIT OF CLARE PAIN

I, CLARE PAIN, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a psychiatrist practising medicine in Toronto, Ontario. I make this affidavit based on my professional experience.

Qualifications and Experience

2. I hold a medical degree from McMaster University. I completed my residency and a fellowship in psychiatrist the University of Ottawa. I have worked as a psychiatrist and taught psychiatry since 1993. Much of my work is in the area of psychological trauma and involves cross-cultural contexts.

3. I am currently a Clinician Scientist at the Lunenfeld-Tanenbaum Research Institute, Mount Sinai Hospital, Toronto and a Professor in the Department of Psychiatry, Faculty of Medicine, University of Toronto.

4. I am also a Senior Strategist, Toronto Addis Ababa Academic Collaboration between the, Department of Psychiatry, Faculty of Medicine, University of Toronto and Addis Ababa University, and a Consultant Psychiatrist with the Weeneebayko Area Health Authority (WAHA) Team, Department of Psychiatry, Mount Sinai Hospital, and at the Canadian Centre for Victims (**"CCVT"**).

5. I am currently involved various studies, including: the "Situational Analysis on Mental Health in Somalia", World Health Organization, Geneva, Switzerland; "Two-year Outcomes of New Beginnings Refugee Clinic", Centre for Addiction and Mental Health, Toronto; and "Identifying Skills and Competencies to Provide High-Quality Virtual Psychiatric Care to Trauma Patients", University of Toronto and Mount Sinai Hospital.

6. I attach my resume as **Exhibit "A"** to my affidavit, which details my numerous appointments, distinctions and research awards, professional associations, grants, contracts and clinical trials, journal articles and magazine entries, presentations and special lectures, and research supervision.

Mandate

7. I have been asked to offer evidence on the impact of psychological trauma and other mental health issues on the ability of individuals to respond to questions and offer information in the immigration and refugee context, based on my professional experience treating individuals who experience trauma.

8. I am qualified to address these topics, as they fall within my area of expertise, which is based on both my first-hand experience and my teaching. My experience includes treatment of refugees who have faced trauma. I have treated more than 600 refugees.

9. In preparing this affidavit, I have reviewed the Affidavit of Shalini Konanur, which addresses these issues in paragraphs 45 to 49 dealing with mental health and in paragraphs 50 to 55 dealing with trauma caused by violence.

10. I am aware of my obligations as an expert and have read the *Code of Conduct for Expert Witnesses* set out in the schedule to the *Federal Courts Rules* and agree to be bound by it. A signed copy of the *Code of Conduct for Expert Witnesses* is attached as **Exhibit "B"** to my affidavit

Trauma and mental health limitations

11. Psychological trauma has been variously defined. For the purpose of this affidavit, I rely on the DSM-5 definition of trauma as exposure to actual or threatened death, serious injury or sexual violence. This exposure can be direct, witnessed or learned about, especially if it involves a close family member or friend. Traumatic experience can result in significant and severe subjective distress. The trauma can be a one-time event or a series of occurrences. The trauma itself can be seriously harmful or life threatening. If the traumatic experience is unresolved and left untreated, individuals may experience its effects throughout their lives. In some cases, for persons who have suffered psychological trauma, a sudden environmental reminder may have the effect of cognitively disorganizing the person or frightening to them so much that they disassociate. For some people, psychological trauma can result in a variety of ongoing mental health limitations.

12. Trauma can affect cognitions, emotional regulation, mood and behaviour. An individual who suffers from psychological trauma may have significant issues with trust, dissociation and withdraw socially.

13. Unresolved psychological trauma can result in Posttraumatic Stress Disorder (**"PTSD"**) and/or depression. The sequelae of traumatic experiences are highly variable. PTSD and depression can include mental health limitations that are not necessarily only associated with the shock of sudden trauma. For example, aside from psychological trauma, refugees also often live with the fear of having experienced danger, humiliation, shame, uncertainty, insecurity, loss of family and friends, profound grief and anxiety.

14. When psychological trauma leads to severe PTSD and depression, it can cause significant functional impairment, which usually results in decreased quality of life, morbidity, and poorer health outcomes. Moreover, functional impairment may include the inability to accurately complete immigration applications forms and effectively participate in immigration interviews.

Manifestations of trauma and mental health limitations in preparing reports for immigration and refugee matters

15. In 2007, I began working at the CCVT on a weekly basis. The refugees I meet at the CCVT are usually referred by their immigration lawyer for a psychiatric report. I prepare reports on these refugees to document their mental health. Most often these reports are put into evidence at refugee

hearings before the Immigration and Refugee Board. I also prepare reports that are used for humanitarian and compassionate applications and Pre-Removal Risk Assessments.

16. An assessment begins with a two hour meeting and continues with two one hour follow up meetings to ensure that I have sufficient information to prepare a report. The assessment includes a review of the patient's relevant documents.

17. The refugees I assess at the CCVT come from many different countries. The countries of origin have varied over the years. Refugees flee their countries for difference reasons. For instance, in the last few years, I have seen more refugees fleeing gender-based violence including domestic violence, and refugees who fear due to LGBTQ+ discrimination.

18. The refugee determination process can retraumatize those individuals who suffer from unresolved psychological trauma. It may do so by resurfacing memories of past traumatic experiences that they must relive to successfully advance a claim for refugee protection.

19. These issues may not arise in a treatment setting. A refugee under my care may be relatively comfortable speaking with me. I attribute that to the fact that our relationship is therapeutic. However, my patients have reported to me that they are apprehensive in anticipation of their refugee hearing. Their anxiety can lead to muddling or forgetting key dates and time lines when we discuss their experiences in advance of the hearing. It can also lead to poor concentration and difficulty focusing on replying in a goal directed linear way to questions. When the anxiety is severe it can result in a refugee dissociating. This can take the form of "zoning out" and losing track of what is being said and not responding to verbal questions.

20. In addition, counsel refer refugees to the CCVT for a post-hearing assessment when testimony has been problematic. In these situations, I meet with the refugee after the hearing to learn what happened. In some cases, during the course of the testimony, the refugee is reminded of a very disturbing detail of an event and cannot testify any further. They freeze up. I then realize that unresolved psychological trauma has emerged to prevent fulsome testimony.

21. In summary, attending a refugee hearing can:

a. raise anxiety in an individual who may have been sleepless in the period prior to the interview, affecting their cognitions and attention;

b. reawaken fear in someone who has undergone terrifying experiences in their country of origin by people who wield power over them; and

c. impact autobiographical memory of an individual whose trauma remains unresolved or who has mental health limitations and who cannot place events into a logical time sequence.

22. I offer two examples from my practice.

23. *Example 1*: Ana (not her real name) experienced sexual assaults by several of the men who had detained her in her country. Her adaptation to living in Canada was adequate and she was able to begin training as a personal support worker. However, she did not make friends or socialize with anyone. She dreaded her hearing because she feared being questioned by the member. This dread ignited the fear she had felt in detention; she would hang her head and be unable to talk.

24. *Example 2*: Digby (not his real name) was a man who had known he was gay since his teenage days. He had hidden his relationships with men as best he could, knowing that homosexuality was illegal in his country of origin, and even if the police would not detain him, he risked death by members of the community for being gay. Rumours spread, and one night a crowd came to his compound. His elderly mother went to the gate. The crowd pushed the gate open and his mother was knocked unconscious to the ground. The crowd was shocked enough to stop and leave. Digby's mother died the following day, and he fled to Canada. The grief he felt, as well as the effects of years of caution, hiding and lying, had affected his memory. He was unable to clarify the dates and events clearly and give a timeline and explanation of what happened over the years.

25. These examples demonstrate the barriers that individuals face when their trauma resurfaces, which can happen when asked to recall details of their experiences by a government decision-maker, and in anticipation of that process.

26. I make this affidavit for no improper purpose.

Affirmed by remotely from the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on August 21, 2025 in accordance with *O.Reg. 431/20, Administering Oath or Declaration Remotely*

Clare Pain
Clare Pain (Aug 21, 2025 18:05:02 EDT)

CLARE PAIN

Maureen Silcoff, Commissioner for Taking Affidavits

This is Exhibit **"A"** referred to in the affidavit
of CLARE PAIN sworn before me
this 21st day of August 2025.

A COMMISSIONER FOR TAKING AFFIDAVITS

Curriculum Vitae
Dr. Clare Pain
Professor

Primary Office	Mount Sinai Hospital	600 University Avenue, Department of Psychiatry,			
	Toronto, ON, Canada	M5G 1X5	Telephone	416-586-4800 x 8890	
Cellphone	416-574-3531	Fax	416-586-8654	Email	clare.pain@sinaihealth.ca

1. EDUCATION

Degrees

2014	Honorary PhD (Doctor of Sciences, *honoris causa*), Addis Ababa University, Addis Ababa, Ethiopia.
1982-1985	MD, McMaster University, Hamilton, ON, Canada
1980-1981	MSc, Health Care Practice, Faculty of Medicine, McMaster University, Hamilton, Toronto, ON, Canada
1978-1980	BSc, Physiotherapy, Faculty of Medicine, University of Toronto, Toronto, ON, Canada
1967-1970	Diploma, Physiotherapy, Middlesex Hospital, London, UK

Postgraduate, Research and Specialty Training

2016	Psychoanalyst, Toronto Institute of Contemporary Psychoanalysis, Toronto, ON, Canada,
1992-1993	Psychotherapy Fellow, University of Ottawa, Ottawa, ON, Canada
1989-1992	Psychiatry Residency, University of Ottawa, Ottawa, ON, Canada
1987-1989	Internal Medicine Residency, University of Ottawa, Ottawa, ON, Canada

Qualifications, Certifications and Licenses

2020	Interpersonal Therapy Trainer and Supervisor, International Society of Interpersonal Psychotherapy
1992	Fellow, Psychiatry, Royal College of Physicians and Surgeons of Canada, Ottawa, ON, Canada, License / Membership #: 420264
1986	Licensed for the Independent Practice of Medicine, College of Physicians and Surgeons of Ontario, Toronto, ON, Canada, License / Membership #: 55389

2. EMPLOYMENT

Current Appointments

2015 – Present	Clinician Scientist, Lunenfeld-Tanenbaum Research Institute, Mount Sinai Hospital, Toronto, ON, Canada
2022 – Present	Professor, Department of Psychiatry, Faculty of Medicine, University of Toronto, Toronto, ON, Canada
2022 – Present	Senior Strategist, Toronto Addis Ababa Academic Collaboration (TAAAC), Department of Psychiatry, Faculty of Medicine, University of Toronto/Addis Ababa University, Toronto, ON, Canada

Facilitating the identification and development of post graduate educational programs between Addis Ababa University and University of Toronto.

2022 – ongoing Consultant and trainer for MindSeed – a virtual allied health professional's clinic

2022 – ongoing Consultant supervisor for Wanasah*, a non-profit mental health agency addressing the urgent mental health needs of black youth and their families in Regent Park Toronto*

2021-present Consultant psychiatrist Weeneebayko Area Health Authority (WAHA) Team, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada
In a team of 6 psychiatrists at Mount Sinai Hospital working with WAHA to provide a mental health outreach clinic and onsite visits to the 6 Cree First Nations communities living along the eastern James Bay and Hudson Bay coasts. Based in Moose Factory, ON.
Consultant Psychiatrist, Canadian Centre for Victims of Toronto, Toronto, ON, Canada

2007 – present Weekly clinic consultation to the Canadian Centre for Victims of Torture - funded from 2009 by inter city health associates st. Michael's hospital.

Previous Appointments

2022 – present Professor of Psychiatry, University of Toronto

2010 – 2022 Associate Professor, Department of Psychiatry, Faculty of Medicine, University of Toronto, Toronto, ON, Canada

2008 – 2022 Co-Director, Toronto Addis Ababa Academic Collaboration (TAAAC), Department of Psychiatry, Faculty of Medicine, University of Toronto/Addis Ababa University, Toronto, ON, Canada

Facilitating the identification and development of over 25 post graduate educational programs between Addis Ababa University and University of Toronto involving 100 UofT faculty teaching on site in Ethiopia/year – switched to virtual trainings during covid – resumed onsite in 2023.

2016 – 2021 Co-founder & Consultant Psychiatrist, New Beginnings Refugee Mental Health Clinic, Centre for Addiction and Mental Health, Toronto, ON, Canada

Co-founder and appointed psychiatrist (part time) for refugee mental health clinic to provide phone consultation for family doctors and NPs; and refugee assessments and the provision of culturally appropriate treatment.

2007 – 2021 Director, Psychological Trauma Program, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada

Our tertiary trauma consultation clinic is attended by 3 psychiatrists, and residents and fellows as an elective rotation. We also have an Affect Regulation Group for complex trauma patients co-facilitated with a resident or fellow and provide trauma consults to psychiatric or consult liaison inpatients as requested. We have a monthly peer consultation group for community physicians, therapists who are working with complex trauma patients.

2003 – 2021 Director, Toronto Addis Ababa Psychiatry Program (TAAPP), Department of Psychiatry, Faculty of Medicine, University of Toronto, Toronto, ON, Canada

Facilitating the development of the first Ethiopian psychiatry residency, and the growth of the Department of Psychiatry Addis Ababa University.

2002 – 2007 Clinical Research Director and Staff Psychiatrist, Traumatic Stress Service,

Department of Psychiatry, London Health Sciences Centre, London, ON, Canada

Part-time

1998 – 2007 Clinical Director, Psychological Trauma Assessment Clinic, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada

1993 – 1997 Staff Psychiatrist and Assistant Professor, University of Ottawa, Department of Psychiatry, Royal Ottawa Hospital.
Adult Outpatients: lead multidiscipline treatment team, psychotherapy supervision, administration and research

1986 – 1989 General Duty Medical Officer at National Defense Headquarters and National Defense Medical Centre, Ottawa.
One year as a General Practitioner and two years (one as Chief Resident) as an Internal Medicine Resident, fulfilling three years of obligatory service for medical school funding. (Medical Officer Training Program).

1981 – 1982 Director of the Rehabilitation Department, Hamilton General Hospital.
Clinical and managerial responsibility for a department of 11 Physiotherapists, two Speech Pathologists, one Occupational Therapist and four support staff. I left this position to attend medical school.

1977 – 1981 Physiotherapist, Toronto General Hospital, Toronto, ON Canada

1975 – 1977 Physiotherapist, Westminster Hospital London, UK

1973 – 1975 Volunteer Co-Director, Cheshire Home, Voluntary Service Overseas (VSO), Ethiopia

Co-Director for a Home with another volunteer, responsible for 86 physically handicapped children and 30 Ethiopian employees for two years. Duties included the active rehabilitation and discharge of over 100 children with post-poliomyelitis contractures; administration of the farm, fundraising and administering the home's finances.

UNIVERSITY

2015 – 2018 Associate Professor, Institute of Health Policy, Management and Evaluation (IHPME), Dalla Lana School of Public Health, University of Toronto, Toronto, ON, Canada

PhD committee member.

UNIVERSITY – CROSS APPOINTMENT

2002 – 2007 Assistant Professor University of Western Ontario, London Ontario. Coordinator of Psychotherapy Training, Department of Psychiatry, Faculty of Medicine.

UNIVERSITY – RANK

1998 – 2009 Assistant Professor, Department of Psychiatry, Faculty of Medicine, University of Toronto.

1993 – 1998 Assistant Professor, Department of Psychiatry, Faculty of Medicine, University of Ottawa, Ottawa, ON, Canada

Work Interruptions

2016-2017 Sabbatical Appointment, Department of Psychiatry, Faculty of Medicine, Addis Ababa University, Addis Ababa, Ethiopia.

I taught and supervised residents and took on a small caseload of Ethiopian patients. I wrote a successful grant to develop mental health services for the Assosa Refugee Camps.

3. HONOURS AND CAREER AWARDS

Distinctions and Research Awards

INTERNATIONAL

October 16th 2021 **Friends of Ethiopia Award**: People to People organization USA https://p2pbridge.org/awards/

People to People, Inc. P2P is emerging globally as a bridge and network of Ethiopian Diaspora committed and willing to give back to Africa with strong links to international organizations and other educational institutions in the US, Africa, and other places in the world.

2019 **Creative Scholarship Award**, Director, Society for the Study of Psychiatry and Culture, North America.

The Creative Scholarship Award is presented to a person who has made a "significant creative contribution to the field of cultural psychiatry". Awarded for collaborative programming with Addis Ababa University, Ethiopia.

2015 **Certificate of High Commendation**, Chapter co-author, British Medical Association, London, UK.

Annual medical book awards to recognize outstanding contributions to medical literature. Awarded for co-authoring chapter in "Essentials of Global Mental Health" (Ed. Samuel O. Okpaku).

2015 **Special Contribution Award**, Ethiopian Psychiatric Association, Addis Ababa, Ethiopia.

Awarded for significant contributions to psychiatry in Ethiopia. Awarded for work on the Toronto Addis Ababa Psychiatry Project.

2014 **Honorary PhD (Doctor of Sciences, *honoris causa*)**, Addis Ababa University, Addis Ababa, Ethiopia. *Awarded for services to Ethiopian mental health.*

2011 **Written Media Award**, Co-author, International Society for the Study of Trauma and Dissociation, Arlington, Virginia, United States.

*Awarded to written media that seeks to advance clinical, scientific, and societal understanding about the prevalence and consequences of chronic trauma and dissociation. Awarded to: Ruth Lanius; Eric Vermetten and **Clare Pain** for The Impact of Early Life Trauma on Health and Disease: The Hidden Epidemic Cambridge University Press 2010.*

2008 **Award for Creativity in Psychiatric Education**, Director, American College of Psychiatrists, Chicago, Illinois, United States.

The Award for Creativity in Psychiatric Education recognizes a teaching program that demonstrates innovation in psychiatric education. Awarded for work on the Toronto Addis Ababa Psychiatry Project. Total Amount: 500 USD

2006 **Robert Giel Prize**, Ethiopian Psychiatry Association, Addis Ababa, Ethiopia.

Awarded for work on the Toronto Addis Ababa Psychiatry Project.

2003 **President's Award of Distinction**, International Society for the Study of Trauma and Dissociation, Arlington, Virginia, USA. *Given to an individual who has given outstanding service to the Society.*

National

2018 **Canadian Women in Global Health**, Director, Canadian Society for International Health, Ottawa, ON, Canada. *Honor awarded for collaborative programming with Addis Ababa University, Ethiopia*

LOCAL

2018 **Dave Davis Research Award**, Co-Principal Investigator, Department of Psychiatry, Toronto, Ontario, Canada

Awarded for excellence in project design, knowledge translation and project impact. Awarded for work on the Biaber Project (the scaling up of mental health services into primary health care in Ethiopia.

2018 **Amina Malko Award**, Canadian Centre for Victims of Torture, Toronto, Ontario, Canada.

Awarded for significant contribution to policy, advocacy and settlement service for traumatized refugees.

2017 **Donald Wasylenki Education Day Best Poster Award**, Collaborator, Department of Psychiatry, University of Toronto, Toronto, ON, Canada.

*Awarded for Priya Watson, **Clare Pain** for their project, "The Trauma Toolkit: A Curriculum for Family Physicians and Pediatricians to Address Developmental Trauma in Children".*

2014 **Professional Excellence Award**, Bikila Awards, Toronto, Ontario, Canada.

Awarded by the Ethiopian community in Toronto for exemplary contributions to promoting academic excellence in Ethiopia through work with the Toronto Addis Ababa Psychiatry Project.

2014 **Best Module**, Director, Global Health Education Initiative – University of Toronto, Toronto, ON, Canada.

This award recognizes outstanding achievement in developing projects that further the agenda of collaboration between the Department of Psychiatry at the University of Toronto and partner countries. Awarded for a module on global mental health.

2013 **Dr**. **Clare Pain Ethiopian Fellowship Fund**, Honoree, Department of Psychiatry, University of Toronto, Toronto, ON, Canada.

This fellowship fund was created by the Department of Psychiatry and named after Dr. Pain to honor her contributions made to the field of psychiatry in Ethiopia. The scholarship fund supports the education of Ethiopian scholars.

2013 **Certificate of Appreciation**, Director, City of Toronto, Toronto, Ontario, Canada.

Presented by Olivia Chow, MP/Députée Trinity-Spadina for significant contributions to the City through work on the Toronto Addis Ababa Psychiatry Project.

2010 **Best Staff Psychiatrist Grand Rounds**, Presenter, Psychiatry Department, Faculty of Medicine, University of Toronto, Toronto, Ontario, Canada.

Awarded for presentation, "G20 Summit Preparation for Crisis: Some Practical Tips".

2011 **Donald A. Wasylenki Award for International Project Excellence**, Collaborator, Department of Psychiatry, University of Toronto, Toronto, ON, Canada.

This award recognizes outstanding achievement in developing projects that further the agenda of collaboration between the Department of Psychiatry at the University of Toronto and partner countries. Awarded for work on the Toronto Addis Ababa Psychiatry Project. Total Amount: 1,000 CAD

2007 **Karen McGibbon Award of Excellence for Humanitarian Behaviour**, Director, Mount Sinai Hospital, Toronto, ON, Canada.

This award recognizes the outstanding effort and commitment of staff members who excel in providing quality service and are role models in their field. Total Amount: 1,000 CAD

2006 **Henry Duroust Award for Educational Program Development**, Supervisor, Department of Psychiatry, University of Toronto, Toronto, ON, Canada.

This award recognizes outstanding achievement in developing projects that further the agenda of collaboration between the Department of Psychiatry at the University of Toronto and partner countries. Awarded for work on the Toronto Addis Ababa Psychiatry Project. Total Amount: 1,000 CAD

2003 **Top Rated Resident Module Lecturer**, Lecturer, Department of Psychiatry,

University of Western Ontario, London, ON, Canada.

Awarded to lecturers receiving the highest ratings for their module.

2003 **Best Grand Rounds**, Presenter, Department of Psychiatry, Mount Sinai Hospital, Toronto, Ontario, Canada.

Awarded for presentation, "TAAPP: Co-developing a Psychiatry Residency Program in Ethiopia" with Lisa Andermann.

2002 **Allen B. Tennen Award for Excellence in Psychotherapy Supervision**, Supervisor, Department of Psychiatry, University of Toronto, Toronto, ON, Canada.

Awarded supervisors nominated by residents for expertise in teaching psychotherapy and significant contributions to resident professional development. Total Amount: 500 CAD.

1997 **Best Psychotherapy Supervisor**, Supervisor, Department of Psychiatry, University of Ottawa, Ottawa, ON, Canada.

Awarded supervisors nominated by residents for expertise in teaching psychotherapy and significant contributions to resident professional development.

1996 **Best Psychotherapy Supervisor**, Supervisor, Department of Psychiatry, University of Ottawa, Ottawa, ON, Canada.

Awarded supervisors nominated by residents for expertise in teaching psychotherapy and significant contributions to resident professional development.

4. PROFESSIONAL AFFILIATIONS AND ACTIVITIES

Professional Associations

2020 - present **Member,** International Society for Interpersonal Therapy
2010 - present **Member,** Canadian Center for Global Health Research
2010 – present **Member**, Toronto Institute of Contemporary Psychoanalysis
2008 – present **Clinical Advisory Board Member**, PTSD Association of Canada
2000 – present **Member**, The International Neuro-Psychoanalysis Society
1992 – present **Member**, Royal College of Physicians and Surgeons of Canada, 420264
1992 – present **Member,** Ontario Medical Association
1986 – present **Member**, College of Physicians and Surgeons of Ontario, 55389
2011 – 2016 **Member,** Board of Directors, Canadian Centre for Victims of Torture
2009 **Program Committee Member**, International Society for the Study of Trauma and Dissociation
2003 – 2006 **Membership Chair – Executive Council,** International Society for the Study of Trauma and Dissociation
2002 – 2006 **Board Member,** International Society for the Study of Trauma and Dissociation
2001 – 2003 **President,** Canadian Society for the Study of Trauma and Dissociation
2001 – 2003 **Elected Council Member**, Ontario Psychiatric Association

Administrative Activities

University of Toronto

INTERNATIONAL

2019 – 2021 **Member**, Master Card Foundation – International Office of the President, University of Toronto. Worked to submit a proposal for: Advancing Health Care in Africa. a Collaboration between the Mastercard Foundation, the University of Toronto and leading African Universities 13M
2014 – 2015 **Member**, Shantou University and University of Toronto Joint Psychiatry Specialist

Committee, Faculty of Medicine, Department of Psychiatry, Toronto, ON, Canada
Invited as a member of the committee to develop a joint specialist in Psychiatry Training Program with Shantou University Mental Health Centre & University of Toronto Department of Psychiatry.

Local

2018 - present **Member**, President's International Council on Engagement with Africa; University of Toronto International Strategic Plan 2017 – 2022
Invited to support the University's international strategic plan and presented on the Toronto Addis Ababa Academic Collaboration, April 3, 2018.

2015 – present **Member**, Postgraduate Global Health Education Committee, PGME, Faculty of Medicine, Toronto, ON, Canada
Chaired by Dr Barry Pakes all members of the faculty of medicine involved in global health meet 2-3 times a year.

2014 – 2018 **Member**, Fellowship Committee, Faculty of Medicine, Department of Psychiatry, Toronto, ON, Canada

2014 – 2016 **Member,** A Sub-Saharan Initiative: Development of a Sustainable Platform for Basic Sciences Education and Life Sciences Research, Faculty of Medicine, Postgraduate Medical Education, Toronto, ON, Canada.
Chair: Alison Buchan.

2015 **Member**, Planning Committee: Going Glo-cal: Global Lessons for Local Benefit, Faculty of Medicine, Department of Psychiatry, Toronto, ON, Canada
Invited as a member of the organizing committee for the inaugural conference on global mental health. Chair: Arun Ravindran.

2009 – 2012 **Member and Faculty mentor**, Admissions Committee, Faculty of Medicine, Department of Psychiatry, Toronto, ON, Canada
Faculty Mentor and Admissions Committee Member, CIHR Strategic Training Program in the Social Aetiology of Mental Illness (SAMI) based at the Centre for Addiction and Mental Health and the University of Toronto. Chair: Kwame McKenzie

2011 **Member**, Search Committee: Global Health Director, Faculty of Medicine, Department of Family and Community Medicine, Toronto, ON, Canada
Chair: Lynne Wilson

2011 **Member,** Strategic Planning Committee for Global Health: "Medicine at UofT - A Roadmap for Global Health 2011-2016", Faculty of Medicine, Toronto, ON, Canada.
Chair: Sarita Verma

<u>Mount Sinai Hospital</u>

Local

2007 – present **Member,** Psychiatry Advisory Committee, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada

1999 – Present **Founder and member**: Community Peer Supervision Study Group on Severe Trauma Spectrum Disorders, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada

2007 – 2010 **Member**, Pandemic Planning Committee, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada *Chair: Bob Maunder*

2009 **Chair**, Planning Committee: 20th Annual Academic Day: "When disaster strikes, what will you do? Essential psychosocial skills for health and mental health professionals", Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada
Speakers: Rachel Jenkins, Jack Saul

1999 **Chair,** Planning Committee: 14th Annual Academic Day: "The Convergence of Mind and Brain: Foundations for Contemporary Psychotherapy", Department of Psychiatry, Toronto, ON, Canada

Speakers: Bessel van der Kolk, Mark Solms, Richard Brockman

1999 **Member,** Ethno-racial Services Committee, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada

1999 **Member,** Psychiatry and Allied Mental Health Committee, Department of Psychiatry, Mount Sinai Hospital, Toronto, ON, Canada

International Society for the Study of Trauma and Dissociation

INTERNATIONAL

2007 **Member**, Education Committee,

2002 – 2003 **Conference Co-chair,** Conference Planning Committee,

2001 **Member,** Program Committee,

City of Toronto

Local

2003 – 2012 **Member,** Committee for Disaster Planning, Toronto Public Health, Toronto, ON, Canada.

Royal Ottawa Hospital

Local

1996 **Member**, Ottawa Brief Psychotherapy Committee, Department of Psychiatry, Ottawa, ON, Canada
Initiated a 26-week training program to teach residents brief therapy. Core-curriculum and Intramural teaching of psychiatry residents.

1993 – 1997 **Member,** Ottawa Group Psychotherapy Training Institute Committee, Department of Psychiatry, Ottawa, ON, Canada
In 1996, we hosted the Annual Canadian Group Association Conference. Developed a 4-afternoon Transcultural Workshop for resident training.

1993 – 1997 **Member**, Medical Audit/Quality Assurance Committee, Ottawa, ON, Canada

1993 – 1997 **Member**, Clinical Records Committee, Department of Psychiatry, Ottawa, ON, Canada

1992 – 1997 **Member,** Interdepartmental Supervisors Group, Department of Psychiatry, Ottawa, ON, Canada

1992 – 1997 **Member** of the ROH Psychotherapy Committee, Department of Psychiatry, Ottawa, ON, Canada

1991 – 1997 **Member**, ROH Trauma Study Group, Department of Psychiatry, Ottawa, ON, Canada

University of Ottawa

Local

1996 – 1997 **Chair,** Interdepartmental Ethics Committee, Research Ethics Board, Ottawa, ON, Canada

Peer Review Activities

Casual reviewer for:

- Psychological Trauma: Theory, Research, Practice, and Policy
- British Journal of Psychiatry – Open
- British Medical Journal

- Post Graduate Medicine
- Canadian Journal of Education

Other Research and Professional Activities

Other Collaborations

July 2022 – ongoing **Member** of the planning committee for the North American Refugee Health Conference 2025

July 2022 - ongoing **Virtual weekly Psychotherapy Group Consultation** for Addis Ababa University and St Paul's University Psychiatry and Psychology Faculty in Ethiopia

July 2021 **Collaborator**, Situational Analysis on Mental Health in Somalia. World Health Organization, Geneva, Switzerland.
At the request of WHO, we wrote and submitted a situational analysis, led by Dr Neil Araya University of Western Ontario

Mar 2020 - present **Collaborator,** Improving psychosocial support and mental health care for young people affected by conflict in Somalia: A socially-inclusive integrated approach for peace-building. World Health Organization, Geneva, Switzerland.
Invited to collaborate on a project to support mental health access and psycho-social supports in Somalia using peacebuilding through social integration and community reconciliation. The project is the first of its kind in Somalia and is expected to benefit 26,500 individuals in camps for Internally Displaced Persons.

Sep 2018 – present **Collaborator,** Disaster Psychiatry. Canadian Psychiatric Association, Ottawa, ON, Canada

Jun 2019 **Collaborator,** Refugee Health Meeting. North American Refugee Health Conference, Toronto, ON, Canada.
Invited to join collaboration and visioning meeting for the Department of Family and Community Medicine, University of Toronto as part of the NARHC.

RESEARCH PROJECTS

July 2022 – ongoing **Co-Investigator** Evaluation of the Toronto Addis Ababa Psychiatry Project (TAAPP) – *Research Ethics Board approval obtained at UofT and AAU.*

2023 – ongoing **Co-PI Investigators**. Understanding the mental health needs of refugees settling in Ontario, pre- and post-hearing: a qualitative grounded-theory approach. Clare Pain, Lisa Andermann, Gelila Alemayhu.

2021 – ongoing **Co-Principal Investigator.** The Effects of a Capacity Building Project on Faculty Development: An analysis of University of Toronto faculty teaching experience at Addis Ababa University, Ethiopia. University of Toronto, Toronto, ON, Canada. Collaborators: Rangel, C., Pain, C., Rose, M.

2021 – ongoing **Collaborator**. Identifying Skills and Competencies to Provide High-Quality Virtual Psychiatric Care to Trauma Patients. University of Toronto and Mount Sinai Hospital, Toronto, ON, Canada. Collaborators: Karwal, K., Inwood, S., Paul, R., Pain, C., Rojas. D.
Qualitative interviews with psychiatry residents, fellows and faculty to identify skills and competencies for virtual care with trauma patients.

2017 – ongoing **Co-Investigator**. Two-year Outcomes of New Beginnings Refugee Clinic, CAMH. Centre for Addiction and Mental Health, Toronto, ON, Canada. Collaborators: Sobers, M., Tuck, A., Agic, B., McKenzie, K., & Andermann, L.
Retrospective chart review study to assess outcomes of clinic patients every 2 years.

2018 – 2019 **Co-Principal Investigator** with Engida Girma. Health & Gender Rights for Women

& Girls: An integrated innovation to address reproductive & mental health needs of refugee women in the Assosa Refugee Camps in Ethiopia. Addis Ababa University, Addis Ababa, Ethiopia. Collaborators: UNHCR Ethiopia, Administration for Refugee & Returnee Affairs (ARRA), Government of Ethiopia. Grand Challenges Canada. Funded: Grand Challenges Canada: 197,000 CAD

2016 – 2017 **Co-Principal Investigator** with Dawit Wondimaagegn. The Biaber Project 2: Integrating Mental Health Services into Primary Health Clinics for Patients with Common Mental Disorders in Addis Ababa, Ethiopia. University of Toronto, Toronto, ON, Canada & Addis Ababa University, Addis Ababa, Ethiopia. Grand Challenges Canada

2015 – 2017 **Co-Principal Investigator** with Dawit Wondigagegn. Ethiopia Medical Information Resources Innovation (EMIRI). Addis Ababa University, Addis Ababa, Ethiopia. Funded by Academics Without Borders, 5,000 CAD

2015 – 2016 **Co-Principal Investigator** with Priya Watson. Developing a Trauma Toolkit Online Resource for Family Physicians and Pediatricians to Address Complex Developmental Trauma in Children. University of Toronto, Toronto, Ontario, Canada. Funded: Call to Caring Grant, 13,600 CAD

2012 – 2015 **Co-Principal Investigator** with Dawit Wondimagegn, Paula Ravitz, Sue Carey, Marci Rose, Mesfin Araya, Yonas Bahirtebebe, Atelay Alem. The Biaber Project: Integrating Mental Health Services into Primary Health Clinics for Patients with Common Mental Disorders in Ethiopia. University of Toronto, Toronto, ON, Canada & Addis Ababa University, Addis Ababa, Ethiopia. Funded: Grand Challenges Canada. 1,000,000 CAD

2013 – 2014 **Co-Principal Investigator**. Toronto Addis Ababa Collaboration Project: A Critical Care Nursing Stream Pilot Project. Addis Ababa University, Addis Ababa, Ethiopia. Funded: CUSO International, in-kind.
Investigating the feasibility and efficacy of a pilot Critical Care Nursing stream in the Masters of Nursing program at Addis Ababa University.

2012 – 2014 **Co-Investigator**. Partnering to Establish Emergency Medicine in Ethiopia: Development, Implementation and evaluation of a postgraduate residency training program at Addis Ababa University. Addis Ababa University, Addis Ababa, Ethiopia. Collaborators: Landes M, Maskalyk J, Hunchak C, Aklilu A, Teklu S, Hodges B, Schull, M. Funded: Development Research Centre (IDRC), 60,000 CAD

2011 – 2012 **Co-Investigator**. Improving Healthcare Delivery by Improving Health Providers' Knowledge of Interpersonal Trauma. University of Toronto, Toronto, ON, Canada. Collaborators: Classen, C., Du Mont, J., Fourt, A., Mason, R., Stalker, C. Funded: Canadian Institutes of Health Research, 24,939.72 CAD

2009 – 2016 **Principal Investigator**. Psychological Trauma Program – Quality Assurance Study. Mount Sinai Hospital, Toronto, ON, Canada. Collaborators: McMullen, E. Andermann L, Flak E.

2009 **Advisor**. A Surgical Partnership: Needs Assessment and Program Overview, University of Toronto, Toronto, ON, Canada & Addis Ababa University, Addis Ababa, Ethiopia. Collaborators: Derbrew, M., Howard A., Cadotte, D., Blankstein, M.

2008 – 2011 **Co-Investigator**. Strengthening the Capacity and Sustainability of Mental Health Research, Training and Practice in Ethiopia. University of Toronto, Toronto, Ontario, Canada; Addis Ababa University, Addis Ababa, Ethiopia; King's College London, London, United Kingdom. Collaborators: Hodges BD, Verma S, Alem A, Derbew D, Prince M, Hanlon C. Funded: Development Partners in Higher Education (DelPHE) British Council, 121,640 CAD

2007 – 2011 **Co-Investigator**. Naturalistic Study of Treatment Outcome for Patients with Dissociative Disorders (TOP DD Study). Towson University, Maryland, United States. Collaborators: Brand B, Putman F, Lanius R, Classen C, Loewenstein R. Funded: Towson University, 35,020 USD

2004 – 2009 **Co-Investigator**. Leavers and Stayers: A comparison of the Health and Development of Ethiopian Children Growing up in Toronto and in Addis Ababa.

University of Toronto, Toronto, ON, Canada & Addis Ababa University, Addis Ababa, Ethiopia. Collaborators: Beizer M, Fenta H. Funded: Canadian Institutes of Health Research, 516,338 CAD

2004 – 2006 **Co-Investigator**. The Impact of SARS on Hospital Workers. University of Toronto, Toronto, Ontario, Canada. PI: Maunder, R., Lancee B. Funded: Canadian Institutes of Health Research, 250,000 CAD

2003 – 2005 **Co-Investigator**. Enhancing Health Capacity in the Niger Delta. University of Toronto, Toronto, Ontario, Canada. PIs: Beizer M., Owens W. Funded: Canadian Institutes of Health Research, 98,000 CAD

2003 **Principal Investigator**. Recruitment and Retention of Ethiopian, Saudi Arabia and Canadian Residents. University of Toronto, Toronto, ON, Canada.
Multi-site qualitative research study. Unfunded

2001 – 2003 **Co-Investigator**. Improving Therapeutic Communication in Difficult Treatment Situations: A Brief Intervention for Medical Residents. University of Toronto, Toronto, ON, Canada. Collaborators: Ravitz, P, Lancee B., Leszcz M., Peterkin A, Rubinstein W, Ruskin R, Tiberius R, McNaughton N. Funded: Physicians' Services Incorporated Foundation, 105,000 CAD

1999 – 2000 **Principal Investigator**. Survey of New Canadian Kosovo's Mental Health in Their First Three Months in Canada. University of Toronto, Toronto, ON, Canada. Unfunded

1997 **Co-Investigator**. Brief Group Therapy for Dysthymia. University of Ottawa, Ottawa, ON, Canada. Collaborators: Ravindran A.
Co-led a group as part of a trial on the treatment of dysthymia.

1996 **Co-Investigator**. The Development of a Clinician Administered Post Traumatic Stress Disorder Scale for Adult Survivors of Childhood Sexual Abuse. Royal Ottawa Hospital, Ottawa, ON, Canada.
Pilot project.

COLLABORATIVE AND ORGANIZATIONAL COMMITTEES

INTERNATIONAL

2002 – 2016 **Board Member**, Board of Administrators, Victims Voices (vivo) International, Konstanz, Germany

Board member to support independent, non-governmental organization in preventing traumatic in individuals and communities.

NATIONAL

2011 **Invited Panelist**, Expert Panel on Canada's Strategic Role in Global Health, "Canadians Making a Difference", Canadian Academy of Health Sciences, Toronto, ON, Canada, Toronto, ON, Canada

External reviewer for final report global health. Chair: Peter Singer.

LOCAL

2021 – present **Advisor,** Community Psychotherapy Clinic, Toronto Institute of Contemporary Psychoanalysis, Toronto, ON, Canada

2020 – present **Collaborator,** Harari Community Centre, Toronto, ON, Canada.
Collaborating with the Harari community (one of the ethnic groups in Ethiopia) in Toronto to address troubled youth.

2012 – present **Content Expert**, CAMH Refugee Mental Health Project, Centre for Addiction and Mental Health, Toronto, ON, Canada.

2010 – present **Member**, Health Committee, Canadian Centre for Victims of Torture, Toronto, ON, Canada.

2011 – 2016 **Board Member**, Board of Directors, Canadian Centre for Victims of Torture, Toronto, ON,

2010 – 2012 **Group Mentor**, WOMEN Mentors, Ontario College of Family Physicians, Toronto, ON,
Leading group workshops through the Ontario College of Family Physicians in partnership with ECHO (an agency of the Ontario Ministry of Health and Long-term Care).

Research Funding

1. Grants, Contracts and Clinical Trials

PEER-REVIEWED GRANTS

FUNDED

2024-2028 **Co-applicant** Strengthening Mental Health Care through Enhancing the Capacity of Health Workers In Somalia (Mhcare-Somalia). CIHR

Funding $420,000

2018 – 2019 Co-**Principal Investigator**. Grand Challenges Canada. Principal Investigators: **Pain, Clare**, Girma, Engeda. 100,000 CAD. Grant. *Funding **ARC ETHIOPIA** project at Assosa Refugee Camp, Western Ethiopia "Health & Gender Rights for Women & Girls: An integrated innovation to address reproductive & mental health needs of refugee women".*

2016 – 2017 **Co-Principal Investigator**. Grand Challenges Canada. Principal Investigators: **Pain, Clare**; Wondimagegn, Dawit. 197,000 CAD. Grant. *Funding for **phase II of the Biaber Project**, integrating mental health services into primary health clinics for patients with common mental disorders in Addis Ababa, Ethiopia.*

2012 – 2015 **Co-Principal Investigator**. Grand Challenges Canada. Principal Investigators: **Pain, Clare**; Wondimagegn, D. 1,000,000 CAD. Grant. *Funding for* **The Biaber Project** *scaling up of mental health services into primary health care.*

2012 – 2014 **Co-investigator**. Development Research Centre (IDRC). Principal Investigator: Landes, M. Collaborators: Maskalyk J, Hunchak C, Aklilu A, Teklu S, Hodges B, Schull M., **Pain, C.** 60,000 CAD. Grant. *Funding to establish emergency medicine in Ethiopia. Development, implementation and evaluation of a postgraduate residency training program at Addis Ababa University*.

2011 – 2012 **Co-applicant**. Meetings, Planning and Dissemination Grant. Canadian Institutes of Health Research. Principal Investigator: Classen, Catherine. Collaborators: Janice Du Mont, PhD; Anne Fourt, OT; Robin Mason, PhD; Carol Stalker, PhD.; **Clare Pain.** 24,939.72 CAD. Grant. *Funding to improve healthcare delivery by improving health providers' knowledge of interpersonal trauma*.

2008 – 2011 **Principal Investigator**. Development Partners in Higher Education (DelPHE) British Council. Principal Investigator: **Pain, Clare**. Collaborators: University of Toronto: Hodges BD, Verma S, Addis Ababa University: Alem A, Derbew D, King's College London: Prince M, Hanlon C., PhD. 121,640 CAD. Grant. *Funding to support the project: Strengthening the Capacity and Sustainability of Mental Health Research, Training and Practice in Ethiopia*.

2007 – 2011 **Co-Investigator**. Towson University, Maryland, US. Principal Investigator: Brand, B. Collaborators: Putman F, Lanius R, Classen C, Loewenstein R.; **Pain, C.** 35,020 USD. Grant. *Funding for multisite study: Naturalistic Study of Treatment Outcome*

for Patients with Dissociative Disorders (TOP DD Study).

2004 – 2009 **Co-Investigator**. Canada Institutes of Health Research. Principal Investigator: Beizer, M. Collaborators: Fenta, H., **Pain, C.** 516,338 CAD. Grant. *Funding for project: Leavers and Stayers: A Comparison of the Health and Development of Ethiopian Children Growing up in Toronto and in Addis Ababa*.

2004 – 2006 **Co-Investigator**. Canada Institutes of Health Research. Principal Investigator: Maunder, R. Collaborators: Landee, B., **Pain, C.** 250,000 CAD. Grant. *Funding for project: The Impact of SARS on Hospital Workers.*

2003 – 2005 **Co-Investigator**. Canada Institutes of Health Research. Principal Investigator: Beizer, M. Collaborators: Owens, W., **Pain, C.** 98,000 CAD. Grant. *Funding for project: Enhancing Health Capacity in the Niger Delta*.

2001 – 2003 **Co-Investigator**. Physicians' Services Incorporated Foundation. Principal Investigator: Ravitz, P. Collaborators: Lancee B, Leszcz M, Peterkin A, Rubinstein W, Ruskin R Tiberius R, McNaughton N. **Pain, C.** 105,000 CAD. Grant. *Funding for project: Improving Therapeutic Communication in Difficult Treatment Situations: A Brief Intervention for Medical Residents*.

NON-PEER-REVIEWED GRANTS

FUNDED

2015 – 2017 **Co-Principal Investigator**. Academics Without Borders. Principal Investigators: **Pain, Clare;** Wondimagegn, Dawit. 5,000 CAD. Grant. *Funding for Ethiopia Medical Information Resources Innovation (EMIRI).*

2015 – 2016 **Co-Principal Investigator**. Call to Caring Grant. Associated Medical Services Phoenix. Principal Investigators: **Pain, Clare**; Watson, Priya. 13,600 CAD. Grant. *Funding for developing a trauma toolkit online resource for family physicians and pediatricians to address complex developmental trauma in children.*

2015 – 2016 **Principal Investigator**. Academics Without Borders & Mastercard Foundation. Principal Investigators: **Pain, Clare**. 5,000 CAD. Grant. *Funding for bio-medical engineering capacity building for Ethiopia.*

2013 – 2014 **Principal Applicant**. CUSO International. Principal Investigators: **Pain, Clare**. In-kind funding partnership.
In-kind funding for a pilot project of a Masters in Nursing stream in Critical Care Nursing to support the Toronto Addis Ababa Collaboration Project.

D. Publications

2. PEER-REVIEWED PUBLICATIONS

Journal Articles

1. 1. Wondimagegn D, **Pain C**, Seifu N, et al. (2023) Reimagining global mental health in Africa. BMJ Glob Health; 8:e013232. doi: 10.1136/ bmjgh-2023-013232
2. 2. Tasca, G. A., Ravitz, P., Hunter, J., Chyurlia, L., Baker, S., Balfour, L., Mcquaid, N., **Pain, C.,** Compare, A., Brugnera, A., & Leszcz, M. (2022, November 10). Training Community-Based Psychotherapists to Maintain a Therapeutic Alliance: A Psychotherapy Practice Research Network Study. *Psychotherapy*. Advance online publication. https://dx.doi.org/10.1037/pst0000466
3. 3. Tasca, G.A., Ravitz, P., Hunter, J., Chyurlia, L., Baker, S., Balfour, L., Mcquaid, N., **Pain, C**., Compare, A., Brugnera, A.,
& Leszcz, M. (2022, October). Training community-based psychotherapists to maintain a therapeutic alliance: A
Psychotherapy Practice Research Network study. *Psychotherapy. (Accepted)*
1. 4. Law R, Ravitz P, **Pain C**, & Fonagy P. (2023) Interpersonal Psychotherapy and Mentalizing –

Synergies in Clinical
PracticeThe American Journal of Psychotherapy. **Coauthor.**

1. 5. Negash A, Ahmed M, Medhin G, Wondimagegn D, Pain C, Araya M. Explanatory Models for Mental Distress Among University Students in Ethiopia: A Qualitative Study. Psychol Res Behav Manag. 2021 Nov 27;14:1901-1913. doi: 10.2147/PRBM.S338319. PMID: 34866943; PMCID: PMC8637470. **Coauthor**.
1. 6. Negash A, Ahmed Khan M, Medhin G, Wondimagegn D, **Pain C**, Araya M. Feasibility and acceptability of brief individual interpersonal psychotherapy among university students with mental distress in Ethiopia. BMC Psychology. 2021;9(64):1-14. DOI: 10.1186/s40359-021-00570-1. **Coauthor**.
2. 7. P**ain C**, Lanius R. Disasters, pandemics and mental health. CMAJ 2020;192(28):E803. DOI: 10.1503/cmaj.200736. **Principal author.**
3. 8. Wondimagegn, D., **Pain, C.,** Baheretibeb, Y., Hodges, B., Wakma, M., Rose, M, & Whitehead, C., Toronto Addis Ababa Academic Collaboration: A Relational, Partnership Model for Building Educational Capacity Between A High-And Low-Income University. Academic Medicine. 2018; 83(12):1795-1801. DOI: 10.1097/acm.0000000000002352. **Principal author**.
4. 9. Petricca K, Bekele A, Berta W, Gibson J, Pain C. Advancing methods for health priority setting practice through the contribution of systems theory: Lessons from a case study in Ethiopia. Social Science & Medicine. 2017 Dec, 9; 9(198):165-174. DOI: 10.1016/j.socscimed.2017.12.009. **Collaborator**
5. 10. Kanagaratnam, P., **Pain, C.,** McKenzie, K., Ratnalignam, N., Toner, B. Recommendations for Canadian Mental Health Practitioners Working with War-Exposed Immigrants and Refugees. Canadian Journal of Community Mental Health. 2017 June 30; 36(2). DOI: 10.7870/cjcmh-2017-010. **Coauthor.**
6. 11. Wondimagegn, D., **Pain, C**. The Dangers of Assuming the Generalisability of Non-Technical Skills. Medical Education. 2016 Mar 15; 50(4):391-393. DOI: 10.1111/medu.12992. **Coauthor**.
7. 12. Ravitz, P., Wondimagegn,D., **Pain, C.,** Araya, M., Alem, A.,Baheretibeb, Y., Hanlon, C., Fekadu, A., Park,J., Fefergrad, M., Leszcz, M.. Psychotherapy Knowledge Translation and Interpersonal Psychotherapy: Using Best-Education Practices to Transform Mental Health Care in Canada and Ethiopia. American Journal of Psychotherapy. 2014;68(4):463-488. **Coauthor.**
8. 13. Brand, B.L., McNary, S.W., Myrick, A.C., Loewenstein, R.J., Classen, C.C., Lanius, R.A., **Pain, C**. Putnam, F.W. A Longitudinal, Naturalistic Study of Dissociative Disorder Patients Treated by Community Clinicians. Psychological Trauma: Theory, Research, Practice, & Policy. 2013;5(4):301-308. DOI: 10.1037/a0027654. **Coauthor.**
9. 14. Cadotte D., Blankstein M., Bekele A., Dessalegn S., **Pain C**., Derbew M., Bernstein M., Howard A. Establishing a surgical partnership between Addis Ababa, Ethiopia and Toronto, Canada. Canadian Journal of Surgery. 2013;56(3):19-23. DOI: 10.1503/cjs.027011. **Coauthor.**
10. 15. Ravitz P, Lancee WJ, Lawson A, Maunder R, Hunter JJ, Leszcz M, McNaughton N, **Pain C**. Improving physician-patient communication through coaching of simulated encounters. Academic Psychiatry. 2013 Mar;37(2):87-93. **Coauthor**
11. 16. Brand BL, McNary SW, Myrick AC, Classen CC, Lanius R, Loewenstein RJ, **Pain C**, Putnam FW. A longitudinal naturalistic study of patients with dissociative disorders treated by community clinicians. Psychological Trauma: Theory, Research, Practice, and Policy. 2013 Jul;5(4):301. DOI: 10.1037/a0027654. **Coauthor.**
12. 17. Beiser M, Taa B, Fenta-Wube H, Baheretibeb Y, **Pain C**, Araya M. A comparison of levels and predictors of emotional problems among preadolescent Ethiopians in Addis Ababa, Ethiopia, and Toronto, Canada. Transcultural psychiatry. 2012 Nov;49(5):651-77. **Coauthor.**
13. 18. Brand BL, Myrick AC, Loewenstein RJ, Classen CC, Lanius R, McNary SW, **Pain C**, Putnam FW. A survey of practices and recommended treatment interventions among expert therapists treating patients with dissociative identity disorder and dissociative disorder not otherwise specified. Psychological Trauma: Theory, Research, Practice, and Policy. 2012 Sep;4(5):490. DOI: 10.1037/a0026487. **Coauthor.**
14. 19. Myrick AC, Brand BL, McNary SW, Classen CC, Lanius R, Loewenstein RJ, **Pain C**, Putnam FW. An exploration of young adults' progress in treatment for dissociative disorder. Journal of Trauma & Dissociation. 2012 Oct 1;13(5):582-95. **Coauthor**
15. 20. Brand BL, Myrick AC, Loewenstein RJ, Classen CC, Lanius R, McNary SW, **Pain C**, Putnam FW. A survey of practices and recommended treatment interventions among expert therapists treating patients with dissociative identity disorder and dissociative disorder not otherwise specified. Psychological Trauma: Theory, Research, Practice, and Policy. 2012 Sep;4(5):490. DOI: 10.1037/a0026487. **Coauthor.**

16. 21. Aiello A, Young-Eun Khayeri M, Raja S, Peladeau N, Romano D, Leszcz M, Maunder RG, Rose M, Adam MA, **Pain C**, Moore A. Resilience training for hospital workers in anticipation of an influenza pandemic. Journal of Continuing Education in the Health Professions. 2011 Dec;31(1):15-20. **Coauthor.**
17. 22. Alem A, **Pain C**, Araya M, Hodges BD. Co-creating a psychiatric resident program with Ethiopians, for Ethiopians, in Ethiopia: the Toronto Addis Ababa Psychiatry Project (TAAPP). Academic Psychiatry. 2010 Nov;34(6):424-32. **Principal author.**
18. 23. Korzekwa MI, Dell PF, **Pain C**. Dissociation and borderline personality disorder: an update for clinicians. Current Psychiatry eports. 2009 Feb 1;11(1):82-8. **Coauthor.**
19. 24. Brand B, Classen C, Lanins R, Loewenstein R, McNary S, **Pain C**, Putnam F. A naturalistic study of dissociative identity disorder and dissociative disorder not otherwise specified patients treated by community clinicians. Psychological Trauma: Theory, Research, Practice, and Policy. 2009 Jun;1(2):153. **Coauthor.**
20. 25. Baheretibeb Y, Law S, **Pain C**. The Girl Who Ate Her House—Pica as an Obsessive-Compulsive Disorder: A Case Report. Clinical Case Studies. 2008 Feb;7(1):3-11. **Collaborator.**
21. 26. Frewen PA, Lanius RA, Dozois DJ, Neufeld RW, **Pain C**, Hopper JW, Densmore M, Stevens TK. Clinical and neural correlates of alexithymia in posttraumatic stress disorder. Journal of Abnormal Psychology. 2008 Feb;117(1):171. **Collaborator.**
22. 27. Maunder RG, Lancee WJ, Balderson KE, Bennett JP, Borgundvaag B, Evans S, Fernandes CM, Goldbloom DS, Gupta M, Hunter JJ, Hall LM, Nagle LM, **Pain C**, Peczeniuk SS, Raymond G, Read N, Rourke SB, Steinberg RJ, Stewart TE, VanDeVelde-Coke S, Veldhorst GG, Wasylenki DA. Long-term psychological and occupational effects of providing hospital healthcare during SARS outbreak. Emerging infectious diseases. 2006 Dec;12(12):1924. **Collaborator.**
23. 28. Frewen PA, **Pain C**, Dozois DJ, Lanius RA. Alexithymia in PTSD: psychometric and FMRI studies. Annals of the New York Academy of Sciences. 2006 Jul;1071(1):397-400. **Co-principal author.**
24. 29. Ogden P, **Pain C**, Fisher J. A sensorimotor approach to the treatment of trauma and dissociation. Psychiatric Clinics. 2006 Mar 1;29(1):263-79. **Co-principal author.**
25. 30. Lanius RA, Bluhm R, Lanius U, **Pain C**. A review of neuroimaging studies in PTSD: heterogeneity of response to symptom provocation. Journal of Psychiatric Research. 2006 Dec 1;40(8):709-29. **Co-principal author.**

Clinical Care Guidelines

1. **Pain, C**. Canadian Forces PTSD Guidelines. Ottawa, Canada – internal document: 1998. **Principal Author**.

3. NON-PEER-REVIEWED PUBLICATIONS

Journal Articles

1. Shuchman M, Wondimagegn D, **Pain C**, Alem A. Partnering with local scientists should be mandatory. Nature medicine. 2014 Jan;20(1):12. DOI: 10.1016/j.psc.2005.11.001. **Coauthor.**
2. Korzekwa MI, Dell PF, **Pain C**. Dissociation and borderline personality disorder: an update for clinicians. Current psychiatry reports. 2009 Feb 1;11(1):82-88. **Co-Principal Author**
3. Classen CC, **Pain C**, Field NP, Woods P. Posttraumatic personality disorder: A reformulation of complex posttraumatic stress disorder and borderline personality disorder. Psychiatric Clinics. 2006 Mar 1;29(1):87-112.
4. **Pain C.** Post-traumatic Stress Disorder: Understanding and Treatment. Patient Care Canada. 2000;11(2):46-47. **Principal Author.**
5. **Pain C.** Voices of experience. Canadian Medical Association Journal. 1999;161(8):1013. **Principal Author.**
6. **Pain C.** Accidents Will Happen. Nursing Mirror. 1984;158(4):20-22. **Principal Author.**

Magazine Entries

1. Beder, M., Fung, K., Stergiopoulos, V., **Pain, C.,** Andermann L., Maggi, J., Munshi, A., & Leszcz, M. Mental

Health for all: why not refugees? Canadian Psychiatry Aujourd'hui. Ottawa, Canada: Canadian Psychiatric Association. 2012 Summer;6. **Coauthor**.

2. Ogden P., Steele K., **Pain, C.** The Integration of Somatic Approaches and Traditional Psychotherapy with Chronically Traumatized Individuals. ISSD News. Arlington, United States: International Society for the Study of Dissociation. 2004;22(3):4-5. **Co-Principal Author**.
3. **Pain, C**. One Year After September 11th: A Perspective. Dialogue. Toronto, Canada: Ontario Psychiatric Association. 2002 Sep. **Principal Author**.

Editorials

1. **Pain C.** Perspectives on Psychological Trauma. Bulletin: Canadian Psychiatric Association. 2002 Aug;34(4):11. **Author**.
2. **Pain C.** PTSD and Co-morbidity or Disorder of Extreme Stress Not Otherwise Specified? Bulletin: Canadian Psychiatric Association. 2002 Aug;34(4):12-14. **Author**.

Books

1. Leszcz, M., **Pain, C**., Hunter, J., Maunder, R., & Ravitz, P. Psychotherapy Essentials to Go: Achieving Psychotherapy Effectiveness. New York, United States: W. W. Norton & Company Inc; 2015. 211 p. **Co-author**.
2. Ogden P, Minton K, & **Pain C**. Trauma and the Body: A Sensorimotor Approach to Psychotherapy. New York, United States: W. W. Norton & Company Inc; 2006. 320 p. ISBN: 0393704572. **Coauthor**.
3. The Impact of Early Life Trauma on Health and Disease: The Hidden Epidemic. Editors, Lanius, R., Vermetten, E., & **Pain, C.** Cambridge, UK: Cambridge University Press; 2010. 300 p. ISBN: 9780521880268. **Editor**.

Book Chapters

1. Wondimagegn D., Pain C., Hailu H., Ravitz P. The Beginning of Interpersonal Psychotherapy in Ethiopia (IPT-E). In Weissman M., and Mootz J, editors. Interpersonal Psychotherapy A Global Reach. Oxford University Press; 2024
2. Andermann, L., Kanagaratnam, P., Wondimagegn, D., & **Pain C**. PTSD in refugee and migrant mental health. In: D. Bhugra, editor. Oxford Textbook of Migrant Psychiatry. Oxford, UK: Oxford University Press; 2021. DOI:10.1093/med/9780198833741.003.0060. **Coauthor**
3. Hurley D., Ferreira S., Brideau M., & **Pain C**. Critical Incident Stress Management. In: R. Csiernik, editor. Workplace Wellness; Issues and Responses. Toronto, Canada: Canadian Scholars' Press Inc; 2014. **Coauthor**
4. **Pain C**., Kanagaratnam P., & Payne D. The debate about trauma and psychosocial treatment for refugees. In: L. Simich & L. Andermann, editors. Refugee resettlement and mental health: Promoting refugee resiliency, constructing health equity. New York, United States: Springer; 2014. p. 51-60. Part of the International Perspectives on Migration series. **Principal Author.**
5. **Pain C.** & Alem A. Medical education and global mental health: Research and monitoring the progress of countries. In S. Okpaku, editor. Essentials of Global Health. Cambridge, UK: Cambridge University Press; 2014. p. 391-399. **Coauthor.**
6. **Pain C**, Lanius R, & Vermetten E. Psychodynamic psychotherapy: Adaptations for trauma. In E. Vermetten, R. Lanius, & C. Pain, editors. The Hidden Epidemic: The Impact of Early Life Trauma on Health and Disease. Cambridge, UK: Cambridge University Press; 2010. p. 286-294. **Principal Author**.
7. Schmahl C., Lanius R., Vermetten E., & **Pain C.** Biological Framework for Early Life Related Traumatic Dissociation. In E. Vermetten, R. Lanius, & C. Pain, editors. The Hidden Epidemic: The Impact of Early Life Trauma on Health and Disease. Cambridge, UK: Cambridge University Press; 2010. P. 178*-188. **Coauthor.**
8. **Pain C**, Bluhm R, & Lanius R. Dissociation in Patients with Chronic PTSD: Clinical and Neuroimaging Perspectives. In: Dell, P. F., & O'Neil, J. A., editors. Dissociation and the dissociative disorders: DSM-V and beyond. Oxford, UK: Rutledge; 2009. p. 373-340. **Principal Author.**
9. Lanius R., Bluhm R. & **Pain C**. The origins of emotion regulation: Clinical presentation and neurobiology. In: Romans S., & M. Seeman, editors. Women's Mental Health: A Life-Cycle Approach. Philadelphia, United States: Lippincott Williams & Wilkins. 2005. p. 147-160. **Co-principal author.**

10. Hurley D, Ferreira S, & **Pain C**. Critical Incident Stress Management. In: R. Csiernik, editor. Wellness and Work: Employee Assistance Programming in Canada. Toronto, Canada: Canadian Scholars' Press Inc. p. 153-168. **Co-principal author.**

Reports

1. 1. Provincial System Support Program, Centre for Addiction and Mental Health. Mental Health and Addictions Treatment Interventions for Immigrant, Refugee, Ethno-Cultural and Racialized (IRER) Populations in Ontario: Scoping Review. Converge3. 2018 Oct. Available from: URL: https://converge3.ca/publication/. **Collaborator**.

Multimedia

1. VIDEO interview by Leszcz M and Pain C: Leszcz, M., **Pain, C**., Hunter, J., Maunder, R., & Ravitz, P. Psychotherapy Essentials to Go: Achieving Psychotherapy Effectiveness DVD Series. New York, United States: W. W. Norton & Company Inc; 2015. 211 p. **Co-author**. Video to accompany *Psychotherapy Essentials to Go* series.

Online Resources

1. 1. Brand, B., Chefetz, R., **Pain, C**. & Steele, K. Frequently Asked Questions about Trauma. Arlington, United States: The International Society for the Study of Trauma and Dissociation; 2007 Dec. Available from: https://www.isst-d.org/resources/trauma-faqs/ **Coauthor.**
2. 2. Brand, B., Chefetz, R., **Pain, C**. & Steele, K. Trauma Annotated Bilbiography. Arlington, United States: The International Society for the Study of Trauma and Dissociation; 2007 May. Available from: https://www.isst-d.org/resources/trauma-annotated-bibliography/**. Coauthor.**
3. 3. Centre for Addiction and Mental Health. Alone in Canada: 21 ways to make it better: A Self-help Guide for Single Newcomers; 2001. Available from: https://www.camh.ca/-/media/files/guides-and-publications/alone-in-canada-en.pdf **Collaborator.**

Manuals

1. 1. Ravitz P., Wondimagegn D., Watson P., Grigoriadis S., Maunder R., **Pain C**. IPT-E: Interpersonal Psychotherapy Adapted for Use in Ethiopia. 2017. **Senior Responsible Author**.
2. **2. Pain C.** Facilitators and Users Manual for the Biaber Project (with videos in Amharic and English and Powerpoints). Internal document. 2017. **Principal author.**
3. **3. Pain C.** Facilitators and Users Manual for the Biaber Project – Internal Document. Developed 2013 and adapted most recently for the Assosa Refugee Camps Ethiopia. 2017. **Principal author.**

Posters

1. 1. Kolodziejczyk, S., Garceau, C., Goodman, G., Baldwin, D., Baker, S., Ravitz, P., Hunter, J**., Pain, C**., Leszcz, M., & Tasca, G. A. (2025, June 25-28). Do therapists walk the talk: Attachment insecurity as a moderator of therapists' self-reported versus observer ratings of therapeutic orientation [Poster presentation]. Society for Psychotherapy Research 2025 Conference, Kraków, Poland. https://www.psychotherapyresearch.org/
2. 2. O'Connor, E. K., Ravitz, P., Hunter, J., Chyurlia, L., Baker, S., Balfour, L., Mcquaid, N., **Pain, C.**, Leszcz, M., & Tasca, G. A. (2023). The Development and Validation of an Observer-Rated Measure of Therapeutic Metacommunication in Psychotherapy. Poster accepted to the Society for the Exploration of Psychotherapy Integration 39th Annual Conference in Vancouver, Canada.
1. 3. O'Connor, E. K., Ravitz, P., Hunter, J., Chyurlia, L., Baker, S., Balfour, L., Mcquaid, N., **Pain, C**., Leszcz, M., & Tasca, G. A. (2023).Measuring Therapeutic Metacommunication in Psychotherapy: The Development of an Observer-Rated Instrument. Poster accepted to the Society for Psychotherapy Research 54th

International
Annual Meeting in Dublin, Ireland.

1. 4. Watson P, **Pain C.** The Trauma Toolkit: A Curriculum for Family Physicians and Pediatricians to Address
Developmental Trauma in Children. Presented: 2017. Education Day, Department of Psychiatry, University of
Toronto. Toronto, ON, Canada. *(Trainee Presentation)* **Collaborator.**

1. 5. Alem A, Hodges B, Araya M, **Pain C**, Verma S, Reja A. The Toronto Addis Ababa Academic Collaboration (TAAAC).
Presented: 2013 Nov 8. Global Health Symposium, University of Toronto. Toronto, ON, Canada. **Collaborator.**

1. 6. Ravitz P, Wondigmagegn D, **Pain C**, Alem A, Fekadu C, Hanlon Y. The Biaber Project: Scaling up Interpersonal Psychotherapy (IPT) for Common Mental Disorders in Ethiopia. Presented: 2013. Grand Challenges Canada. Calgary, AB, Canada. **Collaborator.**

2. 7. Ravitz P, Wondigmagegn D, Shibre T, Fekadu T, Fekadu A, Hanlon C, Baheretibebe Y, Chowdhary N, Verdeli V, **Pain C**, Alem A. IPT-TAAPP – Scaling up an evidence-based therapy for mental health care in Ethiopia. Presented: 2012. Mental Health Training, Butajera, Ethiopia. **Collaborator.**

3. 8. Maskalyk J, Landers M, **Pain C**. 10 Key Challenges in Establishing a Post-Graduate Emergency Training Program in a Low-Resource Setting'. Presented: 2011 Nov 13-15. Global Health Conference. Montreal, QC, Canada. *(Trainee publication).* **Supervisor.**

4. 9. Ravitz P, Wondigmagegn D, Shibre T, Fekadu A, Hanlon C, Baheretibebe Y, Chowdhary N, Verdeli V, **Pain C**, Alem A. IPT-TAAPP: a knowledge and cultural translation initiative to adapt IPT for Ethiopia. Presented: 2011 Nov 13-15. Global Health Conference. Montreal, QC, Canada. **Collaborator.**

5. 10. **Pain C**. The Toronto Addis Ababa Psychiatry Project (TAAPP): We go there! Presented: 2011 Nov 13-15. Global Health Conference. Montreal, QC, Canada. **Author.**

6. 11. Kendall S, **Pain C**. Strengthening Medical Library Services in Ethiopia: An international collaboration Presented: 2011 Nov 13-15. Global Health Conference. Montreal, QC, Canada. *(Trainee publication)* **Advisor.**

G. Presentations and Special Lectures

1. International

Invited Lectures and Presentations

Mar 2020 **Speaker.** *Academic Insights into Linking Mental Health with Peacebuilding: Access to mental health services in Ethiopia.* World Health Organization. Geneva, Switzerland. Presenter: Pain C. Invited to speak in support of program development to increase access to mental health care in Somalia.

Nov 20, 2019 **Speaker.** *Toronto Addis Ababa Academic Collaboration: Stumbling into a Successful Partnership!* Global Mental Health Program, McGill University. Montreal, QC, Canada. Speaking with Dr. Dawit Wondigmagegn on the success of the collaboration.

Mar 2019 **Co-presenter**. Webinar: *Research Capacity Building in Low- and Middle-Income Countries.* Consortium of Universities for Global Health (CUGH). Washington, D.C., United States. Presenter(s): Pain, C. & Hodges, B. Invited to present with Dr. Hodges on bilateral educational project with Ethiopia. Available to 30,000 members

Dec 2018 **Co-presenter**. *Implementing Effective Capacity-Building Partnerships in Global Health: The Toronto-Addis Ababa Academic Collaboration.* Consortium of Universities for Global Health. Washington, D.C., United States. Presenter(s): Pain, C. & Hodges, B. Invited to present with Dr. Hodges on bilateral projects with Ethiopia. Available from: https://www.cugh.org/resources/webinars/2018-2/implementing-effective-capacity-building-partnerships-in-global-health/

Dec 8, 2018 **Speaker**. *Toronto Addis Ababa Academic Collaboration – a partnership model (AAU/UofT) for*

building educational capacity between a H and LIC Universities. Academics Without Borders. Montreal, QC, Canada Presenter(s): Pain, C. Invited to speak at the conference, “Reaching Across Borders, Building a Better World”.

Dec 8, 2018 **Speaker**. *Lessons from Building Health Capacity in Africa.* Academics Without Borders. Montreal, QC, Canada Presenter(s): **Pain, C**. Invited to speak at the conference, “Reaching Across Borders, Building a Better World”.

Nov 23, 2018 **Keynote Speaker**. *Together a Spider Web Will Tie a Lion: Reflections on Implementing Interpersonal Therapy in Ethiopia.* Addis Ababa University. Addis Ababa, Ethiopia. Presenter(s): Pain, C. Invited as keynote speaker at World Psychiatric Day events at Addis Ababa University, Ethiopia.

Nov 22, 2018 **Speaker**. *The Biaber Project: Integrating Mental Health Services into Primary Health Care in Ethiopia.* Addis Ababa University. Addis Ababa, Ethiopia. Presenter(s): Pain, C. Invited to speak on the Biaber Project at World Psychiatric Day events at AAU.

Oct 13, 2018 **Panel**. *Wellness Considerations 'From the Edge' Panel.* International Conference on Physician Health (AMA, CMA, BMA). Toronto, ON, Canada. Presenter(s): Pain, C. Invited panelist, speaking with Arthur Frank, moderated by Joy Albuquerque.

Jun 17, 2018 **Facilitator**. *Trauma Informed Care.* European Association for Psychosomatic Medicine. Verona, Italy. Presenter(s): Pain, C. Led two-hour workshop for care providers.

May 11, 2018 **Speaker**. *TAAAC: Stumbling into a successful model!* Dutch Caribbean Foundation for Clinical Higher Education & Toronto International Summit on Leadership Education for Physicians. Willemstad, Curaçao. Presenter(s): Pain, C. Invited speaker to talk at the joint conference, “Global perspectives on leadership in health care delivery: Tangible outcomes in healthcare improvement”.

Mar 3, 2018 **Co-Facilitator**. *Trauma Informed Care.* Society for Psychotherapy Research. Amsterdam, Netherlands. Presenter(s): Pain, C., Markowitz, J., & Ravitz, P. Led two-hour workshop for psychotherapists and researchers.

Aug 30, 2017 **Keynote Speaker**. *The Socially Embodied Self.* Grand rounds. Department of Psychiatry, Addis Ababa University. Addis Ababa, Ethiopia. Presenter(s): **Pain, C.**

Sep 2, 2015 **Panelist**. *(How) can we train global health professionals for local contexts? Experiences from Global Mental Health*. Maastricht University. Maastricht, Netherlands. Presenter(s): Pain, C. et al. Panelist for conference, “Health Professional Education Globalised”.

May 18, 2015 **Co-facilitator**. *The Evidence-Based Psychothe rapist: Using Theories and Techniques from Attachment, Trauma and Mentalizing to Improve Outcomes.* American Psychiatric Association. Toronto, ON, Canada. Presenter(s): Leszcz, M., Pain, C., & Hunter, J. Co-facilitated workshop at APA’s 2015 annual meeting, “Integrating Body and Mind, Heart and Soul”.

May 17, 2015 **Speaker**. *Global Mental Health is it possible?* American Psychiatric Association. Toronto, ON, Canada. Presenter(s): Pain, C. Presenting at APA’s 2015 annual meeting, “Integrating Body and Mind, Heart and Soul” in the symposium, “Challenges and Opportunities for Global Mental Health”, chaired by Dr. Samuel Okpaku.

Jun 7, 2013 **Speaker**. *Does the diagnosis of PTSD assist the refugee experience? A Dialogue with Professor Michael Hollifield and **Clare Pain**.* “Phenomenology of and Intervention for PTSD”, North American Refugee Health Conference. Toronto, ON, Canada. **The largest interdisciplinary conference in the world.**

Nov 22, 2012 **Speaker**. *Refugees and Mental Health.* United Nations High Commissioner for Refugees and Ontario Regional Mental Health Advisory Committee. Toronto, ON, Canada. Presenter(s): **Pain, C.**

Sep 28, 2012 **Plenary Speaker**. *Adversity and Resilience.* Association of Traumatic Stress Specialists. Mississauga, ON, Canada. Presenter(s): Pain, C. Invited speaker to present on resiliency at the conference, “From Victim to Survivor: Supporting & Promoting Resilience”.

May 7, 2012 **Keynote Speaker**. *The Different Faces of Global Mental Health: Current Initiatives Future Directions.* American Psychiatric Association. Philadelphia, Pennsylvania, United States. Presenter(s): Pain, C. Keynote speaker at APA’s 2012 annual meeting, “Integrated Care”, in workshop chaired by Sosunmolu Shoyinka and Mandy Garber.

Nov 13, 2011 **Speaker**. *The Toronto Addis Ababa Academic Collaboration (TAAAC): Teaching Ethiopian graduate students with Ethiopians in Ethiopia.* Global Health Conference. Montreal, QC,

Canada. Presenter(s): Pain, C. Speaker at the conference, "Advancing Health Equity in the 21st Century", co-hosted by the Global Health Education Consortium, Consortium of Universities for Global Health (CUGH), and Canadian Society for International Health.

Nov 6, 2011 **Facilitator**. *Burnout or Engagement?* International Society for the Study of Trauma and Dissociation. Montreal, QC, Canada. Presenter(s): Pain, C. Led a workshop on burnout.

Nov 4, 2011 **Keynote Speaker**. *Confronting the Stigma: A global and multicultural perspective on the mental health of women and children.* International Women's and Children's Health Conference. Hamilton, ON, Canada. Presenter(s): Pain, C. Invited keynote speaker at 13th annual conference.

May 19, 2011 **Speaker**. *The Impact of Early Life Trauma on Health & Disease.* Annual International Trauma Conference. Boston, Massachusetts, United States. Presenter(s): Pain, C. Invited speaker at 22nd annual Conference. Conference Director: Bessel van der Kolk.

May 24, 2010 **Co-facilitator**. *Improving Psychotherapy Effectiveness: Making Therapeutic Use of Countertransference and Mentalizing.* American Psychiatric Association. New Orleans, Louisiana, United States. Presenter(s): Hunter, J., McNaughton, N., Pain, C., & Ravitz, P. Co-facilitated a workshop at APA's 2010 annual meeting, "Pride & Promise: Toward A New Psychiatry".

Jan 8, 2010 **Speaker**. *The Toronto Addis Ababa Psychiatry Project: The co-creation of a psychiatry residency training program in Ethiopia.* The Diversity Advisory Committee & Department of Psychiatry and Behavioural Sciences, University of California – Davis School of Medicine. Sacramento, California, United States. Presenter(s): Pain, C. Invited to talk about the founding and success of TAAPP.

Oct 16, 2009 **Co-facilitator**. *Treating Refugees Taking Account of Culture and Trauma.* Recovery and Refugees Culture and International Mental Health Conference. Toronto, ON, Canada. Presenter(s): Pain, C. & Rousseau, C.

Dec 4, 2008 **Keynote Speaker**. *Posttraumatic Stress Disorder in Medical and Surgical Settings.* Jimma University. Jimma, Ethiopia. Presenter(s): Pain, C. Invited to speak about PTSD as part of the development of the Toronto Addis Ababa Academic Collaboration.

May 26, 2005 **Facilitator**. *Mental Health in Public Health Policy and Practice: Providing culturally appropriate services in acute and post-emergency situations.* Departments of Psychiatry, University of Toronto & University of Manchester. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker to provide a pre-conference workshop for the 3rd Annual Global Health Conference collaboration from the two universities.

Oct 3, 2002 **Facilitator**. *The Neurobiology of Psychological Trauma.* Trauma Studies Program, New York University. New York, New York, United States. Presenter(s): Pain, C. Invited speaker to provide a workshop to students in the Trauma Studies Program.

Sep 1-8, 2002 **Co-facilitator**. *Training in Refugee Trauma Treatment.* Victims' voices. Euromo, Italy. Presenter(s): Pain, C. Co-led the first ever two-day training workshop for victims' voices (vivo).

Feb 1999 **Facilitator**. *Dissociation: Recognition and Treatment in a Hospital Context.* Valkenberg Psychiatric Hospital. Cape Town, South Africa. Presenter(s): Pain, C. Explored trauma issues with South Africans in the post-apartheid era as part of the People to People Program.

Jan 1994 **Keynote Speaker**. *Chronic Post Traumatic Stress Disorder: Implications for Treatment Presentation.* St. Lawrence College. Ogdensburg, New York, United States. Presenter(s): Pain, C.

2. National

Invited Lectures and Presentations

Oct 23, 2020 **Keynote Speaker.** *The Relationship Between Hoarding Disorder and Trauma.* Sunnybrook Health Sciences Centre's Frederick W. Thompson Anxiety Disorders Centre, the Toronto Hoarding Support Services Network and VHA Home HealthCare (VHA). Virtual. Invited to speak at the 2020 national conference, "Hoarding & Trauma: Myths and Realities Explained".

Oct 16, 2020 **Keynote Speaker.** *The Impact of Unresolved Trauma*. Calgary Psychodynamic Psychotherapy

Education Foundation and the Department of Psychiatry, University of Calgary. Calgary, AB, Canada. Invited speaker for the day.

Nov 7, 2020 **Facilitator.** *Trauma-informed Care.* Medical Psychotherapy Association of Canada. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to lead workshop for GP psychotherapists.

Oct 2020 **Speaker.** *Mental Health Challenges and Resilience for Refugees and Immigrants During COVID-19.* Association for Canadian Studies. Winnipeg, MB, Canada. Presenter: Pain, C. Invited to speak at the 2020 "Renewing Canada's Commitment to Immigration" conference.

Sep 2019 **Speaker**. *Refugee Mental Health and Resilience.* Canadian Academy of Health Sciences. Ottawa, ON, Canada. Presenter(s): Pain, C. Invited to speak as part of the CAHS forum.

Jun 2019 **Speaker**. *Responding to Vulnerable Persons.* Canadian Academy of Health Sciences. Ottawa, ON, Canada. Presenter(s): Pain, C. Invited to speak as part of the CAHS forum.

Feb 2019 **Speaker**. *Trauma and Re-settlement Stress in Child Refugees and Newcomers to Canada.* Union of Medical Care and Relief Organizations-Canada. Mississauga, ON, Canada. Presenter(s): Pain, C. Invited to speak at the Union of Medical Care and Relief Organizations-Canada's forum on Global Healthcare.

Sep 28, 2018 **Co-Presenter**. *Psychotherapy Across Cultures.* Canadian Psychiatric Association. Toronto, ON, Canada. Presenter(s): Fung, k., Andermann, L., Naeem, C. & Pain, C. Co-presented in a symposium at the 68th annual CPA conference.

Aug 11, 2018 **Keynote Speaker**. *Cultural Sensitivity in Addressing Trauma.* Union of Syrian Medical Relief Organizations - Canada. Oakville, ON, Canada. Presenter(s): Pain, C. Invited keynote speaker at conference, "Cultural Sensitivity Stress & Resilience".

May 6, 2018 **Facilitator**. *Affect Regulation Mastery Group.* Canadian Group Psychotherapy Association. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to lead webinar to Canadian psychotherapists.

Sep 26, 2016 **Co-Facilitator**. *The Evidence-Based Psychotherapist: Improving Outcomes with an Understanding of Attachment, Mentalizing, and Trauma.* Canadian Psychiatric Association. Toronto, ON, Canada. Presenter(s): Hunter, J., Leszcz, M., & Pain, C. Co-led a pre-conference workshop, building communicator, medical expert and collaborator CanMEDS roles.

Jul 17, 2013 **Speaker**. *The Toronto Addis Ababa Psychiatry Project.* Grand Challenges Canada. Ottawa, ON, Canada. Presenter(s): Pain, C. Invited speaker to the Summer Student Speaker Series.

June 1-2, 2011 **Speaker**. *Trauma and Re-settlement Stress in Newcomers to Canada – Psychological Perspectives.* Canadian Refugee Health Conference. Toronto, ON, Canada. Presenter(s): Pain, C. Invited plenary speaker.

June 1-2, 2011 **Co-facilitator**. *Treating Refugees Taking Account of Culture and Trauma.* Canadian Refugee Health Conference. Toronto, ON, Canada. Presenter(s): Pain, C. & Rousseau, C. Co-led workshop on culturally sensitive trauma treatment.

May 27, 2011 **Keynote Speaker**. *When What Should Work Doesn't*. General Practice Psychotherapy Association (Now: Medical Psychotherapy Association of Canada MDPAC). Toronto, ON, Canada. Presenter(s): Pain, C. Invited keynote speaker on trauma.

May 27, 2011 **Co-facilitator**. *The Treatment of Chronic Complex Trauma Patients*. General Practice Psychotherapy Association (Now: Medical Psychotherapy Association of Canada). Toronto, ON, Canada. Presenter(s): Pain, C. & Lanius, R. Invited keynote speaker on trauma.

Mar 5, 2010 **Speaker**. *Mental Health and Refugees*. Language Instruction for Newcomers to Canada & Teaching English as a Second Language (TESL). Hamilton, ON, Canada. Presenter(s): Pain, C. Gave talk on refugees and mental health to educators and professionals working with refugees in an educational context.

Oct 29, 2009 **Co-facilitator**. *Through A Different Lens: Understanding what it really means to be culturally competent*. The Community Child Abuse Council of Canada. Hamilton, ON, Canada. Presenter(s): Pain, C. & Andermann, L. Gave talk on cultural sensitivity to child and youth workers.

Mar 16-18, 2009 **Facilitator**. *Building Effective and Sustainable Health Research Partnerships: African Regional Consultation*. Canadian Coalition for Global health Research (CCGHR). Addis Ababa, Ethiopia. Presenter(s): Pain, C. Facilitated workshop with CCGHR Working Group on mutually beneficial and sustainable international partnerships.

May 4-5, 2007 **Speaker**. *What's traumatic about trauma and how do we treat the past?* General Practice

Psychotherapy Association (Now: Medical Psychotherapy Association of Canada). Toronto, ON, Canada. Presenter(s): Pain, C. Invited plenary speaker to the GPPA annual conference, "Treating the Psychological Effects of Trauma".

May 4-5, 2007 **Facilitator**. *Taming Trauma.* General Practice Psychotherapy Association (Now: Medical Psychotherapy Association of Canada). Toronto, ON, Canada. Presenter(s): Pain, C. Invited workshop facilitator for the GPPA annual conference, "Treating the Psychological Effects of Trauma".

May 13, 2006 **Facilitator**. *The Effects of Trauma on Psychological Development: Effective Assessment and Treatment.* General Practice Psychotherapy Association (Now: Medical Psychotherapy Association of Canada). Toronto, ON, Canada. Presenter(s): Pain, C. Invited workshop facilitator for the 19th GPPA annual conference, "The Art and Science of Medical Psychotherapy, Attachment and Beyond: from Neurobiological Development to Psychotherapeutic Change".

Mar 25, 2003 **Presenter**. *Posttraumatic Stress Disorder.* Canadian Integrative Medicine Grand Round. Toronto, ON, Canada. Presenter(s): Pain, C. Invited case presentation and discussion as faculty expert.

Apr 12, 2002 **Facilitator**. *Acute Trauma – September 11th 2001.* General Practice Psychotherapy Association (Now: Medical Psychotherapy Association of Canada). Toronto, ON, Canada. Presenter(s): Pain, C. Led workshop on acute trauma.

May 2000 **Facilitator**. *PTSD - Assessment, Treatment and Understanding.* Canadian Traumatic Stress Network. Ottawa, ON, Canada. Presenter(s): Pain, C. Led one-day workshop on PTSD.

Sep, 1998 **Facilitator**. *151. Dissociative Disorders: Development, Diagnosis and Treatment.* Canadian Psychiatric Society. Halifax, NS, Canada. Presenter(s): Pain, C. Led one-day pre-conference workshop on dissociative disorders.

Media Appearances

Nov 10 2023 **Ontario Today** – invited guest for a 1 hour call in from refugees asked the question "What helped you settle in Canada?"

Jun 20, 2021 **Interviewee.** Interviewer: Jewel Bailey. Immigrant and Refugee Mental Health Project – Projet sur la santé mentale des immigrants et des réfugiés. Toronto, ON, Canada. "World Refugee Day: A video chat with psychiatrist, Dr. Clare Pain on mental healing of refugees". Available from: https://vimeo.com/564733491

Jul 13, 2020 **Interviewee.** Mental distress during a pandemic. Interviewer: Dr. Dorian Deshauer. CMAJ Podcast. Ottawa, ON, Canada. Podcast interview on 2020 CMAJ article, "Disasters, pandemics and mental health". Interview conducted by Deputy Editor of CMAJ. Available from: https://soundcloud.com/cmajpodcasts/200736-five.

May 1, 2010 **Featured Project**. Toronto Addis Ababa Psychiatry Project. Author: David Kattenburg. Green Plant Monitor. Winnipeg, MB, Canada. Online journalist platform featuring the successes of TAAPP. Available from: http://www.greenplanetmonitor.net/news/2010/05/psychiatry-in-ethiopia/

3. Provincial/ Regional

Invited Lectures and Presentations

July 5,2025 **Guest Lecturer.** Canadian Association for Psychotherapy: What's Traumatic about Trauma?

Feb 16, 2021 **Facilitator.** *Supporting Clients with PTSD: A trauma-informed approach.* Canadian Resettlement Conference, the first virtual conference for Resettlement Assistance Program (RAP) service providers and program partners 2021 Conference. Presenters: Pain C., Wright, V.

Sep 2019 **Speaker**. *Canadian Engagement in Global Health: Trans cultural issues in mental health.* Brant Community Healthcare System. Brantford, ON, Canada. Presenter(s): Pain, C. Invited speaker.

Jun 2019 **Speaker**. *Responding to Vulnerable Persons.* Law Society of Ontario. Torontto, ON, Canada. Presenter(s): Pain, C. Invited speaker to present to lawyers.

Apr 1, 2019 **Co-Facilitator**. *Burnout for mental health professionals working with refugees.* London Cross Cultural Learner Centre. London, ON, Canada. Presenter(s): Pain, C. & Dremetsikas, T. Co-led

invited workshop for health professionals on behalf of CCVT.

Apr 1, 2015 **Presenter**. *TAAPPing into Ethiopia! - An educational partnership to build capacity and sustainability in psychiatry in Ethiopia.* Department of Psychiatry, McMaster University. Hamilton, ON, Canada. Presenter(s): Pain, C. Invited presenter for external grand rounds.

Apr 1, 2015 **Keynote Speaker**. *Building Clinical Partnerships within Global Mental Health.* Department of Psychiatry, McMaster University. Hamilton, ON, Canada. Presenter(s): Pain, C. Invited to present special seminar on global health.

Mar 31, 2015 **Keynote Speaker**. *Global Mental Health in Marginalized People.* Department of Psychiatry, McMaster University. Hamilton, ON, Canada. Presenter(s): Pain, C. Invited as keynote speaker for Residents' Global Mental Health Evening. *(Trainee presentation)*

Mar 4, 2015 **Keynote Speaker**. *Making Neuroscience Sense of Trauma: Brain, body and mind.* Hope 24/7. Brampton, ON, Canada. Presenter(s): Pain, C. Invited as keynote speaker for community health centre: Hope 24/7's "Strengthening Our Allies Conference".

Jan 25, 2014 **Keynote Speaker**. *Accessing Mental Health Services in Ethiopia.* Student International Health Initiatives, McMaster University. Hamilton, ON, Canada. Presenter(s): Pain, C. Invited to present at International Health Initiatives conference, "The Faces of Mental Health".

Apr 27-29, 2012 **Speaker**. *Panel Discussion: Education.* Transcending Borders Towards Global Health Conference, University of Western Ontario. London, ON, Canada. Presenter(s): Pain, C., Hall, T., & Herbert, C. Invited to speak at the plenary panel and discussion on education at the conference, "Discovering Sustainable Pathways from Local to Global".

Mar 30, 2011 **Speaker**. *Considerations for the Assessment and Treatment of Patients with Unresolved Traumatic Experiences, Including Trans-Cultural Aspects of Psychological Trauma.* Ontario Shores Hospital. Whitby, ON, Canada. Presenter(s): Pain, C. Invited to speak to healthcare providers on trauma and cultural considerations.

Feb 20, 2010 **Speaker**. *What's special about trauma?* Ontario College of Family Physicians. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak to healthcare providers on trauma in a breakout session at the OCFP's Collaborative Mental Health Care Network annual CME conference.

Jan 21, 2010 **Facilitator**. *Trauma and Recovery.* Children's Hospital of Eastern Ontario. Ottawa, ON, Canada. Presenter(s): Pain, C. Invited to provide a workshop to care providers in the Department of Psychiatry.

Jan 21, 2010 **Presenter**. *Resilience and Vulnerability: Reflections on refugee resilience and the culture of psychiatry.* Children's Hospital of Eastern Ontario. Ottawa, ON, Canada. Presenter(s): Pain, C. Invited to present at grand rounds. *(Trainee presentation)*

Nov 3, 2009 **Keynote Speaker**. *Trauma: The Psychological Impact of Political Violence and Genocide.* Brampton Civic Hospital. Brampton, ON, Canada. Presenter(s): Pain, C. Invited to present as part of the Holocaust Educational Program.

May 7, 2009 **Facilitator**. *Psychoanalytically informed trauma treatment.* Study Group in Psychoanalytically informed Psychotherapy. Ottawa, ON, Canada. Presenter(s): Pain, C. Facilitated full-day workshop on psychoanalytically informed trauma.

Feb 28, 2009 **Speaker**. *Update on TAAPP and TAAAC.* Ontario Psychiatric Association. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak as park of the Collaborative Lecture Series.

Sep 19, 2008 **Facilitator**. *Mentalizing and Psychological Trauma: How to think about the unthinkable.* Centre for Sexual Abuse and Childhood Trauma. Ottawa, ON, Canada. Presenter(s): Pain, C. Facilitated a full day trauma workshop to trauma workers.

May 2, 2008 **Speaker**. *Dissociation: Phenomenology and Disorder.* Ontario Medical Association. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak to care providers on dissociation.

Feb 9, 2008 **Facilitator**. *Basic Psychotherapy Strategies in Working with Traumatized Patients.* Ontario Psychiatry Association. Toronto, ON, Canada. Presenter(s): Pain, C. Led workshop at the 88th annual conference.

Feb 8, 2008 **Keynote Speaker**. *What is acute and post traumatic stress?* The Tema Conter Memorial Trust. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker for, "Common Threads: An educational conference for front line responders on acute and post traumatic stress".

Nov 15, 2006 **Lecturer**. *Chronic Psychological Trauma.* University of Western Ontario. London, ON, Canada. Presenter(s): Pain, C. Invited guest lecturer for MSW course Psychological Trauma.

May 11, 2006 **Facilitator**. *Assessing Trauma: Being held in mind.* London Health Sciences Centre. London,

ON, Canada. Presenter(s): Pain, C. Led half-day CME workshop.

Feb 25, 2004 **Presenter**. *Refugee Mental Health.* Department of Psychiatry, McMaster University. Hamilton, ON, Canada. Presenter(s): Pain, C. Invited to present at grand rounds.

Feb 12, 2004 **Facilitator**. *The Unformulated Stuff of Trauma.* London Health Sciences Centre. London, ON, Canada. Presenter(s): Pain, C. Led half-day CME (emotion regulation, neurobiology, and psychotherapy) workshop.

Sep 23, 2003 **Presenter**. *Traumatic Experience and Chronic Psychiatric Disorders.* Regional Mental Health Centre. St. Thomas, ON, Canada. Presenter(s): Pain, C. Invited to present at grand rounds.

Dec 12, 2002 **Facilitator**. *Personality adaptation to adverse life events.* London Health Sciences Centre. London, ON, Canada. Presenter(s): Pain, C. Led half-day CME workshop.

May 2000 **Presenter**. *The Art and Science of Psychopharmacological Treatment for PTSD.* Whitby Psychiatric Hospital. Whitby, ON, Canada. Presenter(s): Pain, C. Invited to present at grand rounds.

Apr 2000 **Speaker**. *Debrief the Meaning, no Matter the Modality.* Ottawa Trauma Conference. Ottawa, ON, Canada. Presenter(s): Pain, C. Invited to present at conference, “Trauma and Dissociation: Changing Times”.

Apr 2000 **Speaker**. *Cutting to Cope: Trauma and Self Harm.* Ottawa Trauma Conference. Ottawa, ON, Canada. Presenter(s): Pain, C. Invited to present at conference, “Trauma and Dissociation: Changing Times”.

Feb 1997 **Facilitator**. S*ubstance Abuse and Psychiatric Disorders.* Cornwall Community Hospital. Cornwall, ON, Canada. Presenter(s): Pain, C. Led two-day workshop for health care workers.

June 1996 **Facilitator**. *Dual Disorders: Psychiatric Illness and Addictions.* Cornwall Community Hospital. Cornwall, ON, Canada. Presenter(s): Pain, C. Led full-day workshop for health care workers.

Media Appearances

May 26, 2016 **Interviewee**. Discussing the *New Beginnings Refugee Mental Health Clinic* at CAMH. Interviewer: Nancy Deacon. Here and Now, CBC Radio One. Toronto, ON, Canada. Gave interview on the founding and inspiration behind the Clinic.

Oct 25, 2012 **Featured Project.** Throwing off the chains of mental illness in Ethiopia: Modernizing mental health care in a land where priests are often on the front lines. Author: Julia Belluz. Macleans, Toronto, ON, Canada. Highlights the impact of Toronto Addis Ababa Academic Collaboration.

Nov 23, 2003 **Guest Speaker**. Posttraumatic Stress Disorder. Interviewer: “Health on the Line”. Toronto, ON, Canada. Subject matter expert on TV show.

4. Local

Invited Lectures and Presentations

Mar 18, 2021 **Guest Lecturer.** *Global Mental Health.* University of Toronto. Toronto, ON, Canada. Presenters: Pain C, McKenzie Kwame. Invited to co-guest lecture in undergraduate course, “PHS100: Grand Opportunities in Global Health.

Oct 2019 **Speaker**. *Suicide And Suicide Prevention.* Canadian Centre for Victims of Torture. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker for CCVT counsellors and front line community workers.

Sep 2019 **Speaker**. *Trauma: A Psychoanalytic View.* Toronto Institute of Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker as part of the Institute’s Extension Program.

Apr 2019 **Speaker**. *Stress Trauma and Resilience.* Canadian Centre for Victims of Torture. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker as part of the Centres’ refugee lecture series.

Apr 2019 **Speaker**. *TAAAC - An Educational Model.* University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker as part of the University of Toronto’s President’s International Council on Engagement with Africa.

Apr 2019 **Speaker**. *Domestic Violence and PTSD.* Mount Sinai Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. & Andermann, L. Invited speaker to academic half day on trauma-informed care.

Dec 8, 2018 **Co-Facilitator**. *The Evidence Based Therapist.* Departments of Psychiatry, Mount Sinai Hospital & University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C., Hunter, J., Ravitz, P., & Tasca, G. Co-led two-day workshop for psychiatrists.

Sep 13, 2018 **Speaker**. *Trauma: A Psychoanalytic View.* Toronto Institute of Contemporary Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present to therapists about trauma as part of the extension program.

Jun 5, 2018 **Speaker**. *Transference and Counter Transference.* Toronto Institute of Contemporary Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present to therapists.

May/Jul 2018 **Speaker**. *Back to Basics: Treatment of Psychological Trauma.* Mount Sinai Psychotherapy Institute. Toronto, ON, Canada. Presenter(s): Pain, C. & Fisher, J. Co-lead annual 3-day interactive workshop on trauma and resilience for various healthcare providers.

Mar 28, 2018 **Speaker**. *Trauma: A Psychoanalytic View].* Toronto Institute of Contemporary Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present to therapists about trauma as part of the extension program.

Mar 23, 2018 **Co-Presenter**. *IPT in Ethiopia, scaling up mental health services for primary health care – the Biaber Project.* Department of Psychiatry, Mount Sinai Hospital. Toronto, ON, Canada. Presenter(s): Pain, C., & Ravitz, P. Co-presented at grand rounds.

Mar 7, 2018 **Speaker**. *A Year in Ethiopia: Psychotherapy Here and There.* Toronto Institute of Contemporary Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present to therapists about culture and psychotherapy.

2018 **Co-Presenter**. *Toronto Addis Ababa Academic Collaboration.* University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. & Hodges, B. Invited presentation to the clinical chairs at the University.

Oct 22, 2016 **Discussant**. *"Vicarious Traumatization and the Analytic Therapist".* Toronto Psychoanalytic Society and Institute. Toronto, ON, Canada. Presenter(s): Pain, C. Invited discussant on the paper "Vicarious Traumatization and the Analytic Therapist" by Karen W. Saakvitne, Ph.D. for the Advanced Training Program in Psychoanalytic Psychotherapy.

Oct 12, 2016 **Presenter.** *What constitutes treatment? Re-thinking mental health practice for refugees.* Centre for Addiction and Mental Health. Toronto, ON, Canada. Presenter(s): Pain, C. Available from: https://www.porticonetwork.ca/web/nmhp/webinars/past-webinars/successful-or-promising-practices/pain-4. Led webinar for health care providers on refugee trauma.

Jun 16, 2016 **Co-presenter**. *Mental Health in Ethiopia.* Department of Psychiatry, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. & Wondigmagegn, D. Co-presenter on mental health in Ethiopia for Harvey Stancer Research Day.

Apr 2016 **Speaker**. *TAAPPing into Ethiopia: Assisting psychiatry training in Ethiopia.* Department of Family and Community Medicine, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker on collaborative projects with Addis Ababa University, Ethiopia.

Jun 2016 **Speaker**. *Making Sense of Trauma Through Transference and Countertransference.* Toronto Institute of Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker on trauma.

May/Jul 2016 **Speaker**. *Back to Basics: Treatment of Psychological Trauma.* Mount Sinai Psychotherapy Institute. Toronto, ON, Canada. Presenter(s): Pain, C. & Fisher, J. Co-lead annual 3-day interactive workshop on trauma and resilience for various healthcare providers.

Apr 2016 **Speaker**. *TAAPPing into Ethiopia: Assisting psychiatry training in Ethiopia.* Department of Family and Community Medicine, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker on collaborative projects with Addis Ababa University, Ethiopia.

Mar-Jun, 2016 **Guest Lecturer**. *Trauma, War and refugees: Making sense of trauma and dissociation.* Institute for the Advancement of Self Psychology. Toronto, ON, Canada. Presenter(s): Pain, C. Guest lectured, providing clinical concepts and techniques to promote healing and recovery in trauma patients as part of the "Trauma: A Psychoanalytic View" course.

Feb 10, 2016 **Speaker**. *Reactions to War and Systemic Violence: Differentiating Distress from Mental Illness. When/Is Psychiatric Treatment Required?* YMCA. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker to the Refugee Mental Health Symposium at the conference.

Jan 13, 2016 **Facilitator**. *Refugee trauma stress and resilience.* Refugee Mental Health Program, Centre for Addiction and Mental Health. Toronto, ON, Canada. Presenter(s): Pain, C. Led webinar for

health care providers on refugee trauma.

Jan 8, 2016 **Speaker**. *Global Mental Health – Primary Health Care.* Department of Family and Community Medicine, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak to health care providers on global mental health.

Dec 10, 2015 **Panelist**. *Trauma of Living with Domestic Violence*. Mount Sinai Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Led a workshop for event, "Caring for Patients and Each Other when there's Domestic Violence".

Nov 10, 2015 **Panelist**. *Diagnosis and Treatment of Mental Health Issues Among Refugee and Immigrant Populations: Moving from Research to Practice.* Ryerson University. Toronto, ON, Canada. Presenter(s): Pain, C. Lead a workshop for Ryerson University Panel.

Jul 24, 2015 **Speaker**. *Social Responsibility.* Faculty Club, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. & Wondigmagegn, D. Co-lead fellowship orientation.

May/Jul 2015 **Speaker**. *Back to Basics: Treatment of Psychological Trauma.* Mount Sinai Psychotherapy Institute. Toronto, ON, Canada. Presenter(s): Pain, C. & Fisher, J. Co-lead annual 3-day interactive workshop on trauma and resilience for various healthcare providers.

Apr 23, 2015 **Keynote Speaker**. *Trauma, War and Refugees.* Toronto Institute of Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C.

Apr 7, 2015 **Keynote Speaker**. *From TAAPP to TAAAC! Building capacity in post graduate programing in a LIC.* International Health Program, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Keynote speaker at UTIHP gala, "Global Mental Health".

Mar 27, 2015 **Keynote Speaker**. *What's traumatic about trauma? What care provides need to know.* Casey House. Toronto, ON, Canada. Presenter(s): Pain, C. Keynote speaker at full day symposium on maintaining excellence in health care for people living with HIV/AIDS.

Feb 25, 2015 **Keynote Speaker**. *Trauma and the Role of Community in the Rehabilitation of Survivors of War.* Canadian Centre for Victims of Torture (CCVT). Toronto, ON, Canada. Presenter(s): Pain, C. Invited keynote speaker to CCVT volunteers.

Feb 18, 2015 **Keynote Speaker**. *Self-reflective Practice.* Centre for Addictions and Mental Health (CAMH) Refugee Mental Health Project. Toronto, ON, Canada. Presenter(s): Pain, C. Keynote speaker at webinar for refugee health.

Jan 23, 2015 **Panelist**. *Difficult conversations: When to involve family members and how to approach their involvement.* CAMH Refugee Mental Health Project. Toronto, ON, Canada. Presenter(s): Pain, C. Led workshop at the Refugee Mental Health Project's third annual educational and networking event.

Jan 23, 2015 **Keynote Speaker**. *Emotional regulation and de-escalation in distressed refugees.* CCVT. Toronto, ON, Canada. Presenter(s): Pain, C. Invited keynote speaker providing educational lecture/seminar to CCVT counsellors.

Jan 13, 2015 **Keynote Speaker**. *Reactions to war and systemic violence: Differentiating distress from mental illness traumatic events.* CAMH Refugee Mental Health Project. Toronto, ON, Canada. Presenter(s): Pain, C. Available from: https://www.porticonetwork.ca/web/nmhp/webinars/past-webinars/successful-or-promising-practices/pain-3. Keynote speaker at webinar for refugee health.

Mar 14, 2014 **Speaker**. *Lessons Learned: 10 ideas that guide recovery from unresolved traumatic experiences.* North York General Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Presented at external grand rounds.

Feb 28, 2014 **Facilitator**. *Addressing Refugee Trauma in Resettlement: why we over and under-diagnose PTSD.* CAMH Refugee Mental Health Project. Toronto, ON, Canada. Presenter(s): Pain, C. Facilitated workshop for healthcare providers.

Oct 1, 2013 **Panelist**. *Faith and Terror.* Project Ploughshares. Church of the Redeemer, Toronto, ON, Canada. Presenter(s): Pain, C. Invited panelist to discuss the impacts of terror, the interplay of "faith and terror".

May 30, 2013 **Facilitator**. *War, shell shock and refugees: Phenomenology, treatment and applications.* Toronto Institute of Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to lead workshop for course "Trauma: A Psychoanalytic View".

Apr 22, 2013 **Speaker**. *Global Mental Health.* Faculty of Applied Science and Engineering, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to give talk for "Engineering Global

Health" Symposium.

Mar 22-23, 2013 **Speaker**. *Global Mental Health and Marginalized People.* International Health Program, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker at UTIHP's annual Health and Human Rights conference, "Canada's Role in Contributing to the Millennium Development Goals".

Nov 28, 2012 **Keynote Speaker**. *Assessing and Treating Refugees Suffering from the Effects of Trauma.* CAMH Refugee Mental Health Project. Toronto, ON, Canada. Available from: https://www.porticonetwork.ca/web/nmhp/webinars/past-webinars/successful-or-promising-practices/pain Presenter(s): Pain, C. Keynote speaker at webinar for refugee health.

Nov 12, 2012 **Keynote Speaker**. *Reactions to war and systemic violence: Differentiating distress from mental illness traumatic events.* CAMH Refugee Mental Health Project. Toronto, ON, Canada. Presenter(s): Pain, C. Keynote speaker at webinar for refugee health.

Sep 28, 2012 **Speaker**. *Adversity and Resilience.* Association of Traumatic Stress Specialists. Toronto, ON, Canada. Presenter(s): Pain, C. Invited plenary speaker at ATSS annual conference, "From Victim to Survivor: Supporting & Promoting Resilience.

May 30, 2012 **Speaker**. *Non-communicable Diseases in a Global Context.* Global Health Research, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker at introductory lecture.

Nov 2, 2011 **Speaker**. *The Nuts and Bolts of Psychological Trauma: How to help others and stay well yourself.* Children's Aid Society. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak to Children's Aid workers on providing care to individuals who have experienced trauma.

Dec 7, 2011 **Speaker**. *North-South Collaboration for Training Psychiatrists: A Template for Africa?* Joint Centre for Bioethics, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited by Ross Upshur to present in a seminar series on international collaboration.

Nov 9, 2011 **Speaker**. *Psychological Trauma and Culture II.* Sick Kids Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Presented to Outpatients Family and Children HIV/AIDS team.

Oct 25, 2011 **Speaker**. *Invited Talks.* Department of Family Medicine, Markham Stoufville Hospital. Markham, ON, Canada. Presenter(s): Pain, C. Invited to speak to healthcare providers as part of the Hospital's Global Health Lunches on Mental Health.

Jun 8, 2011 **Speaker**. *Psychological Trauma and Culture I.* Sick Kids Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Presented to Outpatients Family and Children HIV/AIDS team.

Apr 27, 2011 **Speaker**. *A Tortured Child Grows Up.* Toronto Institute for Contemporary Psychoanalysis. Toronto, ON, Canada. Presenter(s): Pain, C. Invited presenter to quarterly scientific meeting.

Apr 27, 2011 **Facilitator**. *Social Activism.* Graduate Student Alliance for Global Health, University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Led workshop on social activism for graduate students in Global Health.

Mar 30, 2011 **Panelist**. *Cultural Diversity and Mental Health: Exploring Innovative Approaches to Mental Health Practice in our City.* George Brown College. Toronto, ON, Canada. Presenter(s): Pain, C. Invited panel speaker on prevention and promotion of mental well-being in diverse communities for George Brown College's annual Mental Heath Conference.

Dec 14, 2010 **Facilitator**. *Psycho-social First Aid.* Psycho-social Emergency Response & Recovery Services (PERRS)Training. Toronto, ON, Canada. Presenter(s): Pain, C. Led training workshop.

Dec 3, 2010 **Speaker**. *From TAAPP (Toronto Addis Ababa Psychiatry Project) to: TAAAC (Toronto Addis Ababa Academic Collaboration).* University Health Network. Toronto, ON, Canada. Presenter(s): Pain, C. Presented at UHN external grand rounds.

Oct 1, 2010 **Lecturer**. *Mental Health in Ethiopia.* University of Toronto Scarborough. Toronto, ON, Canada. Presenter(s): Pain, C. Invited by Prof Michael Gervers to guest lecture course, "Ethiopian History Undergraduate Course" at University of Toronto Scarborough.

Oct 19, 2010 **Speaker**. *From TAAPP to TAAAC: Educational Partnerships Between H & LICs.* Social Aetiology of Mental Illness (SAMI) CAMH. Toronto, ON, Canada. Presenter(s): Pain, C. Presented webinar on mutually beneficial educational partnerships.

Oct 13, 2010 **Speaker**. *What's Traumatic About Trauma? Adaptations to Psychodynamic/Psychoanalytic Technique.* Institute for the Advancement of Self Psychology. Toronto, ON, Canada. Presenter(s): Pain, C. Presented lecture as part of the Institute's "Clinical Dialogues" series.

Jun 17, 2010 **Keynote Speaker**. *Moving Beyond Trauma: Celebrating Women's Resilience.* St. Joseph's Women's Health Centre. Toronto, ON, Canada. Presenter(s): Pain, C. Presented lecture as part

of hospital's event, "Celebrating 20 Years of Transforming Care in Women's Mental Health".

Jun 11, 2010 **Co-facilitator**. *Achieving and Sustaining Psychotherapy Effectiveness.* Mount Sinai Psychotherapy Institute. Toronto, ON, Canada. Presenter(s): Pain, C., Ravitz, P., Hunter, J., & McNaughton, N. Co-lead interactive workshop on psychotherapy for various healthcare providers.

May 26, 2010 **Co-facilitator**. *Refugees and Mental Health: How to assess the suffering and promote the healing of refugees, immigrants and newcomers dealing with the aftereffects of trauma and torture.* CCVT. Toronto, ON, Canada. Presenter(s): Dremetsikas, T. & Pain, C. Co-lead interactive workshop on trauma and refugees for CCVT counsellors.

May-Jul, 2010 **Speaker**. *ABCDs of Trauma.* Mount Sinai Psychotherapy Institute. Toronto, ON, Canada. Presenter(s): Pain, C., McMullen, E., Tarnopolsky, A., Lanius, R., Wesson, G., Florius, P., Andermann, L. Co-lead two 1.5 day workshops for faculty, psychiatrists.

May 13, 2010 **Speaker**. *Mental Health in Low Income Countries: Toronto Addis Ababa Psychiatry Project (TAAPP).* Faculty of Medicine University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Presented for the Faculty of Medicine's Global Health Elective, "Global Mental Health". *(Trainee presentation)*

Apr 7, 2010 **Speaker**. *The Role of Universities in Building Capacity and Sustainability in Medicine in LICs.* Faculty of Applied Science and Engineering University of Toronto. Toronto, ON, Canada. Presenter(s): Alem, A. & Pain, C. Co-presented for the Technology, Engineering and Global Development Seminar.

Nov 6, 2009 **Presenter**. *Psychological Trauma: PTSD, fear and grief.* Humber River Regional Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present at grand rounds. *(Trainee presentation)*

Nov 3, 2009 **Facilitator**. *Psychological Trauma in War Affected Countries*. Peter A. Silverman Centre, Mount Sinai Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Led a workshop for International Paediatric Emergency Medicine Elective Program.

Sep 12, 2009 **Speaker**. *Trauma, Dissociation and Affect Regulation.* Institute for the Advancement of Self Psychology. Toronto, ON, Canada. Presenter(s): Pain, C. Led full-day workshop for fourth year psychoanalytic stream students. *(Trainee presentation)*

Aug 4, 2009 **Facilitator**. *Psychological Trauma in War Affected Countries*. Peter A. Silverman Centre, Mount Sinai Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Led a workshop for International Paediatric Emergency Medicine Elective Program. *(Trainee presentation)*

Jun 19, 2009 **Co-facilitator.** *Trauma in Refugees and New Canadians*. CCVT. Toronto, ON, Canada. Presenter(s): Pain, C. & Andermann, L. Co-facilitated a full-day workshop to develop counseling skills for CCVT refugee counsellors.

Apr 1, 2009 **Panelist.** *Panel Discussion*. Women's College Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. et al. Invited panelist to speak at the Hospital's conference, "X Effects: Women's Mental Health in the Workplace", chaired by Dr. Anthony Levitt.

Jan 7, 2009 **Facilitator.** *The Impact of Psychological Trauma and Grief on Parenting*. Toronto District School Board. Toronto, ON, Canada. Presenter(s): Pain, C. et al. Led a half-day professional development workshop for staff and educators in the TDSB.

Nov 3, 2008 **Keynote Speaker**. *Psychological Trauma and Treatment for Survivors of War and Political Violence.* Mount Sinai Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Keynote speaker at Hospital's Holocaust Memorial Lecture.

Oct 31-Nov1, 2008 **Co-facilitator.** *Trauma Training*. CCVT. Toronto, ON, Canada. Presenter(s): Pain, C. & Andermann, L. Co-facilitated a two-day workshop to develop counseling skills for CCVT refugee counsellors.

Aug 29, 2008 **Speaker**. *Responding to the women of Zimbabwe.* Blakes Law Firm. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker to present to national Firm's lawyers.

Mar 20-21, 2007 **Co-facilitator**. *Transcultural Issues and Psychological Trauma: Lessons learned.* The Hincks-Dellcrest Centre. Toronto, ON, Canada. Presenter(s): Pain, C. & Andermann, L. Co-facilitated two-day course on trauma and culturally sensitive care.

Dec 7, 2006 **Speaker**. *The Mind Body Connection: Psychopharmacology and Holistic Approaches to Treating Trauma.* The Hincks-Dellcrest Centre. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker to allied professional half-day, "Psychopharmacology for PTSD Spectrum

Disorders".

Oct 19, 2006 **Guest Lecturer**. *Mental Health in Ethiopia.* University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited guest lecturer for Introduction to Global Health course.

Dec 7, 2005 **Speaker**. *The Mind Body Connection: Psychopharmacology and Holistic Approaches to Treating Trauma.* The Hincks-Dellcrest Centre. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker to allied health professional half-day, "Psychopharmacology for Trauma Spectrum Disorders".

Jun 13, 2005 **Presenter**. *Suicide and Psychological Trauma.* Department of Psychiatry, Sunnybrook Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Invited presenter to external grand rounds.

Jan 20, 2005 **Speaker**. *Trauma variables and the road to recovery.* Mixed Disciplines Peer Supervision Group of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker.

Jan 17, 2005 **Facilitator**. *Recovery from Traumatic Experience: A Body of Knowledge.* The Hincks-Dellcrest Centre. Toronto, ON, Canada. Presenter(s): Pain, C. Led full-day workshop on Trauma.

Nov 1, 2004 **Speaker**. *Trauma and Grief: Treating Adult Women.* Infant Mental Health Promotion Project, The Hospital for Sick Children. Toronto, ON, Canada. Presenter(s): Pain, C. Invited speaker to series of talks, "Unresolved Loss & Trauma in Parents: Impact on Young Children & Intervention".

Dec 9, 2003 **Facilitator**. *Psychological Trauma.* Toronto Western Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to lead workshop on trauma.

Oct 18, 2003 **Facilitator**. *Trauma Treatment – Initial Phase.* Toronto Advanced Professional Education. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to lead full-day workshop on trauma for healthcare providers.

Feb 4, 2003 **Presenter**. *Interpersonal Impact of Trauma.* Centre for Addiction and Mental Health. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present at interpersonal therapy rounds.

Nov 26, 2002 **Keynote Speaker**. *Understanding and Treating Posttraumatic Stress Disorder.* Department of Psychiatry, Toronto East General Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak to the department.

Oct 2, 2002 **Keynote Speaker**. *From Survival to Recovery: The relationship between childhood trauma and adult mental illness.* Centre for Addiction and Mental Health. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak at an educational forum in celebration of World Mental Health Day.

Oct 2002 **Facilitator**. *Trauma Treatment – Initial Phase.* Toronto Advanced Professional Education. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to lead full-day workshop on trauma for healthcare providers.

Sep 28, 2002 **Co-presenter**. *Dissociation; neurobiology and psychoanalytic theory.* Toronto Advanced Professional Education. Toronto, ON, Canada. Presenter(s): Pain, C. & Lanius, R. Invited to present at neuro-psychoanalysis rounds.

Sep 19, 2002 **Keynote Speaker**. *PTSD: Diagnostic Issues.* Toronto Advanced Professional Education. Toronto, ON, Canada. Presenter(s): Pain, C. Invited as keynote speaker for Faculty Development Program event.

Sep 13, 2002 **Presenter**. *September 11th – what have we learned?* St. Michael's Hospital. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present at grand rounds.

Sep 13, 2002 **Facilitator**. *Dissociation and Trauma for Clinical Challenges in Psychiatric Practice*. University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Led CME workshop on trauma.

July 2001 **Facilitator**. *PTSD and Refugees*. Canadian Centre for Victims of Torture. Toronto, ON, Canada. Presenter(s): Pain, C. Led a training workshop on behalf of CCVT for Post Claim Determination Officers.

June 2001 **Presenter**. *Trauma Related Disorders in Children and Adolescents*. Hospital for Sick Children. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to present at grand rounds.

June 2001 **Speaker**. *Psychopharmacology and Trauma: An Integrated Approach to Treatment*. Hincks-Dellcrest Institute. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak as part of the Trauma and Resiliency Lectures.

Apr 2001 **Speaker**. *What's so Traumatic about Trauma?* University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Invited to speak to part-time psychiatry faculty.

Apr 2001 **Facilitator**. *Evidence Based Psychopharmacology for Trauma Related Disorders.* Toronto

Advanced Professional Education. Toronto, ON, Canada. Presenter(s): Pain, C. Led workshop for Trauma Counseling Certificate Program at TAPE.

Feb 2001 **Facilitator**. *Acute and Chronic Trauma Syndromes.* University of Toronto. Toronto, ON, Canada. Presenter(s): Pain, C. Led CME workshop for: Clinical Challenges in Psychiatric Practice.

Nov 1995 **Facilitator**. *Transference in a Group Context.* Ontario Group Psychotherapy Training Institute. Ottawa, ON, Canada. Presenter(s): Pain, C. Led a workshop for psychotherapists.

Dec 1995 **Speaker**. *Post Traumatic Stress Disorder.* University of Ottawa. Ottawa, ON, Canada. Presenter(s): Pain, C. Guest speaker to Student Psychiatric Services at the University.

Mar 1995 **Speaker**. *Post Traumatic Stress Disorder.* Royal Ottawa Hospital. Ottawa, ON, Canada. Presenter(s): Pain, C. Speaker at the Hospital's conference, "Dissociative Disorders"

Mar 1995 **Facilitator**. *Deliberate self-harm.* Royal Ottawa Hospital. Ottawa, ON, Canada. Presenter(s): Pain, C. Led workshop on self-harm at the Hospital's conference, "Dissociative Disorders".

Feb 1995 **Presenter**. *What's Traumatic about Trauma: Posttraumatic Stress Disorder.* Royal Ottawa Hospital. Ottawa, ON, Canada. Presenter(s): Pain, C. Presenter at grand rounds.

Media Appearances

Nov 2020 **Subject Matter Expert**. Refugee mental health. Produced by Dr Sarah Hanafi, Weam Sieffien, & Shaoyuam (Randi) Wang. PsychEd Podcast, University of Toronto. Toronto, ON, Canada. Featured in podcast on refugee mental health. Available from: https://player.fm/series/psyched-educational-psychiatry-podcast-2630134/psyched-episode-28-newcomer-mental-health-with-dr-lisa-andermann-dr-clare-pain-and-norma-hannant

Dec 3, 2018 **Featured Project.** Toronto Addis Ababa Academic Collaboration. Author: Romi Levine. UofT News, Toronto, ON, Canada. Success and impacts of TAAAC are discussed. Available from: https://www.utoronto.ca/news/u-t-addis-ababa-university-strengthen-partnership-launch-new-programs-ethiopia.

Nov 23, 2017 **Featured Project**. Canadian Centre for Victims of Torture. Author: Nicholas Keung. Toronto Star, Toronto, ON, Canada. Success and beginnings CCVT are highlighted. Available from: https://www.thestar.com/news/immigration/2017/11/23/for-40-years-this-toronto-agency-has-focused-on-treating-refugee-victims-of-torture.html

Feb 10, 2017 **Featured Project**. CAMH New Beginnings Clinic. Author: Centre for Addiction and Mental Health. CAMH website, Toronto, ON, Canada. Success and beginnings New Beginnings Clinic for refugees are highlighted. Available from: https://www.camh.ca/en/camh-news-and-stories/refugees-find-hope-and-care-at-camh-mental-health-clinic

Nov 26, 2015 **Featured Project.** Expansion of the Toronto Addis Ababa Academic Collaboration. UofT News, Toronto, ON, Canada. Available from: https://www.utoronto.ca/news/dentistry-joins-toronto-addis-ababa-academic-collaboration

2013 **Featured Projects**. Toronto Addis Ababa Academic Collaboration. Mount Sinai Hospital. Toronto, ON, Canada. Success and impacts of TAAAC are discussed. Available from: https://www.mountsinai.on.ca/about_us/news/2013-news/mount-sinai-psychiatrists-help-tame-the-lion-of-mental-health-in-ethiopia

Oct 19, 2013 **Featured Projects**. Toronto Addis Ababa Academic Collaboration. Faculty of Medicine News, Faculty of Medicine, University of Toronto. Toronto, ON, Canada. Success and impacts of TAAAC are discussed. Available from: https://medicine.utoronto.ca/news/u-t-transforming-health-care-ethiopia?utm_source=MedEmail&utm_campaign=b6e98e04eb-MedEmail_Volume_26_Number_4_2_22_2017&utm_medium=email&utm_term=0_f51fac87dd-b6e98e04eb-91878077

Mar 13, 2013 **Featured Projects**. Toronto Addis Ababa Psychiatry Project. MedEMail Newsletter, Faculty of Medicine, University of Toronto. Toronto, ON, Canada. Featured in the message from the Dean (Catherine Whiteside). Available from: http://medicine.utoronto.ca/sites/default/files/MedEmail_Vol21n12.pdf

Fall 2012 **Featured Projects**. Toronto Addis Ababa Psychiatry Project and Toronto Addis Ababa Academic Collaboration. UofT Medicine Newsletter, Faculty of Medicine, University of Toronto.

Toronto, ON, Canada. Featured in Faculty newsletter, Available from: URL no longer available.

July 2009 **Featured Projects**. Toronto Addis Ababa Psychiatry Project. The Dean's Report 2009: Health Starts Here. University of Toronto. Toronto, ON, Canada. Success of TAPP highlighted in the section, "U Toronto Medicine Taking Care: The value of social responsibility".

Apr 5, 2009 **Featured Project**. Toronto Addis Ababa Academic Collaboration. Author: Leslie Scrivener. Toronto Star, Toronto, ON, Canada. Success and beginnings of TAAAC are mentioned. Available from: https://www.thestar.com/news/insight/2009/04/05/at_the_intersection_of_art_and_reality_a_lifealtering_project_is_born.html

Dec 2008 **Interviewee**. Toronto Addis Ababa Psychiatry Project. Interviewer: Andy Barrie. Metro Morning, CBC Radio One. Discussion of TAAPP.

H. Teaching and Design

Please see the Teaching and CPA Dossiers for details.

2018 – ongoing	Sexual and Gender Based Violence, Assosa Refugee Camp Professionals, Addis Ababa University. *This half day workshop was devised for Government and UNHCR refugee camp staff, to provide needed content and a safe space to discuss how to operationalize clear camp policies on Sexual and Gender Based Violence (SGBV).*
2018 – ongoing	Master of Clinical Psychology, Clinical Psychology Students, Faculty of Arts & Sciences, Addis Ababa University. *Invited to review curriculum and ensured future TAAPP curricula were designed with this program in mind.*
2017 – ongoing	Interpersonal Psychotherapy: Adapted for Ethiopians, Faculty of Medicine, Department of Psychiatry, Addis Ababa University. *For residents and Masters in Clinical Psychology – and for primary health workers, community health workers. This 2-4 day workshop is updated twice a year.*
2012 – ongoing	Refugee Trauma Stress and Resilience, Refugee Support Workers and Counsellors, Centre for Victims of Torture.
2021	Research in the Developing World, Medical Residents, Global Health Education Initiative, Faculty of Medicine, Postgraduate Medical Education, University of Toronto *Designed and taught 9-hour module on conducting research in developing/low-income countries for residents across UofT with Dr Lisa Andermann for the Global Health Education Initiative certificate program.*
2020	Impact of COVID-19 on Mental Health, Medical Residents, Global Health Education Initiative, Faculty of Medicine, Postgraduate Medical Education, University of Toronto *Designed and taught 9-hour special module on global mental health impacts of COVID-19 for residents across UofT with Dr Lisa Andermann for the Global Health Education Initiative certificate program*
2003 – 2021	*With regard to the Toronto Addis Ababa Psychiatry Project – we have had 44 onsite on* *month teaching trips with 2 UofT faculty and a UofT resident, and 2 virtual teaching months since COVID. I have recruited the faculty and worked with them to develop their one-month teaching curricula, pdfs, practical training etc. I have taught as a faculty of TAAAC on 5 separate months.*
2017 – 2019	Narrative Exposure Therapy, Psychiatry Residents, Faculty of Medicine, Department of Psychiatry, Addis Ababa University & Canadian Centre for Victims of Torture. *Two-day course to teach practitioners on an evidence-based treatment of*

psychological trauma for use in clinics, and refugee camps.

2010 – 2021 Global Mental Health, Medical Residents, Global Health Education Initiative, Faculty of Medicine, Postgraduate Medical Education, University of Toronto

Designed and taught 9-hour module on global mental health for residents across UofT with Dr Lisa Andermann for the Global Health Education Initiative certificate program.

2010 – 2015 Teaching in International Settings, Medical Residents, Global Health Education Initiative, Faculty of Medicine, Postgraduate Medical Education, University of Toronto

Designed and taught 9-hour module on global education for residents across UofT with Dr Julie Maggi for the Global Health Education Initiative certificate program.

2010 – 2015 Global Mental Health and Physical Disability, Medical Residents, Global Health Education Initiative, Faculty of Medicine, Postgraduate Medical Education, University of Toronto

Designed and taught 9-hour module on mental health and physical disability in a global context for residents across UofT for the Global Health Education Initiative certificate program.

2008 – 2018 Trauma Essentials and Advanced Trauma Course, Psychotherapists, Mount Sinai Psychotherapy Institute.

Two 3-day courses, one for beginners and the second for advanced learners each help on alternate years. Modified and updated annually based on student feedback and needs.

2009-2011,2013 How to assess and treat the challenging patient/trauma patient, Medical Residents, Faculty of Medicine, University of Toronto

Designed and taught module for Family and Community Health Program residents.

2001, 2004, 2009, 2014-2015 How to Treat Unresolved Trauma, Medical Residents, Faculty of Medicine, Addis Ababa University.

2001, 2004, 2009, 2015. *What's Special About Trauma.* Medical Residents, Faculty of Medicine, Addis Ababa University.

I. Research Supervision

1. Primary or co-supervision

Graduate Education

2021 **Co-Supervisor**, Masters. Geoffrey Sem. Supervisee Position: Graduate Student, Supervisee Institution: University of Toronto. *Virtual Teaching between AAU and UofT*. Supervisor(s): Dr. Lisa Andermann.

2017 – 2018 **Co-Supervisor**, Masters. Feven Tekle, Department of Global Health. Supervisee Position: Student, Supervisee Institution: McMaster University. Completed 2018

2017 – 2018 **Co-Supervisor**, Masters. Zelalem Tadesse, Department of Global Health. Supervisee Position: Student, Supervisee Institution: McMaster University. Completed 2018

2015 **Co-Supervisor**. Masters. Elnathan Mesfin, Department of Global Health. Supervisee Position: Graduate Student, Supervisee Institution: McMaster University. *Analysis of Future Temporal Orientation and Perceived Social Support of Trauma Patients*. Supervisor(s): Drs. Clare Pain and Evelyn McMullen. Completed 2015.

Undergraduate MD

2011 **Supervisor**, final year. J. A. Greenwald, Faculty of Medicine. Supervisee Position: Undergraduate Student, Supervisee Institution: University of Toronto. *Cultural Competency and International Health Professional Development*.

2010 **Supervisor**, final year. Gavinn Niroopan, Faculty of Medicine. Supervisee Position: Undergraduate Student, Supervisee Institution: University of Toronto. *Towards and Understanding of the Surgical Training and Physical Environmental Needs of Surgical Residents and Faculty at BLH: A Needs Assessment Study*.

2009 **Supervisor**, final year. Joshua Greenberg, Faculty of Medicine. Supervisee Position: Undergraduate Student, Supervisee Institution: University of Toronto. *Strengthening Cross-Cultural Educational Partnerships Through Cultural Sensitivity Training*.

Postgraduate MD

2017 **Co-supervisor**. Meron Getatchew MD. Supervisee Position: Psychiatry Resident, Supervisee Institution: Addis Ababa University. Non-thesis project: *Mental Distress in Medical Students of Addis Ababa University, Ethiopia: A Follow-Up Study.* Supervisor(s): Drs. Clare Pain & Filmon Mengesha. Completed: 2017

2017 **Co-supervisor**. Dr. Biruh Alemayehu Supervisee Position: Psychiatry Resident, Supervisee Institution: Addis Ababa University. Non-thesis project: *Attitudes, needs and experiences of patients with schizophrenia participating in arts involving activities at a specialized psychiatric hospital, in Addis Ababa, Ethiopia: a qualitative study.* Supervisor(s): Drs. Clare Pain & Barkot Milkias Completed: 2017

2011 – 2012 **Co-supervisor**. Amanda Stiglick MD & Hoa Phuc Nguyen MD. Supervisee Position: Residents, Supervisee Institution: Canadian Centre for Victims of Torture. Non-thesis project: *The Effectiveness of Weekly-Visiting Psychiatric Consultants at the Canadian Centre for Victims of Torture – 2011-2012.* Supervisor(s): Drs. Clare Pain and Lisa Andermann.

2010 – 2011 **Supervisor**. Jake Crookall, Department of Psychiatry. Supervisee Position: Psychiatry Resident, Supervisee Institution: University of Toronto. Supervisor(s): Clare Pain

Postdoctoral Research Fellow (PhD)

2011 – 2012 **Primary Supervisor**. Régine King, Social Aetiology of Mental Illness, Centre of Addiction and Mental Health. Supervisee Position: Research Fellow, Supervisee Institution: University of Toronto. Non-thesis Project: *Developing a Culturally Adapted Group-Based Mental Health Intervention to Promote the Mental Well-Being and Social Functioning Among Rwandan Refugees in Toronto*. Supervisor(s): Clare Pain, Kwame McKenzie.

2010 – 2012 **Primary Supervisor**. Pushpa Kanagaratnam, Social Aetiology of Mental Illness, Centre of Addiction and Mental Health. Supervisee Position: Research Fellow, Supervisee Institution: University of Toronto. Non-thesis Project: *Towards Developing National Guidelines: A Scoping Review on Clinical Practice with Refugee Survivors of Torture*. Supervisor(s): Clare Pain, Brenda Toner.

1. OTHER SUPERVISION

Thesis Committee Member

2017 – 2021 **PhD** Assegid Negash MA, Department of Psychiatry, Addis Ababa University. External dissertation supervisor. Mental Distress, Need and Barriers to Receive Mental Healthcare, Explanatory Models and Feasibility of Interpersonal Psychotherapy Among Wolaita Sodo

University Students. Completed 2021.

2009 – 2015 **PhD**. Kadia Petricca HBSc, MSc, PhD, Department of Health Policy, Management and Evaluation. Supervisee Position: PhD candidate, Supervisee Institution: University of Toronto. *Developing a Framework to Strengthen Fair and Legitimate Priority Setting for Health Services or Low-Income Countries: An Ethiopian Case Study.* Completed 2015.

2009 – 2016 **PhD**. Maraki Fikre HBSc, PhD, Department of Health Policy, Management and Evaluation. Supervisee Position: PhD candidate, Supervisee Institution: University of Toronto. *Developing a Framework of Evaluation for Educational University Partnerships Between High and Low-Income Countries. Case Study: The Toronto Addis Ababa Academic Collaboration (TAAC)*. Did not complete.

2001 – 2003 **PhD**. Patricia Ogden, Department of Psychology. Supervisee Position: PhD Candidate, Supervisee Institution: Union Institute and University, Ohio, United States. *Building Somatic Resources: The Theory and Practice of Sensorimotor Psychotherapy in the Treatment of Trauma*. Supervisor(s): Dr. Kenneth Suslak. Completed 2003.

Thesis Examiner

2019 **PhD**. Amber Reider, BA, BSc, School of Graduate Studies. Supervisee Position: PhD candidate, Supervisee Institution: McMaster University. *Child and Adolescent Mental Health in LMIC: Application of Task-Sharing Approaches and an Examination of Intergenerational Transmission of Risk.* Supervisor(s): Hall, G. & Gonzalez, A. Completed 2019.

Postgraduate MD

2020 – 2021 **PGY-3**. Juliette Dupre, MD, Interpersonal Psychotherapy. Supervisee Position: Psychiatry Resident, Supervisee Institution: Mount Sinai Hospital. Clinical Supervisor. 1 year psychotherapy supervision.

2021 **PGY-5**. Ammar Khairullah, MD, Integrated Mental Health Care. Supervisee Position: Psychiatry Resident, Supervisee Institution: Canadian Centre for Victims of Torture. Clinical Supervisor. Six-month supervision.

2020 – 2021 **PGY-5.** Jordan Bawks MD, Trauma Clinic. Supervisee Position: Psychiatry Resident, Supervisee Institution Mount Sinai Hospital. Clinical Supervisor 1 year elective

2019 – 2021 **PGY-5.** Hussein Hirjee MD, Trauma Clinic. Supervisee Position. Psychiatry Resident, Supervisee Institution Mount Sinai Hospital. Clinical Supervisor 1.5 year elective

2020 – 2021 **PGY-5**. Ken Euler, MD, Integrated Mental Health Care. Supervisee Position: Senior Resident, Supervisee Institutions: Canadian Centre for Victims of Torture, Mount Sinai Hospital, University of Toronto. Clinical Supervisor: Clare Pain. One year elective

2019 – 2020 **PGY-5**. Geneva Weiglein, MD, Integrated Mental Health Care. Supervisee Position: Senior Resident, Supervisee Institution: Canadian Centre for Victims of Torture and University of Toronto. Clinical Supervisor. One year elective.

2019 – 2021 **PGY-2/3**. Iline Guan, MD, Psychotherapy. Supervisee Institution: Mount Sinai Hospital and University of Toronto. Clinical Supervisor. 18-month supervision.

2019 **PGY**. Martin Rottenberg, MD, Trauma Elective. Supervisee Institution: Mount Sinai Hospital, University of Toronto. Clinical supervisor. Six-month supervision.

2018 – 2019 **PGY-2**. Shale Farber, MD, Psychotherapy. Supervisee Institution: Mount Sinai Hospital, University of Toronto. Clinical supervisor. Six-month supervision.

2018 – 2019 **PGY-5**. Ana Drandjic, MD, Integrated Mental Health Care. Supervisee Institutions: Canadian Centre for Victims of Torture, Mount Sinai Hospital, University of Toronto. Clinical Supervisor: Clare Pain. One year elective.

2016 – 2018 **PGY-5**. Ana Drandjic, MD, Trauma Elective. Supervisee Position: Senior Resident, Supervisee Institution: Mount Sinai Hospital. Clinical Supervisor. 18-month elective

2016 **PGY-4**. Devina Wadhwa, MD, Psychotherapy. Supervisee Position: Psychiatry

Resident. Supervisee Institution: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. Six-month supervision.

2015 – 2016 **PGY-5**. Mishelle McIntyre, MD, Trauma Elective. Supervisee Institution: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. One year elective.

2015 – 2016 **PGY-5**. Emma Hapke, MD, Psychotherapy supervision and trauma elective. Supervisee Position: Psychiatry Resident, Supervisee Institution: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. One year supervision.

2015 – 2016 **PGY-5**. Paul Uy, MD, Psychotherapy. Supervisee Position: Psychiatry Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. One year supervision.

2015 **PGY-3**. Nourhan Mohamed, MD, Trauma Elective. Supervisee Position: Psychiatry Resident, Supervisee Institutions: Mount Sinai Hospital University of Toronto. Clinical Supervisor. Six-month supervision.

2015 **PGY-5**. Christopher Richards-Bently, MD, Trauma Elective. Supervisee Position: Psychiatry Resident, part-time Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisors. Six-month supervision.

2014 **PGY-4**. Emma Hapke, MD, Psychotherapy. Supervisee Position: Chief Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. Six-month supervision.

2014 **PGY-5**. Michelle McIntyre-Stewart, MD, Psychotherapy. Supervisee Position: Chief Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. Six-month supervision.

2013 – 2015 **PGY-5**. Andrea Nixon, MD, Psychotherapy. Supervisee Position: Chief Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. 18-month elective.

2013 **PGY-2**. Ana Drandjic, MD, Trauma Elective. Supervisee Position: Psychiatry Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. Six-month supervision.

2013 **PGY-5**. Nicole Koziel, MD, Psychotherapy. Supervisee Position: Senior Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. Six-month residency.

2013 **PGY-5**. David Banayan, MD, Trauma Elective. Supervisee Position: Senior Resident, Supervisee Institution: University of Toronto. Clinical Supervisor. Six-month supervision.

2012 – 2013 **PGY-2**. Amanda Sawyer, MD, Trauma Elective. Supervisee Position: Psychiatry Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. One year supervision.

2012 **PGY-4**. Patrick Lo, MD, Psychotherapy. Supervisee Position: Supervisee Institution: Mount Sinai Hospital University of Toronto. Clinical Supervisor. Six-month supervision.

2012 **PGY-5**. Leanne Allison Wagg, MD, Trauma Elective. Supervisee Position: Senior Resident. Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. Six-month supervision.

2012 **PGY-4**. Anna Chen, MD, Trauma Elective. Supervisee Position: Psychiatry Resident. Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. One year supervision.

2011 – 2012 **PGY-5**. Lori Wasserman, MD, Psychotherapy. Supervisee Position: Chief Resident, Supervisee Institution: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. One year supervision.

2011 **PGY-5**. Amanda Sullovery, MD, Trauma Elective. Supervisee Position: Senior Resident. Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical

Supervisor. Six-month supervision.

2011 **PGY-5**. Lakha Singh, MD, Trauma and Psychotherapy Elective. Supervisee Position: Senior Resident, Supervisee Institution: University of Toronto. Clinical Supervisor. Six-month supervision.

2010 – 2011 **PGY-5**. Kalam Sutandar, MD, Trauma and Psychotherapy Elective. Supervisee Position: Senior Resident, Supervisee Institution: Mount Sinai Hospital University of Toronto. Clinical Supervisor. One year supervision.

2010 **PGY-5**. Julie Henderson, MD, Trauma and Psychotherapy Elective. Supervisee Position: Senior Resident, Supervisee Institution: University of Toronto. Clinical Supervisor. Six-month supervision.

2010 **PGY-5**. Brittany Poynter, MD, Trauma and Psychotherapy Elective. Supervisee Position: Senior Resident, Supervisee Institutions: Mount Sinai Hospital, University of Toronto. Clinical Supervisor. Six-month supervision.

Continuing Education

2020-2021 **Fellow**: Fikirta Girma MD, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Addis Ababa University, Ethiopia. Facilitator.

2020-2021 **Fellow**: Ilana Pelov MD, Department of Psychiatry, Faculty of Medicine, Supervisee Position: Mount Sinai Fellow. Supervisor, Trauma elective.

2019 – 2021 **Fellow**: Benyam Dubale MD**,** Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Addis Ababa University, Ethiopia. Supervisor.

2014 – 2015 **Fellow**. Miheret Tamirat MD, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Addis Ababa University, Ethiopia. Facilitator.

2012 – 2013 **Fellow**. Asnake Limenhe MD, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Addis Ababa University, Ethiopia. Supervisor.

2012 – 2013 **Fellow**. Solomon Teferra MD, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Addis Ababa University, Ethiopia. Supervisor.

2011 – 2012 **Fellow**. Teketel Tegegn MD, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Neuropsychiatry Fellow. Supervisee Institution: Amanuel Hospital, Addis Ababa, Ethiopia. Supervisor.

2010 – 2011 **Fellow**. Teshome Shibre MD PhD, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Amanuel Hospital, Ethiopia. Supervisor.

2010 – 2011 **Fellow**. Ian Weinroth MD FRCPC, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Psychotherapy Fellow. Supervisee Institution: Mount Sinai Hospital Psychotherapy Institute. Supervisor, Trauma Elective.

2008 – 2009 **Fellow**. Yonas Alamu MD, Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Addis Ababa University, Ethiopia. Supervisor(s): Clare Pain

2007 – 2008 **Fellow**. Yilma Bekele MD FCPsych (SA), MMed (Psych), Department of Psychiatry, Faculty of Medicine. Supervisee Position: Toronto Addis Ababa Psychiatry Project Fellow. Supervisee Institution: Addis Ababa University, Ethiopia.

Faculty Development

2018 – 2020 **Professional**. Paula Bell RN. Supervisee Position: Registered Nurse. Supervisee Institution: Mount Sinai Psychotherapy Institute. Supervisor(s): Clare Pain

2014 – 2016 **Faculty**. Suvercha Pasricha MD, Education Scholars Program Advisor. Supervisee Position: Medical Education Supervisor, Supervisee Institution: Centre for Addiction and Mental Health (Toronto, ON). Non-thesis research project: *Assessing Barriers to Treating Trauma- Perspectives from Psychiatrists.* Supervisor(s): Clare Pain. Completed 2016.

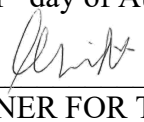
2011 – 2015 **Professional**. Ian Weinroth MD FRCPC. Supervisee Position: Psychiatrist. Supervisee Institution: Mount Sinai Hospital Psychotherapy Institute. Supervisor(s): Clare Pain.

2011 – 2015 **Professional**. Marijana Drandic MD, FRCPC. Supervisee Position: Psychiatrist. Supervisee Institution: Mount Sinai Psychotherapy Institute. Supervisor(s): Clare Pain.

2011 – 2013 **Professional.** Wanda Smith RN. Supervisee Position: Registered Nurse. Supervisor Institution: Mount Sinai Psychotherapy Institute Supervisor: Clare Pain

2011 – 2013 **Professional**. Cynthia Perry Brown, RN, RP. Supervisee Position: Mental Health Professional. Supervisee Institution: Mount Sinai Psychotherapy Institute. Supervisor(s): Clare Pain.

This is Exhibit **"B"** referred to in the affidavit
of CLARE PAIN sworn before me
this 21st day of August 2025.



A COMMISSIONER FOR TAKING AFFIDAVITS

FORM 52.2 **Court File: IMM-12116-25**

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

Certificate Concerning Code of Conduct for Expert Witnesses

I, Clare Pain, having been named as an expert witness by the Applicant, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to *the Federal Courts Rules* and agree to be bound by it.

Dated August 21, 2025

Clare Pain
Clare Pain (Aug 21, 2025 18:07:31 EDT)

Clare Pain
Mount Sinai Hosital
600 University Ave, Toronto, ON M5G 1X5
Phone: 416-586-4800 x 8890

SOR/2010-176, s. 12.

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

AFFIDAVIT OF KAREEM EL-ASSAL

I, **KAREEM EL-ASSAL**, of the City of Toronto, in the Province of Ontario, DO hereby AFFIRM:

1. I am the Executive Director of the Canadian Immigration Lawyers Association (**"CILA"**), and as such, have knowledge of the matters herein deposed to, except where I have relied on the information of others, which I verily believe to be true.

2. I offer this affidavit in support of CILA's assertion of public interest standing in this Application for Leave and Judicial Review.

CILA's History and Mandate

3. CILA is a non-partisan and non-profit association. Its mandate is to promote the rule of law, access to justice, and positive change in the Canadian immigration system for all immigrants, newcomers and persons that having dealings with Canadian immigration and citizenship laws.

4. CILA was incorporated under the *Canada Not-for-profit Corporations Act* on January 1, 2021. It was conceived by a group of senior immigration lawyers to provide a national organization focused exclusively on immigration law. They recognized the need to create an organization capable of effectively representing the immigration bar, fostering an independent community of immigration lawyers, law students and academics, providing professional resources, and mentorship.

5. CILA's membership includes some 540 lawyers, academics, articling students and law students with an interest in legal issues related to immigrants, refugees, asylum seekers, international students, temporary foreign workers, and visitors to Canada. CILA uses the broad expertise of its membership to submit policy recommendations to the Canadian government, present before House of Commons and Senate committees, speak with the media, produce research reports and commentaries, and host educational seminars.

6. CILA's Board of Directors of CILA consists of the following individuals, all of whom are practicing immigration lawyers: Barbara Jo Caruso, Sarah Adler, Grace Allen, Ho Sung Kim, Rick Lamanna, Jonathan Leebosh, Ekaterina Neouimina, Nicolas Simard-Lafontaine, Erkan Ates, Thanh Phan, Max Berger, Khatidja Moloo-Alam, Joycna Kang, and Cedric Marin.

7. CILA's administrative team comprises: myself, Dinah Singh (Membership Coordinator), and Shara Brandt (Digital Marketing Coordinator).

8. CILA operates various committees that exist to execute its mandate, including educating its members and the public and promoting policy and legal reform. The committees are the: Artificial Intelligence Committee, Article Committee, Business Immigration Committee, Ethics Committee, Events Committee, Citizenship Committee, Bill C-2 Committee, Professionalism Committee, and Refugee Committee.

CILA's Expertise and Activities

9. CILA's expertise in immigration law matters is reflected in our participation in stakeholder consultations with the Immigration, Refugees and Citizenship Canada (**"IRCC"**), Public Safety Canada, Employment and Social Development Canada, Global Affairs Canada, Members of Parliament, and the Federal Court of Canada, among other government entities. CILA has appeared regularly before the House of Commons Standing Committee on Citizenship and Immigration (**"CIMM"**) and the Senate of Canada's Standing Committee on Social Affairs, Science and Technology (**"SOCI"**). CILA also contributes to the Federal Court of Canada's Bench and Bar Liaison Committee (Citizenship, Immigration, and Refugee Law).

10. Since its inception, CILA has participated in numerous advocacy activities to promote the rule of law, access to justice, and competent and ethical representation of immigration clients (in reverse chronological order):

a. On April 8, 2025, the Ontario Court of Appeal granted CILA leave to intervene in *Caruso v. Law Society of Ontario*, 2025 ONCA 270, an important case on the scope of federal jurisdiction to regulate rights of representation in immigration and refugee-related matters by paralegals.

b. Since 2024, CILA has been liaising with IRCC to advocate against IRCC's proposal to introduce Administrative Monetary Penalties (**"AMPs"**) on immigration lawyers. In September 2024, CILA submitted a letter to IRCC outlining how this proposal may exceed federal jurisdiction over immigration and citizenship and invade provincial jurisdiction over the legal profession, based on the Supreme Court of Canada's decision in *Law Society of British Columbia vs. Mangat,* [2001] 3 SCR 113.

c. In August 2025, CILA submitted a letter to the Minister of Immigration, Refugees and Citizenship (**"Immigration Minister"**) outlining how the increase in arbitrary visa refusals was undermining procedural fairness and access to justice for those seeking temporary resident visas.

d. In May 2025, CILA submitted recommendations to the Immigration Minister and Minister of Justice to improve client experience for immigration applicants, strengthening the integrity of the immigration system to protect against unscrupulous actors, and a proposal to replace AMPs on immigration lawyers with Memoranda of Understanding between IRCC and provincial law societies.

e. In March 2025, CILA made a submission to the Federal Court of Canada's public consultations on its *Strategic Plan 2026-2030* and included recommendations on how the court can help to improve access to justice for immigration applicants. These included IRCC introducing Data Integrity Units to triage and address administrative errors in decisions and also the development of an Early Dispute Resolution system.

f. In March 2025, CILA released a research report entitled *The State of Immigration Fraud in Canada*, containing ten recommendations on how the federal government

can better safeguard the immigration system to protect applicants while ensuring it is fair, transparent, and secure.

g. In December 2024, CILA released a statement in response to the federal government's border plan announcement. CILA argued it was unwise and unfair to end "flagpoling" since it would deny immigration applicants the ability to update their immigration status in urgent situations. Moreover, CILA stated that the federal government's proposal to be able to return immigration applications "when it is in the public interest" would further erode IRCC's accountability, the applicant experience, and the global competitiveness of Canada's immigration system.

h. In December 2024, CILA and the Canadian Association for Refugee Lawyers (**"CARL"**) submitted a letter to the Chief of Staff of the Immigration Minister containing proposals to reduce the application backlog at the Immigration and Refugee Board (**"IRB"**). The spirit of the proposals were to help clear the IRB's growing backlog while safeguarding procedural protections for applicants and maintaining the integrity of the immigration system.

i. In December 2024, CILA published a statement highlighting the shortcomings of federal policy reform limiting the ability of multinational corporations to transfer staff to Canada due to the potentially negative impact the reforms would have on the economy.

j. In November 2024, the *Toronto Star* published a CILA commentary outlining how the federal government can better protect the public from unscrupulous immigration consultants. In addition, CILA submitted these recommendations in a letter to the Immigration Minister. The recommendations were a function of recent public comments by the Immigration Minister outlining concerns about unethical behaviour by immigration consultants.

k. In November 2024, CILA published a statement critical of remarks by the Immigration Minister that questioned the integrity of asylum claimants. The CILA statement referenced official IRB statistics showing that the IRB accepted 79% of asylum claims in 2023, indicating that the majority of asylum claims are legitimate.

l. In November 2024, CILA issued a statement critical of Quebec's 2025 Immigration Plan, arguing the province's application backlogs are a function of policy changes introduced by Quebec in recent years, and new application restrictions announced by the province would create significant hardship and uncertainty for permanent residence applicants who have established roots and contributed to the province for several years.

m. In October 2024, CILA published a statement critical of Canada's Immigration Levels Plan 2025-2027, arguing the federal government's sudden policy shift to restrict immigration is unfair to the many temporary residents the Canadian government had welcomed under the pretense they would have clear pathways towards permanent residence.

n. In October 2024, CILA testified before the Senate of Canada's Standing Committee on National Security, Defence and Veterans Affairs regarding Bill C-20, *An Act establishing the Public Complaints and Review Commission and amending certain Acts and statutory instruments.* CILA proposed recommendations on how the Bill could be amended to better protect civil liberties.

o. In October 2024, CILA published a research report entitled "Business Insights on Immigration Policy: A Western Canada Perspective", outlining various recommendations on how federal and provincial policies can better harness immigration to support economic growth in Western Canada. The report followed an educational seminar CILA hosted in Calgary on this topic in September 2024.

p. In October 2024, CILA published an article offering commentary on the refugee and asylum policy successes and shortcomings of the federal government.

q. Since September 2024, CILA has contributed to the Federal Court's request for feedback for its Study Permit Pilot, which was launched in October 2024 to streamline the adjudication of study permit applications brought under section 72 of the *Immigration and Refugee Protection Act* (**"*IRPA*"**), by reducing procedural steps, and eliminating the need for a hearing. CILA has expressed support for this pilot as it helps to streamline access to justice for study permit applicants.

r. In September 2024, CILA issued a statement cautioning against overly restrictive immigration policies that penalize employers with genuine labour shortages and called on the federal government to consult with experts including immigration lawyers to enact reforms that would best support Canada's diverse labour market needs while balancing the integrity of the immigration system.

s. In June 2024, CILA made a written submission commenting on proposals made by the Federal Court's Rules Committee. CILA outlined concerns about the Federal Court permitting representation by non-lawyers in rare circumstances since this may lead to significant abuse and many unintended consequences given litigants could end up with ineffective representatives.

t. In June 2024, CILA met with IRCC officials and submitted a letter to the department proposing recommendations on how to strengthen the integrity of the international student program and the Post-Graduation Work Permit program.

u. In May 2024, CILA released a major research report entitled: "Let's Clean Up Our Act: A Report on Legislative Reform of *The Immigration and Refugee Protection Act.*" CILA was encouraged to complete this report following a meeting with the Deputy Minister of IRCC in the spring of 2023 when the Deputy Minister indicated the department was exploring reform of the *IRPA*. The Chair of the CILA committee that authored the report was Michael Battista, prior to his appointment as a Judge of the Federal Court in May 2024. The report contains about 30 recommendations for *IRPA* reform. These include introducing an Immigrant Bill of Rights, and Ombuds for both IRCC and the Canada Border Services Agency, and enshrining the right to legal counsel in *IRPA*. Since the release of the report, CILA has met with public officials to discuss its findings, including MP Jenny Kwan in June 2024, IRCC Deputy Minister Dr. Harpreet Kochhar in October 2024, and MP Tom Kmiec in November 2024.

v. In May 2024, SOCI published a report containing CILA's expert testimony entitled *Act Now: Solutions for Temporary and Migrant Labour in Canada.* CILA testified before the committee in November 2022.

w. In May 2024, CILA issued a statement expressing support for the Bill C-71, *An Act to Amend the Citizenship Act.* CILA noted Bill C-71 would help families negatively

impacted by 2009 *Citizenship Act* reform and that Bill C-71 would also provide women with the same rights as men in passing down Canadian citizenship.

x. In March 2024, CILA sent a letter to the Government of New Brunswick's immigration officials requesting they include more references to immigration lawyers on their webpage entitled "Using a Representative."

y. In March 2024 and February 2024, CILA was invited to appear twice before SOCI to provide expert testimony on Bill S-235, *An Act to amend the Citizenship Act and the Immigration and Refugee Protection Act.* CILA also received a letter of gratitude for its testimony from Senator Mobina Jaffer.

z. In March 2024, CILA issued a rebuttal to a news conference held by the Immigration Minister and the Minister of Employment, Workforce Development and Labour, stating that the federal government was unfairly scapegoating temporary residents amid policy choices made by the federal government since the pandemic to significantly increase the temporary resident population.

aa. In February 2024, CILA published a statement outlining how the federal government can strengthen the integrity of the international student program.

bb. In February 2024, CILA issued a statement in February 2024 on how Canada could pursue policies to regularize the status of certain undocumented workers.

cc. In January 2024, CILA wrote a letter to the College of Immigration and Citizenship Consultants (**"CICC"**) to share concerns on unlicensed consultants offering immigration services in Canada and to offer two recommendations to help address this issue.

dd. In January 2024, CILA published a statement following the federal government's decision to introduce a cap on international students, outlining additional ways the federal government could better promote its international student policy goals. CILA also released a statement on this topic following other international student changes announced by the federal government in December 2023.

ee. In November 2023, CILA published commentary on Canada's Immigration Levels Plan 2024-2026 announcement providing additional suggestions to improve the immigration system.

ff. In October 2023, CILA responded to a report by the Office of the Auditor General of Canada on permanent residence application backlogs, highlighting additional ways IRCC could reduce the backlogs.

gg. In July 2023, CILA participated in Global Affairs Canada's call for submissions in support of the development of Canada's new International Education Strategy. CILA shared ways the federal government could address fraud and unscrupulous behaviour committed by unlicensed immigration consultants.

hh. In July 2023, CILA sent a letter to the Immigration Minister expressing the importance of IRCC recognizing the right to counsel. The Immigration Minister responded in January 2024. I attach this letter as **Exhibit "A"** to my affidavit.

ii. In August 2023, CILA published a statement outlining the ways the federal government was impeding immigration lawyers from representing their clients and offering recommendations on how it could better facilitate access to counsel.

jj. In June 2023, CILA issued a statement offering suggestions on how a new IRCC policy could be strengthened to improve family reunification.

kk. In May 2023, CILA released an article addressing how the federal government was impeding foreign technology talent from being able to obtain work permits under the federal "Global Talent Stream Program."

ll. In April 2023, CILA issued a statement outlining its concerns with the revised *U.S.-Canada Safe Third Country Agreement*, noting the revisions expose vulnerable individuals and families to more danger and potential harm while they attempt to enter Canada and wait 14 days to make an asylum claim.

mm. In April 2023, CILA published commentary on the federal government's Budget 2023, applauding investments to improve application processing and also the federal government earmarking of additional funding towards legal aid programs for immigration and refugee matters across Canada in support of access to justice.

nn. In March 2023, CILA produced a statement expressing disappointment with the federal government did not consult with the public prior to announcing it would resume the collection of biometrics for temporary residence applicants effective immediately.

oo. In January 2023, CILA expressed concern with the federal government's decision to loosen eligibility criteria for temporary resident visa applications would undermine the integrity of Canada's immigration system by encouraging applicants to abuse the system.

pp. In November 2022, CILA commented on the federal government's Immigration Levels Plan 2023-2025, outlining additional ways to improve the immigration system.

qq. In September 2022, CILA wrote a letter following a meeting with MP Jasraj Singh Hallan the previous month expressing support for M-44 permanent residency for temporary foreign workers.

rr. In September 2022, CILA joined other immigration lawyer associations in writing a letter to the Immigration Minister urging him to expedite the application processing of asylum claimants in Canada.

ss. In June 2022, CILA was invited to testify before CIMM on how to improve immigration application processing. CILA stressed the importance of the federal government improving access to counsel.

tt. In June 2022, CILA testified before SOCI regarding the federal government's proposal to reform the Express Entry application management system for skilled immigrants.

uu. In May 2022, CILA testified before CIMM regarding a study on reforming Canada's parents and grandparents Super Visa Program.

vv. In May 2022, CILA testified before SOCI regarding Bill S-6, *An Act respecting regulatory modernization*, in which it expressed civil liberties concerns about the federal government's desire to be able to share applicant information with other domestic and international governments.

ww. In April 2022, CILA released a statement applauding the federal government's reforms to address labour shortages via immigration and offered ideas on other ways Canada could make work permits more accessible such as by ensuring work permit applicants have the right to legal counsel.

xx. In April 2022, CILA sent a letter to the Immigration Minister requesting reforms to better help Ukrainians fleeing war to obtain visas to enter Canada.

yy. In March 2022, CILA published a statement sharing the contact information of Canadian immigration lawyers who are available to assist Ukrainians fleeing the conflict with Russia.

zz. In February 2022, CILA released a statement offering immigration system recommendations for improvement in light of Canada's Immigration Levels Plan 2022-2024 announcement.

aaa. In February 2022, CILA testified before CIMM regarding a study on discrepancy rates by country of origin for those applying for Canadian study permits.

bbb. In January 2022, CILA was invited to present before the Senate Working Group on Immigration to share insights on current opportunities and challenges in the immigration system.

ccc. In January 2022, CILA issued a statement congratulating the federal government for launching a pilot project to help employers in Quebec recruit foreign workers to address genuine labour shortages.

ddd. In January 2022, CILA issued an endorsement of recommendations made by the Canadian Bar Association's Immigration Law Section to help resettle Afghan refugees in Canada.

eee. In January 2022, CILA joined various immigration, human rights, and civil liberties associations in submitting a request to the Inter-American Commission on Human Rights (**"IACHR"**). The associations requested the IACHR hold a thematic hearing to address the lack of proportionality in Canada's criminal inadmissibility and deportation scheme – namely that Canada removes long-term permanent residents found inadmissible due to criminality without a proportionality assessment taking place at any stage, and that this removal amounts to cruel and inhumane treatment.

fff. In December 2021, CILA released a statement expressing the importance of access to counsel in Canada's immigration system. I attach this letter as **Exhibit "B"** to my affidavit.

ggg. In December 2021, CILA published an article calling on the federal government to increase stakeholder consultations and policy transparency to help potential immigrants to Canada better plan their lives.

hhh. In December 2021, CILA published an article welcoming the federal government's announcement to make the Atlantic Immigration Program permanent.

iii. In December 2021, CILA issued statements welcoming new federal immigration officials, including the Immigration Minister, and used the opportunity to outline areas for reform.

jjj. In November and December 2021, CILA published various articles in highlighting the importance of access to counsel in the immigration system and calling on the federal government to allow applicants to be able to rely on their legal representatives to submit applications online. I attach these articles as **Exhibits "C"**, **"D"**, and **"E"** to my affidavit.

kkk. In November 2021, CILA called on the federal government to release a backlog reduction plan to provide immigration applicants with more transparency and to provide a better experience to applicants.

lll. In November 2021, CILA published a statement outlining why it believes the third iteration of a regulatory body to govern the profession of licensed immigration consultants would likely fail to protect vulnerable members of the public.

mmm. In November 2021, CILA outlined in a statement how federal policies do not treat the spouses of Canadian citizens and permanent residents fairly under existing immigration law.

nnn. In November 2021, CILA wrote welcome letters to Canada's new Immigration Minister, the Minister of Employment, Workforce Development and Labour, and the Minister of Public Safety, sharing opportunities for reform.

ooo. In August 2021, CILA sent a letter to the Immigration Minister and Minister of Justice calling on them to improve access to counsel for immigration applicants.

11. I make this affidavit for no improper purpose.

Affirmed remotely by **KAREEM EL-ASSAL** in the Province of Ontario, before me on August 26, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A. Choudhry

Commissioner for Taking Affidavits

Sujit Choudhry

KAREEM EL-ASSAL

Kareem EL-Assal

This is the **Exhibit "A"** to the Affidavit of Karim El-Assal affirmed before me remotely on August 26, 2025

A. Chowdhry

ARTICLES

CILA's Welcome to Minister Marc Miller & Priorities for Consideration

CILA(https://cila.co/author/root-2-2-2-2-2/)
July 27, 2023(https://cila.co/2023/07/27/)

To the Honourable Marc Miller, Minister of Immigration, Refugees, and Citizenship,

Dear Minister Miller,

On behalf of the Canadian Immigration Lawyers Association (CILA), a rapidly growing organization representing close to 500 members, we extend our warmest congratulations on your recent appointment as the new Minister of Immigration, Refugees, and Citizenship. We eagerly welcome your leadership and vision as we navigate the complexities and challenges of the immigration landscape in Canada.

CILA takes pride in its mission to promote excellence in immigration law and advocate for just and inclusive immigration policies. With our diverse membership of dedicated legal professionals across the country, we are committed to

supporting the Government of Canada in creating a fair, efficient, and compassionate immigration system that serves the interests of all Canadians.

We commend your dedication to public service and your significant experience in advocating for the rights of Indigenous peoples, your work with the Standing Committee on Indigenous and Northern Affairs, as well as your contributions to fostering economic growth and cultural diversity in Canada. Your expertise and commitment are valued assets as we address the pressing issues facing our nation's immigration landscape.

CILA members have a vested interest in ensuring that our immigration system remains responsive, equitable, and inclusive. As practitioners, we have witnessed firsthand the transformative impact that well-crafted immigration policies can have on individuals and communities, as well as on Canada's social fabric and economic prosperity. Our association has actively participated in various immigration-related discussions, and we take pride in being a reliable source of expertise for policymakers and legislators.

Considering your experience as a fellow lawyer and your dedication to principles of equity, diversity, and inclusion, we are eager to collaborate with your esteemed office. We believe that by working together, we can continue to advance Canada's immigration system, ensuring it remains at the forefront of global best practices.

As we embark on this journey together, we humbly request the opportunity to meet with you and members of your team to discuss the pressing concerns of our membership and to explore ways we can collectively enhance Canada's immigration landscape.

As we prioritize key issues affecting immigration in Canada, we wish to highlight the following areas that are of utmost importance to CILA and our membership:

1. Improving Client Experience: While we appreciate the spirit of recent innovations, including the TR to PR Pathways, e-landings, the new Canadian Refugee Protection Portal, and online citizenship applications, we are concerned about the challenges faced by vulnerable applicants, such as refugees and 'low' skill workers, in navigating these systems. We would like to address issues related to old and new technology, slow processing times, and generic responses to status inquiries. CILA would welcome the opportunity to share our clients' experiences

and make recommendations for meaningful and immediate change.

2. Exclusion of Counsel: Access to competent counsel is crucial in ensuring access to justice for vulnerable individuals in our communities. We advocate for the protection of the right to counsel and seek to minimize the exclusion or marginalization of lawyers from immigration processes. CILA members are eager to provide valuable insights into counsel's experience representing clients through IRCC's platforms. We are concerned about certain programs, like electronic certificates for citizenship, which exclude counsel. We urge the Department to view immigration lawyers as a resource to shorten processing times and create efficiencies rather than design programs that exclude us.

3. Addressing Challenges with IRCC Portals: IRCC's "Authorized Representative Portal" and "Employer Portal" have frequently experienced outages, causing applicants to miss deadlines and impacting Canadian employers during a period of labor shortages. We urge IRCC to promptly address these technical difficulties, provide meaningful technical support, and consult with stakeholders, including CILA, to optimize the portals.

4. Business Experience Class: We believe that promoting immigrant entrepreneurship and investment can support Canada's economic recovery. A Canadian Business Experience Class could facilitate the transition of small and medium-sized businesses from retiring baby boomers to immigrant entrepreneurs and investors. This program could be particularly beneficial to smaller regions of the country, such as Atlantic Canada.

5. Strengthening the College and Transparency: We advocate for the strengthening of the College, particularly in terms of discipline and investigation, and call for transparency in disclosing all firms and companies where regulated consultants work as employees or contractors.

6. Undocumented Workers: We propose that undocumented workers in construction and health care, with an employer willing to file and successfully obtain a Labor Market Impact Assessment (LMIA), should be able to apply for an employer-specific work permit at an inland office on an expedited basis.

7. Temporary Foreign Workers: We believe that labour market pressures across Canada and in specific sectors require that IRCC work with ESDC to exempt many

occupations from the mandatory recruitment process. The province of Quebec maintains a whole host of occupations that no longer require the employer to advertise vacancies before hiring foreign workers. The same exemptions should apply regionally across Canada where labour market information confirms acute occupation specific shortages.

8. Reimagining the Student Program: We believe in prioritizing quality over quantity in the student program to enhance the overall experience of international students.

9. Maintained Status and Travel: We suggest that individuals in maintained status be allowed to travel while their applications are pending, especially if processing times remain at 5 months.

We recognize the challenges that your office faces in addressing these matters, and we are enthusiastic about collaborating with you to find innovative and effective solutions. CILA and its members remain committed to working towards a robust and inclusive immigration system that reflects the values and aspirations of all Canadians.

Once again, congratulations on your appointment as Minister of Immigration, Refugees, and Citizenship. We look forward to the potential collaborations ahead and to contributing our expertise to the continued growth and development of Canada's immigration policies.

Thank you for your attention to these important matters, and we look forward to the potential collaborations ahead.

Sincerely,

Ravi Jain
Co-president, Canadian Immigration Lawyers Association (CILA)

This is the **Exhibit "B"** to the Affidavit of Karim El-Assal affirmed before me remotely on August 26, 2025

A. Choudhry

ARTICLES

CILA congratulates IRCC for achieving immigration target; hopes for greater transparency in 2022

CILA(https://cila.co/author/root-2-2-2-2-2/)
December 24, 2021(https://cila.co/2021/12/24/)

The Canadian Immigration Lawyers Association (CILA) congratulates IRCC for achieving their goal of landing 401,000 new permanent residents in 2021.

Immigration, Refugees and Citizenship Canada has confirmed (https://www.canada.ca/en/immigration-refugees-citizenship/news/2021/12/canada-welcomes-the-most-immigrants-in-a-single-year-in-its-history.html) it has met its ambitious permanent residents target and Canada has welcomed the most immigrants in a single year in its history.

As noted in its press release, IRCC was able to achieve the target by focusing on transitioning those in Canada during the pandemic to permanent residence. Prior

to the pandemic, most of Canada's new permanent residents landed from abroad.

IRCC deserves credit for landing 401,000 immigrants amid an extremely challenging operating environment. Despite the pandemic, the Canadian government has remained committed to immigration as a key tool to supporting Canada's economic and social prosperity. The Canadian government's desire to welcome the highest immigration targets in our country's history will help to support Canada's post-pandemic economic recovery. Prior to the pandemic, most of Canada's population and labour force growth came from immigration, and higher levels will increase immigration's contributions to annual economic growth in the coming decades.

While CILA acknowledges the pandemic continues to pose major difficulties for IRCC, it wishes to use this opportunity to call on the department to strive even higher in 2022. Achieving the country's immigration goals is a "Team Canada" effort and CILA strongly believes IRCC can do better in a variety of aspects, such as by consulting more widely with the public, being more transparent, and delivering a better client experience. As CILA continues to point out, there has been an erosion of dialogue and transparency from IRCC during the pandemic which has exacerbated challenges for the immigration system.

For example, IRCC entered 2021 with a plan to achieve its 401,000 immigration target by transitioning more temporary foreign workers (TFWs) and international students to permanent residence. This decision was made without consulting with stakeholders and experts such as economists and employers on the impacts of this policy shift. CILA stresses that it is important for federal and provincial governments to continue to provide adequate permanent residence pathways for all TFWs and students. However, as a result of IRCC's 2021 plan, there have been negative immigration policy and economic consequences.

The decision has increased backlogs since IRCC has processed the applications of those overseas at a much slower pace, punishing those abroad through no fault of their own. Many immigration applicants continue to wait in limbo with little or no communication from IRCC. From an economic point of view, Canada has experienced the weakest population growth in over 100 years (https://www150.statcan.gc.ca/n1/daily-quotidien/210929/dq210929d-eng.htm), and job vacancies are at an all-time high (https://www150.statcan.gc.ca/n1/daily-

quotidien/211220/dq211220a-eng.htm), both of which are due in part to IRCC's decision to reduce overseas arrivals. Little has also come in the way of discussion on the potential economic and labour force impacts of, for instance, inviting a Canadian Experience Class (CEC) candidate with a Comprehensive Ranking System (CRS) score of 75, as opposed to a Federal Skilled Worker Program candidate with a CRS of 470.

At the very least, IRCC could have demonstrated better faith to immigration hopefuls by advising them early in the year of the department's intentions so that candidates could plan accordingly. For example, an Express Entry hopeful that completed a language test at the start of 2021 has now seen the validity period of their test cut in half. As another example, had they been equipped with more information at the start of the year, some immigration candidates may have opted to move to Canada as a TFW or as a student in order to pursue permanent residence from within the country.

Lack of consultation and transparency this year as IRCC sought to achieve its newcomer target also hurt candidates in other ways. In May, for instance, IRCC launched six temporary streams for up to 90,000 essential workers and international graduates to apply for permanent residence. Because little advanced notice was given prior to the launch of the streams, many applicants did not have an opportunity to book a mandatory language test before the streams opened, causing them to miss out on this immigration opportunity. In addition, IRCC released instructions on how to apply for the streams less than 24 hours before the streams went live, giving candidates little time to prepare. This was in spite of IRCC warning that candidates risked being rejected if they completed their applications incorrectly. To compound matters, IRCC did not allow immigration lawyers to apply on behalf of the clients that retained them, which undermined access to justice for those who wanted a trusted and experienced professional to support them during this defining life moment. In essence, IRCC forced some candidates to choose between taking the day off work and foregoing income rather than having a competent immigration lawyer to submit their application for them.

As a final regrettable example, despite IRCC's promises to contact all pre-March 2020 Confirmation of Permanent Residence (COPR) holders by October 2021, this has not been the case, resulting in COPR holders with expired documents

continuing to wait in limbo overseas. These individuals have had their lives on hold for almost two years now as IRCC continues to neglect them.

IRCC has an opportunity to hit the reset button in 2022 as it seeks to land 411,000 immigrants. Greater dialogue and transparency from the department will help us all get through this crisis, and yield better outcomes for the country, department, economy, families, and newcomers themselves. CILA has released a variety of publications on ways IRCC can improve in 2022, including:

- CILA's welcome letter to the new Standing Committee on Citizenship and Immigration (https://cila.co/cila-issues-welcome-letter-to-new-members-of-standing-committee-on-citizenship-and-immigration-cimm/)
- CILA's statement on minister Sean Fraser's mandate letter (https://cila.co/cilas-statement-on-immigration-minister-sean-frasers-new-mandate-letter/)
- CILA's welcome letter to minister Sean Fraser (https://cila.co/cila-issues-welcome-letter-to-new-members-of-standing-committee-on-citizenship-and-immigration-cimm/)

Become a CILA Member (https://cila.co/join/)

This is the **Exhibit "C"** to the Affidavit of Karim El-Assal affirmed before me remotely on August 26, 2025

A. Choudhry

ARTICLES

IRCC needs to provide better customer service to immigrants and their lawyers

CILA(https://cila.co/author/root-2-2-2-2-2/)
December 27, 2021(https://cila.co/2021/12/27/)

*This guest article was authored by **Claudia A. Molina**, Canadian Immigration Lawyer, Cabinet Molina.*

The pandemic has caused major disruptions in processing immigration applications. A report (https://ici.radio-canada.ca/nouvelle/1168374/canada-verificateur-general-inefficacite-demande-asile-immigration) from the Auditor General states that processing delays, notably for the processing of refugee claims, have become unreasonable and, in some cases, are increasing with no end in sight.

For several years now, Members of Parliament have been inundated with calls (https://ici.radio-canada.ca/nouvelle/1649764/immigration-trudeau-ottawa-

delais-ombudsman) from discouraged clients and lawyers due to a processing delays and other issues with respect to our immigration system. This phenomenon has increased year after year.

Members of Parliament have also recently expressed frustration that their own inquiries on behalf of constituents have received no meaningful reply, on the grounds that the Department is preoccupied with the situation in Afghanistan. They are seeing a surge of requests for help when the webform or the helpline are of no assistance. For some Members of Parliament, handling these types of urgent requests from clients and lawyers in distress has become a major part of their day-to-day responsibilities.

Recently, Members of Parliament of different political parties started a petition to support the creation of an ombudsman for IRCC. Currently, several lawyers have reported a disengagement from Members of Parliament, with some saying they cannot help. This is concerning given elected officials must answer to those who elected them and their representatives.

Another major concern is that lawyers no longer have access to the full list of contacts for all the Program Managers who are the top immigration officials at visa offices worldwide. This is interfering with lawyers' rights to effectively represent their clients. No acceptable reason has ever been given for blocking the names and coordinates of certain Program Managers. Lawyers have witnessed less and less transparency when making Access to Information requests (https://www.hilltimes.com/2021/06/18/pandemic-reveals-canadas-access-to-information-system-in-a-critical-state-and-need-for-urgent-resources-says-top-watchdog/302615). Indeed, it is now well known that securing access to information in Canada is in a critical state and in need for urgent resources, as reported by Canada's information commissioner.

Our country stands for the principles of Peace, Order and Good Government. Our country is founded on the Rule of Law and transparency. The pillars of our democracy are jeopardized when Members of Parliament are not responsive or when the Immigration Department removes valuable and effective channels of communications for members of parliament. It's also challenged when the names of Program Managers are redacted from Access to Information requests, preventing effective representation from counsel.

These delays or lack of responsiveness towards our clients has led to many suffering from serious mental distress. When our clients are working, studying and claiming refugee status here, they are paying Canadian taxes. Our clients also pay processing fees and contribute to Canadian society. Many of our clients are Canadian citizens or have relatives who are Canadian citizens or Permanent Residents. Constituents deserve better service and attention.

Good government is an essential service which is fundamental to our democratic Canadian values, and it should be prioritized as such, especially during a crisis.

Become a CILA Member (https://cila.co/join/)

This is the **Exhibit "D"** to the Affidavit of Karim El-Assal affirmed before me remotely on August 26, 2025

A. Choudhry

Articles

ARTICLES

Why do Canadian immigration applicants turn to lawyers?

CILA(https://cila.co/author/root-2-2-2-2-2/)
December 29, 2021(https://cila.co/2021/12/29/)

If you can pay a trained professional to help you file a tax return, and you can retain the services of a civil litigator to assist you in a commercial dispute, why then are you not given the same right to hire experienced counsel to assist you with your immigration application? Especially when the application in question involves a fundamental human right, such as the right to stay, live, work, or study in Canada?

Here is an example to help understand the gravity of the issues that face applicants for permanent residence in Canada. The example is fictional, but based on real stories of clients we have worked with.

Marko and his family came to Canada when he was transferred as a foreign worker to work as a supervisor in the agricultural sector. He is 40, has no formal

education, and though he speaks English, he is not able to achieve a high score on a standardized language test. In short, Marko is not eligible to apply for permanent residence via Express Entry. But, the Government of Canada, in response to a very obvious and pressing need for the kind of labour Marko provides, announces a new program for people like him – people our labour market desperately needs, but who do not fit into any of our usual immigration programs – Temporary Residence to Permanent Residence.

The program is very welcome, but hastily planned and rolled out. Additionally, pursuant to IRCC's rules, Marko is not allowed to have an authorized representative to file this application for him, meaning he has to navigate the new untested portal, known for glitches and problems on top of lack of appropriate guidance on how to use it, completely by himself. Marko tries his best to create his application and upload the documents relying on often unclear instructions he is not able to fully comprehend. He hopes that he has done everything correctly, as he is concerned about being fully transparent and compliant, but some of the instructions feel like they can be interpreted in different ways. Finally, having made his best effort, he submits his application. He waits for months to hear back. His family is eagerly anticipating the news. They have now been living in Canada for five years, and he has two new children who were born here.

In time, Marko receives news from Immigration, Refugees and Citizenship Canada (IRCC) and it is completely devastating. His application is refused as incomplete because he failed to include both the certified translation of the police clearance, and the police clearance itself. Also, he paid the wrong processing fee, having miscalculated a minor detail, providing $50 less than what was required. There is a cap on the length of time allowed for a work permit in Marko's category, and after five years he is maxed out. He can not extend the permit, which means that he has no options left. Marko has to uproot his family after five years and leave Canada. His employer is left to struggle for qualified workers in a competitive labour market which is experiencing a severe shortage of people with Marko's qualifications.

This is by no means a rare scenario. One small and completely unintentional error can be fatal to an individual's ability to become a permanent resident in Canada. Something as inane as not uploading a document that was readily available, but the person just did not understand the (often confusing and contradictory) IRCC

instructions, or selecting the wrong box on an application form, or miscalculating a fee by $50, are all real scenarios we have seen that threatened to ruin a future of a whole family, who in many cases invested everything in the hope of following the available pathways for permanent immigration to Canada. There are even worse examples whereby applicants are determined to have misrepresented material facts, often just due to their unintentional misreading of the guidelines.

These immigration schemes exist in the first place for the very purpose of attracting and enticing people like Marko to come and invest their talent and skill into Canada. Just like Canadian Tax Law, Immigration Law is complicated. There are many programs, options, rules, regulations, acts, precedents, forms, documents, and various other hurdles. What's worse, these are typically in a state of flux as they need to be sufficiently malleable in order to quickly respond to changing labour and demographic needs our country is experiencing.

It is good for an immigration policy to have this kind of flexibility, however, in practice this means that things are always changing, and staying on top of the complicated scheme is the work of specialized, educated, qualified, and licensed professionals. Given a choice to apply on their own or hire an immigration lawyer to prepare their file, many people would choose the latter, because they understand how much is at stake. Not giving people that choice is a very big disservice to both the applicants and the employers who are desperate to employ their talent. And when we consider the personal implications of a life changing decision to uproot a family and invest everything to pursue an available immigration program in Canada, only to be denied the right to retain expert assistance and ultimately fail on a banality, it is no less than a violation of human rights.

Become a CILA Member (https://cila.co/join/)

This is the **Exhibit "E"** to the Affidavit of Karim El-Assal affirmed before me remotely on August 26, 2025

A. Chowdhry

ARTICLES

Lawyers are an essential part of Canada's immigration system

CILA(https://cila.co/author/root-2-2-2-2-2/)
December 8, 2021(https://cila.co/2021/12/08/)

*This guest article was authored by **David Garson**, Partner, Garson Immigration Law.*

I had a consult recently with potential clients. They were nervous, asking me the same questions multiple times… "to be sure." They looked at each other anxiously (we were on Microsoft Teams), and then thought of several permutations of possible outcomes that may impact their Canadian immigration objectives.

When I was speaking to them, I kept my voice steady. I answered each and every question with a smile on my face and a chipper tone to my voice. I wanted to be comforting and soothing. I wanted them to leave the conversation calmer than when they went in.

What does this have to do with anything? Ah, glad you asked.

I've been an immigration lawyer for a really long time. There have been many challenging days, but also lots of very rewarding weeks. When I was speaking to these people I felt…. useful and necessary. They had looked at the stuff on the websites and were confused. They had no idea how to proceed. We discussed what had to be done and made a plan. If they are generous enough to retain me, then when we do represent them, Immigration, Refugees and Citizenship Canada (IRCC) will receive an organized set of documents clearly delineating the facts and the arguments of the case.

Unfortunately, IRCC has been making it a habit to exclude immigration lawyers.

So, imagine this: It is a criminal matter… The concerned individual's whole life is on the line… And the court system of Canada says, "You don't really need representation… You'll be fine. Just follow the instructions we give you, and, by the way, we also adjudicate your case… No pressure." Have fun in prison!

Or, perhaps it's a complicated corporate deal… Millions, maybe even billions on the line… Who needs counsel then? There's Google and various informative pamphlets. Better to keep the lawyers out of it….They only complicate things.

These examples kind of strike you as ludicrous, right? Effective counsel is intrinsic to these systems. The government almost insists upon it. Yet, IRCC is resisting.

In a sense, it seems bizarre that IRCC would want to get ill-prepared applications. Wouldn't that create more work for them? Isn't what I'm doing somewhat helpful?

What I am getting at here is this: If lawyers are needed and demanded in pretty much every other type of law, it doesn't make sense why this wouldn't apply to immigration law. We help the system. We are necessary.

The sooner that IRCC recognizes this and starts working more closely with immigration lawyers, the better off IRCC and immigration applicants will be.

Become a CILA Member (https://cila.co/join/)

Registry No.: IMM-12116-25

FEDERAL COURT

BETWEEEN

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

APPLICANT'S MEMORANDUM OF LAW AND ARGUMENT

OVERVIEW

1. The Canadian Immigration Lawyers Association [**"CILA"**] brings this Application for Leave and Judicial Review for declarations under the common law, and ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms* [**"*Charter*"**], to recognize the right to counsel, at an individual's or business's own expense, for **all** immigration and refugee matters that are the responsibility of the three Respondents – the Ministers of Immigration, Refugees and Citizenship Canada [**"IRCC"**], Public Safety and Emergency Preparedness, and Employment and Social Development Canada [**"ESDC"**]. While there is no legal bar to individuals or businesses retaining and instructing counsel to represent them in any immigration and refugee matters, there is currently no corresponding obligation on the Respondents by treating them as the exclusive point of contact and accord them full participatory rights in examinations/interviews. The goal of this proceeding is to secure recognition of that obligation.

2. At present, the right to counsel is only recognized in proceedings before the Immigration and Refugee Board [**"IRB"**] under s. 167(1) *Immigration and Refugee Protection Act* [**"*IRPA*"**], and detentions under s. 10(b) of the *Charter*.[1] The portions of

[1] *Immigration and Refugee Protection Act*, SC 2001, c 27 [***IRPA***].

the immigration and refugee system that are not governed by s. 167(1) of the *IRPA* and s. 10(b) of the *Charter* are extensive and could not be more important. They include applications for temporary residence visas and permanent residence. They also include Port of Entry [**"POE"**] and consequential inland examinations/interviews, including for spousal sponsorship, Labour Market Impact Assessments [**"LMIA"**], and refugee eligibility.

3. The stakes in these processes are often high, and a negative decision can have severe consequences. Spouses may be separated from each other. A victim of domestic violence may not obtain a temporary resident permit [**"TRP"**]. A business can be left without a temporary foreign worker's expertise. An asylum-seeker can be denied entry at the border.

4. Although administrative in nature, immigration and refugee applications and examinations/interviews are far from straightforward and are growing ever more complex. Applicants require an accurate understanding of laws, policies, and practices to successfully navigate these processes. The complex and evolving nature of *IRPA* policies, portals and application forms, and examinations/interviews, can be difficult for even a sophisticated applicant to navigate on their own. Legal counsel increases the chances of success in these processes, and the lack of counsel can increase the likelihood of failure.

5. Barriers arising from language, culture, education, mental health and trauma can diminish the capacity of applicants to meaningfully participate in immigration processes. Legal counsel can mitigate the impact of these barriers.

6. The recognition of the right to counsel also increases the efficiency of Canada's immigration and refugee system. It ensures that applicants apply under the correct program and provide relevant and accurate information in applications and when being interviewed. This saves time and effort for applicants and bureaucratic decision-makers. It also reduces the need for proceedings before the IRB, and judicial reviews in the Federal Court. While the expense of counsel is borne entirely by clients, counsel furthers the public interest.

7. In the contexts not covered by s. 167(1) of the *IRPA* and s. 10(b) of the *Charter*, the Respondents: a) do not recognize the right to counsel (e.g., in POE eligibility examinations); b) recognize it in only a limited manner (e.g., in a spousal sponsorship interview when counsel is relegated to the role of observer who cannot participate); or c) downgrade it through policies and practices that discourage individuals from hiring counsel when submitting applications and circumvent counsel of record. While IRCC policies

recognize the broadest right to counsel for inland inadmissibility interviews, they are not legally binding.

8. The Court has jurisdiction to hear this challenge under s. 72(1) of the *IRPA*. The Applicants have public interest standing to bring this application, because it is impractical for individual applicants with private standing to come together in a comprehensive proceeding such as this one.

9. The Applicant has made out a fairly arguable case. The Court should grant the Applicants leave to commence judicial review.

PART I – THE FACTS

A. There is no right to counsel for large portions of the immigration and refugee system with high stakes decisions

10. The *IRPA,* s. 10(b) of the *Charter,* and the Respondents' policies and practices do not recognize the right to counsel in large portions of the immigration and refugee system where decisions have high stakes. Yet the consequences of negative decisions in those contexts can be very great for individuals and businesses. The following are some illustrative (but non-exhaustive) examples.

Temporary residence applications

11. There is no right to counsel for temporary resident applications, including work permits, study permits, and visitor visas. IRCC and ESDC make decisions on temporary residence applications through portals and application forms. LMIAs for work permits are decided through applications and employer interviews. The consequences of a negative decision are high. An unsuccessful temporary residence application can cause significant economic loss and prevent an applicant from having a future path to PR status. A negative LMIA decision can harm Canadian businesses that have been unable to find a suitable domestic employee. Negative visitor visa decisions significantly impact an individual for time-sensitive visits – for example, to attend a university graduation or support a terminally ill family member.[2]

Permanent residence ["PR"] applications

12. There is no right to counsel for applications for PR status. These include family sponsorship, economic immigration, and humanitarian and compassionate cases. IRCC

[2] Bonisteel Affidavit, paras 17-22, pp 19-21 [AR].

makes decisions on PR applications through portals and application forms. IRCC makes decisions on spousal sponsorship through applications and examinations/interviews of both spouses. The cost of a negative decision is high. An unsuccessful PR application in an economic stream can mean losing a job opportunity. An unsuccessful spousal sponsorship application can result in family separation. Similarly, a negative decision for a Protected Person may prevent them from reuniting with family members from whom they have been separated when they had to flee their country of origin for protection in Canada.[3]

Refugees: eligibility, vacation and cessation

13. CBSA's eligibility assessments are based on examinations. The stakes are high, because an unsuccessful refugee eligibility examination means an individual cannot institute a claim in Canada. If they are turned back at the Canada-U.S. border, they will likely face detention in the U.S. and possible *refoulement*. Vacation and cessation applications to the RPD can stem from examinations/interviews. An RPD application can result in the loss of refugee or PR status, and in vacation matters, Canadian citizenship.[4]

Enforcement: admissibility and removal

14. Admissibility and removal are decided through examinations/interviews. The stakes are high. An inadmissibility finding can mean denial of entry to Canada or removal once in Canada. An individual in a removal interview may end up in detention even if they nonetheless intend to comply with Canadian law, if the individual requests a deferral of removal for health reasons or expresses a fear of returning to their country of origin. Barriers may limit the ability to communicate and lack of understanding of the legal context of questions asked may prevent meaningful participation. [5]

B. The role of counsel in navigating *IRPA* matters

15. Counsel play a vital role in assisting individuals and businesses to effectively navigate immigration and refugee applications and examinations/interviews. The *IRPA* and *Immigration and Refugee Protection Regulations* [**"*IRPR*"**] are themselves complex. IRCC policies add an additional layer of complexity. Portals and application forms are not

[3] Bonisteel Affidavit, paras 17-22, pp 19-21 [AR]; Waldman Affidavit, para 14, pp 165 [AR].
[4] Neufeld Affidavit, paras 14, 30-31, pp 641, 646 [AR]; Waldman Affidavit, paras 14-15, pp 165-166 [AR].
[5] Waldman Affidavit, paras 48-49, 85-87, pp 175, 182 [AR].

straightforward and easy to complete. Examinations/interviews require providing accurate answers that are legally relevant. Even the most sophisticated laypersons can require assistance for all these processes. Indeed, this is why they retain counsel.

16. Non-citizens face additional barriers arising from language, culture, and education. Some applicants may face further barriers from mental health and trauma. Legal counsel can mitigate the impact of these barriers.

17. Individuals are not prevented from hiring counsel at their own expense. Counsel may also go on record through the submission of a IRCC Use of a Representative Form. However, IRCC and CBSA: (a) **discourage** the hiring of counsel (paras 55 to 59); (b) **circumvent** counsel by not necessarily treating them as the exclusive point of contact (paras 60 to 62); and (c) **deny** participatory rights to counsel in examinations/interviews (paras 63 to 66).

Counsel can advise on complex immigration programs

18. Counsel play a vital role in advising an individual whether they would likely qualify for a program under the *IPRA* or the *IRPR*. These programs are complex. Counsel can advise against applications with no hope of success. After counsel guide clients to the proper program, they can represent them in the application process.[6]

19. Counsel's role has become even more important because of growing complexity in immigration programs, through Ministerial Instructions under ss. 10.3(1) and 14.1(1) of the *IRPA*, and temporary public policies [**"TPPs"**] pursuant to s. 25.2(1). These programs or changes do not appear on the face of the *IRPA* or *IRPR*. They are difficult for even an educated individual to navigate without counsel.[7]

20. IRCC increasingly issues Ministerial Instructions to set eligibility criteria and application details for certain immigration applications. Ministerial Instructions are the primary means whereby IRCC governs the Express Entry program – specifically, to reset the number of points required to permit applications to move forward from a pool of candidates. This occurs approximately every two weeks, creating constantly changing eligibility requirements. Ministerial Instructions also govern the Caregiver Program, the

[6] Bonisteel Affidavit, paras 23-26, pp 21-22 [AR]; Konanur Affidavit, paras 25-27, pp 664-665 [AR].
[7] Bonisteel Affidavit, para 77, p 34 [AR]; Konanur Affidavit, para 43, p 668 [AR].

Parents and Grandparents super visa, the Rural and Northern Immigration Pilot, and the Agri-Food Immigration Pilot.[8]

21. Ministers have increasingly issued TPPs to create numerous, complex, and time-limited immigration programs. For example, Ministers have issued several TPPs to create pathways to permanent residence for international students. Ministers have also issued TPPs in response to humanitarian crises in Ukraine, Afghanistan, and Sudan, and programs that offer PR pathways for individuals with temporary status in Canada. [9]

22. Finally, there is often a gap between IRCC's written policies and how IRCC interprets those policies internally and administers them. IRCC does not publish information about how it interprets many written policies. For example, a policy to provide a TRP for victims of family violence for those with temporary status first covered visitor visa holders, then excluded them. The text of the policy did not change. Based on their experience, counsel provide advice on the gap between IRCC's written policies and their administrative interpretation.[10]

Counsel can assist with IRCC portals and application forms

23. The digitization of immigration processes through IRCC portals and application forms has led some individuals to not retain counsel to advise them on how to navigate these online processes, on the false assumptions that the information sought in an electronic application is straightforward, and decision-making is based on a mechanical application of clear legal criteria to the facts. But the reality is that portal and application forms are complex and difficult to navigate without counsel.

24. In particular, counsel can explain concepts found in portal questions and application forms whose meaning to laypersons may not match their legal meaning, which is found in a large body of Federal Court jurisprudence. For example: [11]

a. a security screening question asks whether an individual has been "detained", but a layperson may not understand or be unsure about what constitutes detention;

b. a security screening question asks whether an individual has been refused admission to Canada, but a layperson would not understand that this could

[8] Bonisteel Affidavit, para 28, pp 22 [AR].
[9] Konanur Affidavit, paras 42-44, pp 668-669 [AR].
[10] Konanur Affidavit, para 26, pp 664-665[AR].
[11] Bonisteel Affidavit, paras 63-64, 71, 74, pp 31-33 [AR]; Konanur Affidavit, paras 19-21, pp 663-664 [AR].

include a refusal of an Electronic Travel Authorization;

c. personal history questions ask about work history, including job title and specific dates of employment, but minor differences in responses may be at odds with an Express Entry profile; and

d. questions regarding family status and relationships ask applicants to list siblings, but a layperson may not understand the distinction between a brother and a half-brother based on cultural differences.

25. In addition, limited fields that lack drop down options give rise to inadvertent omission of information, including in education, employment, and personal history. Further, a question in the humanitarian and compassionate ["**H&C**"] application form asks about best interests of the child, which may be central to the application yet involves complex issues of Canadian and international law. Counsel can provide additional written submissions – which are permitted, although this is not evident from the online form.[12]

26. Some portals bar counsel access. The solution is not for counsel to access portals on behalf of applicants and complete them on their behalf from the shadows. For example, counsel cannot access citizenship and PR confirmation portals. In addition, a 2021 PR portal was unclear whether counsel was permitted access, which sidelined counsel from the process. Other portals favour applicants having counsel because of their complexity, and the fact that caps are met within hours of the program opening.[13]

Counsel can play an important role in examinations/interviews

27. Examinations/interviews are equally complex and difficult for clients to navigate without counsel. Prior to examinations/interviews, counsel can: explain the purpose of these processes to clients; obtain disclosure from CBSA or IRCC of the legal issues at stake and supporting evidence (including past applications); explain the legal issues to clients which can be complex arising from extensive Federal Court jurisprudence; advise clients of the evidence required to accurately answer those questions and avoid misrepresentations; and prepare the client for the interview.[14]

28. At the examination/interview itself, counsel can: act as a note-taker given the lack of record; ensure that the record provides a foundation for a successful judicial review if one proves necessary; ensure the client understands the legal context of the questions being

[12] Bonisteel Affidavit, para 83, pp 35-36 [AR]; Konanur Affidavit, para 21, pp 663-664 [AR].
[13] Bonisteel Affidavit, paras 53, 107-111, pp 29, 41-42 [AR].
[14] Waldman Affidavit, paras 16-19, pp 166-167 [AR].

asked because without an understanding of the legal issue underlying a question, it may be impossible to offer an appropriate response; ensure the client understands the questions put to them; explain questions to clients; ensure complete disclosure of information; raise procedural issues. As a result of attending the examination/interview, counsel have the necessary information to prepare fulsome written submissions.[15]

29. The following are examples of the complexities of examinations/interviews which underpins counsel's central role in attending examinations/interviews.

30. Admissibility: Sections 34-42 of the *IRPA* set out inadmissibility grounds, which may be assessed at a POE examination or inland interview. These include security issues, violations of human rights, various forms of criminality, health, and financial, misrepresentation, cessation of refugee status, non-compliance, and having an inadmissible family member. Each admissibility ground is distinct and raises complex legal and factual issues. A specific example is transborder criminality. Section 36(2.1) of the *IRPA* renders inadmissible to Canada foreign nationals who commit proscribed offences in the absence of any formal charge, such as firearms and smuggling offences. CBSA determines inadmissibility and may order removal without a hearing before the ID. Inadmissibility automatically cancels an individual's Electronic Travel Authorization.[16]

31. Refugee eligibility: Sections 101(1)(e) and 102(1) of the *IRPA* and s. 159.1 (4) of the *IRPR* prevent individuals from being eligible to institute a refugee claim in Canada under the *Canada-U.S. Safe Third Country Agreement* [**"*STCA*"**] unless they meet a specified list of exceptions in s. 159.5 of the *IRPR.* The most common exception is having an anchor relative in Canada. In addition, the Supreme Court's decision in *Canadian Council for Refugees* requires that IRCC consider whether "safety valves" permit entry to individuals who do not meet any of the listed exceptions. The consequences of ineligibility are severe: being turned back at the border, and possible detention in the U.S. and *refoulement*. In a recent example, IRCC made an incorrect anchor relative decision for an asylum seeker and turned them back at the border, after which they were detained in the

[15] Waldman Affidavit, paras 55-58, 63-65, 78-82 85-88, pp 176-179, 182-183 [AR]; Konanur Affidavit, paras 38-39, pp 667-668 [AR]; Bauer Affidavit, paras 26-36, 38-40, pp 488-491 [AR]; Neufeld Affidavit, para 38-40, pp 648-649 [AR].
[16] Bauer Affidavit, paras 41-48, pp 492-493 [AR].

U.S. Had counsel attended and participated in the eligibility interview, they could have ensured a correct anchor relative decision was made.[17]

32. Spousal sponsorship: IRCC interviews spouses to determine the genuineness of a marriage in a spousal sponsorship application. The questions are often very personal. An individual must fully comprehend the questions posed and provide complete responses. Moreover, if individuals do not trust government officials with personal information, they may not disclose it.[18]

33. Refugee vacation and cessation: IRCC and CBSA can address vacation and cessation issues at examinations/interviews that trigger applications before the RPD under s. 108 of the *IRPA* to determine that the need for refugee protection has ceased, or under s. 109 of the *IRPA* to determine that refugee status should be vacated for misrepresentation or the withholding of material facts relating to a relevant matter. Such determinations strip the individual of refugee and PR status, and in the case of vacation, citizenship. Refugees may not appreciate the legal significance of questions asked and may fail to understand and disclose relevant information. [19]

34. Removal: Sections 48-52 of the *IRPA* govern removal of individuals from Canada. CBSA holds interviews to arrange for removals. Individuals may be detained as flight risks if they say they fear returning to their country of origin. Removal may be deferred, but individuals would not understand how to make a deferral request – which involves evidence and legal submissions – leading to an inadequate, premature application at the interview which can then lead to a negative decision.[20]

35. ESDC: On LMIA applications, ESDC does not treat counsel as the exclusive point of contact. It regularly contacts employers directly to obtain information and conduct interviews, without even notifying counsel. This leaves clients confused as to whether counsel can be involved in the process. Unless clients inform counsel of ESDC's direct outreach, counsel will be unaware that this has occurred. Without counsel, clients may

---

[17] *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 [***CCR***]; Neufeld Affidavit, paras 11-21, 31, 46-55, pp 641-643, 646, 650-652 [AR]; Waldman Affidavit, paras 68-70, pp 179-180 [AR]; Bauer Affidavit, paras 37-40, pp 491 [AR].
[18] Waldman Affidavit, paras 57-58, p 177 [AR]. Konanur Affidavit, para 38, p 667.
[19] Waldman Affidavit, paras 75-77, pp 180-181 [AR].
[20] Waldman Affidavit, paras 85-90, pp 182-183 [AR].

provide incorrect and inaccurate information to ESDC, which can lead to misunderstandings and incorrect refusals.[21]

36. In each of these contexts, counsel's involvement maximizes the chances of a reasonable and fair decision.

Counsel can mitigate linguistic, cultural, educational, mental health, and trauma-based barriers

37. Non-citizens face additional barriers arising from language, culture, and education. Some applicants may face further barriers from mental health and trauma. These barriers undermine their capacity to meaningfully participate in these processes. Legal counsel can mitigate the impact of these barriers in applications and at examinations/interviews.

38. Linguistic barriers: Most applicants in immigration and refugee processes lack fluency in English or French. They may not understand how to properly complete forms or portals and may be unable to respond to correspondence from IRCC. They may inadvertently provide inaccurate or incomplete answers to questions, which may amount to misrepresentation. Counsel can ensure that questions are properly understood and answered with the assistance of a professional interpreter, or through direct communication when they speak the client's native language.[22]

39. Cultural barriers: Applicants in immigration and refugee processes may have a false trust in Canada's immigration system. This belief may be based on the notion that since Canada is a constitutional democracy governed by the rule of law, IRCC is invariably competent and non-adversarial and will assist clients in navigating its processes if any challenges arise. Applicants may therefore be surprised by aggressive questioning and be unprepared to respond. Counsel can step in to ensure that a question is fully addressed.[23]

40. IRCC's and CBSA's cultural sensitivity training, guidelines, and exposure to diverse cultures cannot fully prepare officers to avoid unconscious bias, particularly when dealing with many diverse applicants and operational pressures. Moreover, an officer's role is inherently different from that of counsel. Counsel can bridge the gap created by cultural differences between an officer and an applicant. By explaining how specific cultural differences influence understanding of, and compliance with, immigration laws, counsel

[21] Bonisteel Affidavit, paras 101-106, pp 40-41 [AR].
[22] Konanur Affidavit, paras 21, 28-35, pp 663-666 [AR].
[23] Konanur Affidavit, paras 36-40, pp 666-668 [AR]; Bauer Affidavit, paras 34-36, pp 490-491 [AR].

can help reduce the pressure on officers, who may not always be familiar with these nuances. This includes deference to authority or being vague when answering a question, particularly when applicants come from a corrupt or authoritarian country.[24]

41. Educational barriers: The complexity of *IRPA* and the *IRPR*, Ministerial Instructions and TPPs, portals and application forms, and examinations/interviews can be difficult for even a sophisticated lay applicant to navigate on their own. The need for counsel is even greater for individuals with a lower level of education. Counsel can mitigate this barrier by carefully explaining these issues to applicants.[25]

42. Trauma: Trauma may be caused by actual or threatened death, serious injury, or sexual violence. For some, "a sudden environmental reminder may have the effect of cognitively disorganizing the person or frightening them so much that they disassociate." Trauma may also lead to trust issues. Unresolved trauma can lead to Posttraumatic Stress Disorder which can include "functional impairment" that impacts applications and examinations/interviews.[26]

43. Counsel can ensure that all relevant information comes to light and help dispel any IRCC officer's myths that victims of violence will take certain steps – such as calling the police, speaking to family or community members, contacting health care services, or fleeing abusive relationships. Trauma-based issues may be exacerbated by cultural barriers. Although IRCC officers are trained in being sensitive to gender-based violence situations, counsel play a different role, including taking many hours to gain a client's trust so that sensitive information is disclosed to them, which counsel can ensure is disclosed in a portal or at an interview.[27]

44. Mental health: Individuals with mental health issues may have difficulty responding to questions in application forms and interviews, if they shut down or have emotional responses to questions. An individual may be unable to provide the requested responses and necessary evidence to support an application. Counsel can ensure that an individual submits a diagnosis as evidence in the immigration process which explains the

---

[24] Waldman Affidavit, paras 555, pp 176[AR]; Bauer Affidavit paras 34-36, pp 490-491 [AR].
[25] Konanur Affidavit, paras 41-44, pp 668-669 [AR].
[26] Pain Affidavit, paras 11-14, p 734 [AR]; Konanur Affidavit paras 50-55, pp 670-671, pp 669-670 [AR].
[27] Waldman Affidavit para 56, pp 176 [AR].

individual's limitations. Counsel can also work with a client to organize their evidence into a coherent chronology, that addresses all relevant issues. This role is particularly important as the *IRPA* does not provide for designated representatives in non-IRB processes.[28]

45. Refugees who are interviewed by CBSA or IRCC may mistrust government officials, be from countries ruled by oppressive regimes that do not respect human rights and the rule of law, or face gender-or LGBTQ-based harm. Such individuals may not disclose relevant information on their own. Counsel can ensure that they do.[29]

Counsel can overcome the limitations of judicial review in the Federal Court

46. The right to counsel becomes more important due to the lack of a statutory appeal under the *IRPA*. In all the above examples, aside from overseas sponsorships, and in many more matters under the *IPRA*, the only option when faced with a negative decision is to seek leave to commence an application for judicial review in the Federal Court. But judicial review has limitations, including: the inability to add to the record, the limited outcome of remitting the matter for redetermination in a successful judicial review application; and the lack of a statutory stay or removal pending judicial review. These limitations increase the importance of initial success in applications and examinations/interviews, to prevent the need to have resort to judicial review. They only reinforce the case for the recognition of the right to counsel in those processes.[30]

47. Moreover, if judicial review becomes necessary, counsel's role as note-taker at an examination/interview is important. There is often no recording of the examination/interview, and hence, no way to generate a formal transcript that can be included in the Certified Tribunal Record. Counsel's notes (attached to an affidavit) may be the only evidence available of the questions and answers in support of an application.[31]

Counsel enhances efficiency in public administration and the Federal Court

48. Finally, counsel enhances efficiency in public administration and the Federal Court. A first level decision may be the subject of a reconsideration request to IRCC or CBSA,

---

[28] Konanur Affidavit paras 45-49, pp 669-670 [AR]. See note 24.
[29] Konanur Affidavit, para 36, pp 666-667 [AR]; Waldman Affidavit, paras 17, 55, pp 166, 176 [AR].
[30] Waldman Affidavit, paras 18, 60, 67, 70, 74, 84, 89-90, pp 167, 177, 179-180, 182-183; Bonisteel Affidavit, para 67, p 179.
[31] Waldman Affidavit, paras 17 (e), 60, 67, pp 167, 177-79 [AR]; Bauer Affidavit, paras 24-25, p 488 [AR].

may proceed to the ID or an appeal at the IAD, and/or may be taken to the Federal Court by way of an application to leave to commence judicial review and possibly an accompanying stay of removal. These processes are resource intensive for bureaucracies, tribunals, and the judiciary.[32]

49. Counsel can reduce the burden on the Respondents' overtaxed bureaucracies. Fewer applications are incomplete; there is less need for a procedural fairness letter; some refusals can be avoided; and fewer reconsiderations are needed. If counsel can resolve issues by dealing directly with bureaucrats, there will be fewer IRB and Federal Court proceedings at a time of backlog.[33]

C. Limited recognition of the right to counsel under the *IRPA*, s. 10(b) of the *Charter*, and the Respondents' policies and practices

50. The right to counsel under *IRPA*, s. 10(b) of the *Charter* and IRCC, and CBSA and ESDC policies and practices applies only to a portion of Canada's large and complex immigration and refugee system. These omitted areas involve high stakes decisions.[34]

51. Section 167(1) of the *IPRA* recognizes the right to counsel in proceedings before the four divisions of the IRB: the Immigration Division, the Immigration Appeal Division, the Refugee Protection Division, and the Refugee Appeal Division. The *IPRA* does not recognize a right to counsel beyond IRB proceedings.[35]

52. While s. 10(b) of the *Charter* confers a right to counsel outside the contexts covered by s, 167(1), it applies only if an individual is detained or arrested. Moreover, *Dehghani* has interpreted the definition of "detention" narrowly in the immigration and refugee context – for example, to exclude secondary examinations.[36]

---

[32] See note 28.
[33] Konanur Affidavit, paras 34-35, p 666 [AR]; Neufeld Affidavit, paras 38-40, pp 648-649 [AR].
[34] Waldman Affidavit, paras 21-23, pp 167-168 [AR]; Bonisteel Affidavit, paras 37-38, pp 23-25; Neufeld Affidavit, paras 11-14, p 641 [AR].
[35] The scope of s. 167(1) extends the right to counsel to a "pre-hearing interview" by CBSA to gather information from a person who has been referred to the RPD for a refugee hearing: *(Citizenship and Immigration) v. Paramo de Gutierrez*, 2016 FCA 211 [***Gutierrez***]. This situation does not encompass the contexts addressed in this application.
[36] *Dehghani v. Canada (MEI)*, [1993] 1 SCR 1053 [***Dehghani***].

53. With limited exceptions, the Respondents' policies do **not** expand the contexts in which the Respondents recognize the right to counsel beyond those set out above.

Applications: IRCC and ESDC counsel of record

54. For applications, IRCC and ESDC allow businesses and individuals to designate counsel of record, through completing IRCC's Use of a Representative Form and ESDC's Appointment of a Third Party Representative Form. However, the completion of these forms does not overcome the limited recognition of the right to counsel under the *IRPA*, the *Charter*, and the Respondents' policies.

IRCC's Use of a Representative Form

55. In applications, IRCC's Use of a Representative Form is fundamental to counsel representation. Clients who complete the form appoint counsel of record. Counsel must include the form when commencing an application or when contacting IRCC or CBSA on behalf of a client for any reason.

56. From the outset, the form discourages applicants from retaining counsel by stating:[37]

> You do not need to hire a representative. It is your choice. All the forms and information that you need to apply are available for free on the Immigration, Refugees and Citizenship Canada (IRCC) Website.

57. The Use of a Representative Form guidance on IRCC's website reinforces this message. It states:[38]

a. "You are not obliged to hire a representative. We treat everyone equally, whether they use the service of a representative or not."
b. "your application will not be given special attention nor can you expect faster processing or a more favourable outcome.
c. "You do not have to pay someone for them to be your representative IRCC will conduct business with an unpaid representative if an applicant appoints them on their behalf."

58. Finally, IRCC's "Learn about representatives" webpage reiterates this point

[37] Waldman Affidavit, paras 25-26, pp 168-169, Exh "C', p 190 [AR]; Bonisteel Affidavit, paras 40-41, pp 25-26, Exh "E", p 81 [AR]; Konanur Affidavit, para 16, pp 662, Exh "D", p 702 [AR].
[38] Bonisteel Affidavit paras 41, 43, 51-52, pp 25-29, Exh "F", p 88 [AR]; Waldman Affidavit, para 29; p 170, Ex. "D", p 197 [AR] Konanur Affidavit para 17, p 662 [AR].

(emphasis in original):[39]

> **You don't need to hire a representative!**
>
> It's your choice.
>
> You can get all the forms and instructions you need to apply for a visa, a permit or citizenship for free on this website. If you follow the instructions, you should be able to fill out the forms and submit them yourself.

59. These IRCC statements have induced individuals not to hire counsel, as they wrongly assume they can proceed on their own and that IRCC can assist them.[40] These statements have also induced individuals to turn to unlicensed consultants who are untrained, lack expertise, and may be unscrupulous, resulting in individuals making meritless applications and even engaging in misrepresentation.[41]

60. When clients do hire counsel and complete a Use of a Representative Form, counsel have the reasonable expectation that they become counsel of record and are the exclusive point of contact and have full participatory rights for all interactions with IRCC or CBSA. The basis for this expectation is IRCC's guidance – Use of a Representative Form (IMM5476) – which states that counsel has permission to "conduct business on your behalf" with IRCC and CBSA and that the representative will receive all correspondence from IRCC or the CBSA, not the applicant." This expectation is reinforced by the Use of a Representative Form itself, which does not expressly circumscribe counsel's role. [42]

61. IRCC's and CBSA's practices are at odds with these reasonable expectations. For example, if counsel or applicants submit a Use of a Representative for a spousal sponsorship, counsel of record does not have full participatory rights at any examination/interview to assess the authenticity of the marriage. In addition, IRCC and CBSA have severely restricted communication in both directions by failing to provide direct email addresses for officers who are processing applications, compelling counsel to communicate through a webform that involves delayed responses, inconsistently

---

[39] See note 36.
[40] Konanur Affidavit para 18, p 663 [AR].
[41] Konanur Affidavit paras 22-24, p 664 [AR].
[42] Bonisteel Affidavit paras 43-44, pp 26-27 [AR]; Waldman Affidavit paras 28-29, 31, pp 169-170 [AR].

recognizing a duly completed Use of a Representative Forms, and circumventing counsel by communicating with applicants directly.[43]

ESDC's Appointment of a Third Party Representative Form

62. ESDC uses the Appointment of a Third Party Representative Form for counsel to become counsel of record. Counsel and clients reasonably expect counsel to be the exclusive point of contact, or at least party to all communications with ESDC in the matter – typically a LMIA application. Regrettably, ESDC routinely contacts businesses directly without including counsel of record. [44]

Examinations/interviews: IRCC and CBSA policies

63. IRCC and CBSA have three policies on examinations/interviews for non-detained individuals that are inadequate: a) IRCC's website "use of representatives: Counselling applicants during interview" page (which in substance is a policy); b) ENF 4 (addressing POE examinations); and c) ENF 5 (POE inadmissibility examinations).

IRCC website

64. For released (i.e., non-detained) cases, the website notes that persons "do not have the right to have counsel present during the interview". It then states that "in the spirit of procedural fairness, officers should permit counsel's presence". The right of counsel to be present at an interview is not the right to participate as counsel. Moreover, "officers may require counsel to leave if they are of the opinion that such an action is warranted" – which could include circumstances if counsel attempts to exercise full participatory rights. We observe that the IRCC website does not differentiate among POE examinations, inland or POE admissibility interviews, and/or Minister's Delegate [**"MD"**] admissibility interviews. A member of the public reading this website would reasonably conclude that they had no right to counsel in any of these circumstances.[45]

POE examinations

65. ENF 4 explains that when an individual has counsel with them at a POE examination, the officer "should allow the legal representative to remain present as long as they do not interfere with the examination process". Counsel may be asked to leave if they interfere, "as there is no legal obligation to allow them to be present". Moreover, ENF 4

[43] See note 39; Waldman Affidavit, para 30, p 170 [AR].
[44] Bonisteel Affidavit paras 46-49, 101-106, pp 27-28, 40-41 [AR].
[45] Waldman Affidavit paras 35-38, pp 171-172, Exh "E', p 208 [AR].

notes that there is no right to counsel if "the examination does not go beyond what is required to establish admissibility." In summary, under ENF 4, counsel may observe POE examinations but may not participate in them as counsel.[46]

Admissibility interviews

66. ENF 5 is similar to ENF 4 in respect of POE admissibility interviews. ENF 5 states: "[g]enerally, CBSA's policy is not to permit counsel at a port of entry examinations unless arrest/detention has occurred" but "if an officer is dealing with an individual who does have counsel present, the officer should allow the counsel to remain present as long as counsel does not interfere with the examination process." Like ENF 4, under ENF 5, counsel may observe but not participate in POE interviews.[47]

Admissibility interviews with broader right to counsel policies

67. Two policies do expand the scope the right to counsel beyond s. 167(1) of the *IRPA* and s. 10(b) of the *Charter*: ENF 5 for inland admissibility interviews under s. 44(1) of the *IRPA* 5 and ENF 6 for MD review of inadmissibility reports under s. 44(2) of the *IRPA.* For both, counsel have the right to be present and participate. However, for ENF 6 there is no obligation to reschedule an interview to ensure counsel can participate.[48] Moreover, neither policy is legally binding.[49]

PART II – THE ISSUES

68. This AJLR raises the following issues:

a. What is the test for leave?

b. Does the Federal Court have the jurisdiction to hear this AJLR?

c. Does the Applicant have public interest standing?

d. Does the common law right to procedural fairness grant the right to counsel?

e. Does s. 7 of the *Charter* grant the right to counsel?

f. Does s. 15 of the *Charter* grant the right to counsel?

g. Are the violations of ss. 7 and 15 of the *Charter* justified under s. 1?

---

[46] Waldman Affidavit paras 39-42, pp 172-17, Exh "F", p 213 [AR].
[47] Waldman Affidavit paras 43-46, pp 173-175, Exh "G", p 353 [AR].
[48] Waldman Affidavit paras 44-47 pp 173-175, Exh "G", p 353, Exh "H", pp 433-434 [AR].
[49] *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, para 32.

h. What is the appropriate relief?

PART III – THE LAW AND ARGUMENTS

Issue 1: What is the test for leave?

66. The question at the leave stage is simply whether the Applicant has established an arguable case.[50]

Issue 2: Does the Federal Court have the jurisdiction to hear this AJLR?

67. The Court has jurisdiction to hear this application under s. 18.1 of the *Federal Courts Act*. In s. 18.1, "the word "matter" does embrace not only a "decision or order" but any matter in respect of which a remedy may be available under section 18 of the *Federal Court Act*".[51] As a result, "policies that are unlawful or unconstitutional may be challenged at any time by way of an application for judicial review seeking, for instance, the remedy of declaratory judgment".[52]

68. The same logic applies to s. 72(1) of the *IRPA*, which further defines the scope of the term "matter" under s. 18.1 as "a decision, determination or order made, a measure taken or a question raised". Section 72(1) does not restrict s. 18.1 but is rather meant to give "the broadest possible scope" to the term "matter".[53] As a result, while most leave applications under s. 72(1) challenge a specific decision, a "matter" extends more broadly to institutional policies and practices which underpin specific decisions, including the constitutionality of legislation – "a decision is not required".[54]

69. In this application, the "matter" is the unlawfulness of the Respondents' practice to not recognize the right to counsel, and the unconstitutionality of an omission in the *IRPA*.

---

[50] *Bains v Canada (MEI)*, 1990 CarswellNat 615, [1990] FCJ No. 457, 109 NR 239, 21 ACWS (3d) 405, 47 Admin LR 317, paras 1 and 3; *Virk v Canada (MEI)*, (1991) 13 ImmLR (2d) 119 (FCTD).

[51] *Krause v. Canada (C.A.)*, 1999 CanLII 9338 (FCA), [1992] 2 F.C. 476, p 491. See also *May v. CBC/Radio Canada*, 2011 FCA 130, para 10 [***May***]; *Bird v. Canada (Attorney General)*, 2025 FCA 70, paras 1-2.

[52] *May*, para 10, citing *Sweet v. Canada* (1999), 249 N.R. 17.

[53] *Zaghbib v. Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 182, para 31; *Alhilal v. Canada (Citizenship and Immigration)*, 2025 FC 1201, paras 53-55 [***Alhilal***].

[54] *Alhilal,* para 58.

Issue 3: Does the Applicant have public interest standing?

70. CILA asserts public interest standing. CILA is a non-partisan and non-profit association focused exclusively on immigration and refugee law. It provides professional resources and mentorship and promotes positive change in the Canadian immigration system for immigrants, newcomers, and persons having dealings with Canadian immigration and citizenship laws.[55]

71. CILA meets the three-part test for public interest standing set out in *Downtown Eastside*.[56]

72. *First*, CILA raises a serious justiciable issue in this litigation. This does not mean that the case must be certain to succeed; only that its failure is not a foregone conclusion.[57] CILA asserts a right to counsel in *IRPA* matters outside s. 167(1) under the common law and/or ss. 7 and 5 of the *Charter*. The submissions advanced in this application clearly meet this test.

73. *Second*, CILA has a real stake or a genuine interest in the outcome of the litigation. *Downtown Eastside* stated that the assessment of the nature of the public interest litigant's interest "reflects the concern for conserving scarce judicial resources and the need to screen out the mere busybody."[58] CILA's Board of Directors is comprised of highly experienced immigration lawyers. CILA engages in stakeholder consultations with IRCC and other ministries and organizations – including on the right to counsel, makes regular appearances before various committees, and provides educational sessions on a wide range of immigration and refugee matters. The Ontario Court of Appeal recently granted CILA intervener standing in *Caruso*. CILA is concerned about the broad range of the impact of the right to counsel under the *IPRA* and can fully address these issues.[59]

74. *Third*, the litigation is, in all the circumstances, a reasonable and effective way to bring the right to counsel issue before the Court. This element concerns four interrelated, non-exhaustive elements: (a) the capacity to bring forward litigation, which includes

---

[55] El-Assal Affidavit, paras 3-4, p 778 [AR].
[56] *Canada (AG) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 [***Downtown Eastside***].
[57] *Downtown Eastside*, para 42.
[58] *Downtown Eastside*, para 43.
[59] El-Assal Affidavit, paras 6-10 p 778-785 [AR].

resources, expertise and the ability to offer a well-developed factual setting; (b) whether the matter transcends the interests of the party and assists disadvantaged groups in access to justice; (c) whether alternative, more effective means of litigating the matter exist; and (d) the rights and interests of others more directly affected by the litigation.[60]

75. CILA meets all four factors of this third branch. The application does not require an individual to bring the matter to Court. The "sufficiently concrete and well-developed factual setting" in this leave application supports this matter proceeding in the absence of an individual.[61] In fact, bringing one comprehensive proceeding, instead of a patchwork of applications, is the most efficient way to litigate the right to counsel issue, which CILA has the resources and expertise to do. Moreover, core to this challenge is that some individuals face barriers to immigration and refugee processes. This supports the need for CILA to litigate on behalf of such individuals.

Issue 4: Does the common law right to procedural fairness grant the right to counsel?

76. The common law recognizes the right to counsel in the absence of a *Charter* and an *IRPA*-specified right to counsel, based on the *Baker* principles of procedural fairness.[62]

The *Baker* principles

77. *Baker* ruled that administrative decisions under the *IRPA* affecting "the rights, privileges or interests of an individual" can "trigger the application of the duty of fairness".[63] *Baker* outlined the following non-exhaustive factors for determining whether procedural fairness is owed to an individual:[64]

a. the nature of the decision and the process followed;
b. the statutory scheme and the role of the decision within that scheme;
c. the importance of the decision to the individual;
d. legitimate expectations that a certain procedure will be followed; and
e. respect for the agency's choice of procedures and its institutional constraints.

---

[60] *Downtown Eastside*, paras 44 and 51.
[61] *British Columbia (AG) v. Council of Canadians with Disabilities*, 2022 SCC 27, para 71.
[62] *Baker v. Canada (MCI)*, 1999 CanLII 699 [***Baker***].
[63] *Baker*, para 20.
[64] *Baker*, paras 23-27.

78. *Baker* explained that the principle underlying procedural fairness is "that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision."[65]

79. The Court should add a further factor for immigration and refugee processes: the capacity of the individual, drawing on the Supreme Court's decision in *G. (J.)*.[66] In that case, the Court determined that the right to counsel was a principle of fundamental justice under s. 7 of the *Charter*. *G. (J.)* and set out three factors to determine if an "opportunity to present his or her case effectively" in specific circumstances requires a right to counsel: (a) the seriousness of the interests at stake; (b) the complexity of the proceedings; and (c) the capacities of the appellant.[67] *Baker* already considers the seriousness of the interests at stake and the complexity of the proceedings. It should also consider the **capacity** of the individual to deal with immigration and refugee applications and examinations/interviews when barriers arise from language, culture, education, mental health and trauma as a standalone factor. As *G. (J.)* explained, education and communication barriers limit capacity, and that the impact increases with the complexity of the matter:[68]

> The parent's capacities are also variable. Some parents may be well educated, familiar with the legal system, and possess above-average communication skills and the composure to advocate effectively in an emotional setting. At the other extreme, some parents may have little education and difficulty communicating, particularly in a court of law. It is unfortunately the case that this is true of a disproportionate number of parents involved in child custody proceedings, who often are members of the least advantaged groups in society. The more serious and complex the proceedings, the more likely it will be that the parent will need to possess exceptional capacities for there to be a fair hearing if the parent is unrepresented.

These observations hold true for immigration and refugee applicants.

Baker and G. (J.) principles applied to the right to counsel

Existing jurisprudence

80. To date, the Federal Court of Appeal and this Court have considered the right to

---

[65] *Baker*, para 28.
[66] *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46 [***G. (J.)***].
[67] *G. (J.)*, paras 73 and 75.
[68] *G. (J.)*, para 89.

counsel for examinations/interviews under the *IRPA* on a case-by-case basis and have not considered at all whether the common law right to counsel extends to applications under the *IRPA*. This proceeding is very different. The Applicant asserts the right to counsel for multiple categories of immigration and refugee contexts based on an extensive record of expert and experiential evidence.

81. The leading cases on the right to counsel in the Federal Court of Appeal have not addressed if procedural fairness requires the right to counsel across immigration and refugee processes.[69] *Ha* determined that counsel had a right to observe an overseas refugee interview.[70] *Cha* distinguished *Ha*, and held there was no duty to notify an individual of their right to counsel for an MD review of whether a person was inadmissible.[71] Both cases are expressly limited to their specific contexts. Moreover, in neither case did the Court have the benefit of a fulsome evidentiary record of the nature adduced by the Applicant here.

82. The same holds true for the decisions of this Court applying *Ha* and *Cha*, which have also been context specific. For example, *Shala* followed *Ha* and found that an officer fettered their discretion in removing counsel from an interview for a TRP that was conducted under Ministerial Instructions for human trafficking, when the officer relied on office practice that the clients' interests are best protected without the presence of counsel.[72] Conversely, *Obodo* found no right to counsel at the POE for refugee eligibility.[73] In neither case did the Court have a comprehensive record before it.

The nature of decisions and the process under the IPRA (Baker factor 1)

83. *Baker* explained that the nature of the decision and the process followed (i.e., whether it is close to a judicial process) inform procedural rights.[74] The nature of the decision and the process in examinations/interviews and applications require the right to counsel.

84. *First*, although the Courts have noted a low duty of fairness for foreign nationals in

---

[69] *Ha v. Canada (MCI) (F.C.A.)*, 2004 FCA 49, paras 40-41 [***Ha***].
[70] *Ha*, para 46.
[71] *Cha v. Canada (MCI) (F.C.A.)*, 2006 FCA 126, paras 52-56 [***Cha***].
[72] *Shala v. Canada (Citizenship and Immigration)*, 2019 FC 416, paras 18, 21-22, 31-32; see also *Brar v. Canada (Citizenship and Immigration)*, 2025 FC 130, para 49.
[73] *Obodo v. Canada (Citizenship and Immigration)*, 2022 FC 1493, paras 77-80; *Gutierrez*, para 54; *Lin v. Canada (Citizenship and Immigration)*, 2025 FC 1043, para 68 [***Lin***].
[74] *Baker*, para 23.

right to counsel cases for admissibility interviews based on the notion in *Cha* that "immigration is a privilege, and not a right" and that the *IRPA* accords foreign nationals few procedural rights, this cannot define the right to counsel under common law.[75] Just as everyone in Canada has s. 7 *Charter* rights, simply being a non-citizen cannot justify a low standard of procedural fairness.

85. *Second*, since the *Baker* factors are non-exhaustive, the fact that an *IRPA* process lacks the attributes of a judicial process should not dictate procedural rights. Although many *IRPA* processes are non-judicial, they are extremely complex. The choice to use administrative processes for high stakes matters on the ground of administrative efficiency should not be exacerbated by a lack of the right to counsel.

86. *Third*, *Ha* ruled that an interview/examination may involve a "significant legal element" – in that case, interview questions based on the refugee definition.[76] *Mason* reveals that a lawful interpretation of an *IRPA* provision may involve an assessment of Canada's international legal obligations.[77] *Ha* noted that without attending the interview, counsel cannot know the evidence upon which to offer written submissions.[78] Examinations/interviews and applications also often involve question of fact that *are necessarily tied* to the *IRPA* or to the legal interpretation of *IRPA* provisions according to the jurisprudence of this Court. For example, the question of whether a person qualifies as a visitor to Canada depends on factors the Court has deemed as appropriate benchmarks. In addition, as noted above at para 24, a seemingly simple question in an application about whether a person has even been arrested is complicated and may result in a finding of misrepresentation. Even when a spousal interview appears to focus on facts, leading to a conclusion that the "the interview's sole purpose was to clarify factual issues related to the genuineness of the relationship between the spouses", the law has pre-determined which facts are relevant or could result in a refusal.[79] Cases have ruled that there is no right to counsel when the officer merely engages in a fact-finding mission, in the absence of questions of a "legal or complex nature", are incorrect.[80]

---

[75] See for example, *Cha*, paras 23, 42-52; *Lin*, para 63.
[76] *Ha*, paras 48-53.
[77] *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, para 106.
[78] *Ha*, para 66.
[79] *Essaidi v. Canada (Citizenship and Immigration)*, 2011 FC 411, para 25.
[80] E.g. *Najafi Asl v. Canada (Citizenship and Immigration)*, 2009 FC 505, para 7.

87. *Fourth*, there are many policies and programs that stem from the *IRPA*, and counsel ensures that an individual chooses the right one. In addition, while the use of portals and electronic forms looks nothing like a judicial process, the do-it-yourself nature of applications masks the complexity of the questions posed, as set out in para 23 above. In addition, certain programs may be operational for a few hours only before they are full and knowing how to navigate them within a short timeframe is essential.[81]

The IRPA statutory scheme (Baker factor 2)

88. *Baker* noted that: "[g]reater procedural protections, for example, will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted".[82] *Ha* ruled that procedural protections were increased when no appeal rights follow a negative decision, and the remedy is restricted to judicial review.[83]

89. The *IRPA* does not permit an appeal from most decisions, as with few exceptions, there is only a right to seek leave to commence judicial review in the Federal Court, which does not carry a statutory stay of removal and requires seeking a stay in this Court. Counsel can ensure that the first level interview/examination or application is done properly, increase the chance of a positive decision, and avoid the need to seek a judicial remedy. Although *Cha* decided that a procedurally unfair denial of the right to counsel could be corrected by legal remedies such as a stay of removal pursuant to H&C considerations, and noted that judicial review exists,[84] those remedies are illusory given today's backlogs at IRCC and the Court.

The importance of certain IRPA provisions to individuals (Baker factor 3)

90. As *Baker* states: "[t]he more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated"[85] Immigration and refugee processes under the *IPRA* are serious matters and decisions are extremely important to applicants, attracting the right to counsel. These matters may carry life-changing consequences, as outlined above at paras 10 to 14, for example, spousal sponsorships seek to reunite loved ones. In addition, these

[81] Bonisteel Affidavit, paras 28, 33- 34, pp 22, 23 [AR].
[82] *Baker*, para 24.
[83] *Ha*, para 55.
[84] *Cha*, paras 46 and 48.
[85] *Baker*, para 25.

matters involve economic consequences when employers rely on an applicant filling a job vacancy to ensure that their business runs properly. The importance of the right to counsel is even greater for individuals with a capacity issue caused by barriers arising from language, culture, education, mental health and trauma.

91. *Ha* confirmed that an interview determining the grant refugee protection overseas is "potentially of great significance."[86] *Cha* held there was no right to counsel for an admissibility interview for an international student but is distinguishable. The considerations *Cha* relied on to find there was no right to counsel – Cha lacked an expectation to remain in Canada, his admissibility was determined by an administrative process without an ID referral, and other legal remedies were possible, such as PRRA or H&C relief – have been overtaken by IRCC/CBSA's policies conferring the right to counsel in the admissibility interview context, which now recognize the high stakes.[87] While policies do not extend the right to counsel to other immigration contexts, *Baker* cautions that "[t]he institutional practices and choices made by the Minister are significant, though of course not determinative factors to be concerned in the analysis".[88]

The legitimate expectations of a right to counsel (Baker factor 4)

92. *Baker* states that when there has been a representation that a certain procedure will be followed, it would be unfair to act in contravention of that procedure.[89] Just as *Ha* and *Cha* noted that the legitimate expectations flow from the policies in place, the admissibility policies create legitimate expectations for admissibility interviews, including full counsel participation.[90] For other processes, the Use of a Representative Form and Third Party Representative Form, the legal complexity of the processes, and the fact that policies exist in admissibility interviews which are also high stakes, create legitimate expectations that the Respondents understand the importance of the right to counsel, including serving as the exclusive point of contact and having full rights of participation.

Institutional choices concerning procedural fairness issue (Baker factor 5)

93. *Baker* explains that institutional choices concerning procedures and constraints

[86] *Ha*, para 58.
[87] *Cha*, paras 46-48.
[88] *Baker*, para 31.
[89] *Baker*, para 26.
[90] *Ha*, paras 62-63; *Cha*, paras 49-50.

should be respected.[91] In *Ha*, IRCC had a general policy of not having counsel present at interviews due to concerns that the interviews would be less efficient, but the Court found that such a policy fettered officers' discretion.[92] But since IRCC/CBSA's policies on admissibility expressly confer a right to counsel, there is no reason to distinguish this policy from other contexts, given the evidence that individuals in other contexts face high stakes, and that the system is rendered more, not less efficient, in recognizing the right to counsel.

Capacity of the individual (G. (J.))

94. Barriers to immigration and refugee processes include language, culture, education, mental health and trauma. These barriers limit an individual's capacity to participate meaningfully in immigration and refugee processes. Counsel levels the playing field.

95. As in *G.(J.)*, only rarely would individuals who have "superior intelligence or education, communication skills, composure, and familiarity with the legal system" be able to effectively present evidence and legal arguments to CBSA at a refugee eligibility examination, navigate questions at an admissibility examination/interview or address spousal sponsorship factors at such an interview.[93]

96. *G.(J.)* also explains that individuals are entitled to "participate meaningfully" in a proceeding. This "goes beyond mere ability to understand the case and communicate." [94] When an individual faces barriers, their capacity is limited, which infringes meaningful participation in the examination/interview or in the application process. The right to counsel offsets this limitation.

Issue 5: Does s. 7 of the *Charter* grant the right to counsel?

97. Section 7 of the *Charter* grants individuals, in certain circumstances, the right to counsel under the *IRPA*. This includes inadmissibility and refugee examinations/interviews, spousal sponsorship interviews, and H&C decisions which must be made in accordance with the best interests of the child.

Section 7 engagement

98. Section 7 is engaged when an individual is deprived of their liberty, security of the

[91] *Baker*, para 27.
[92] *Ha*, paras 64-65 and 72.
[93] *G. (J.)*, para 80.
[94] *G. (J.)*, para 83.

person or life, and/or face a risk to the deprivation of those interests. In the wake of *CCR*, section 7 is clearly engaged in this way in a POE examination or inland interview, which can lead to a refugee ineligibility determination, and ultimately, removal from Canada, and possible detention and *refoulement* by the U.S – notwithstanding the existence of curative mechanisms or "safety valves" such as pre-removal risk assessment.[95]

99. Section 7 is also engaged when an individual's family life is at stake, which is protected by the liberty and security of the person interests. The liberty interest includes "the right to make fundamental personal choices free from personal interference".[96] The liberty interest should be interpreted in a manner consistent with Article 17 of the *International Covenant on Civil and Political Rights*, which protects the right to family life.[97] This includes the parent-child relationship and the spousal relationship. *G. (J.)* held that the security of the person interests of both the parent and child are at stake in the child-parent relationship, and that "the child's psychological integrity and well-being may be seriously affected by the interference with the parent-child relationship".[98] An application for family reunification can be unintentionally improperly completed or a spousal interview can fail to extract relevant evidence or produce problematic evidence, leading to a refusal of the application and separation of spouses. An H&C application may be similarly improperly prepared, leading to family separation, contrary to the best interests of the child.

Dehghani is distinguishable

100. *Dehghani* can be distinguished. *Dehghani* ruled that a POE secondary examination of an individual who was seeking refugee protection did not amount to detention under s. 10(b) of the *Charter*, reasoning that the examination involved routine questioning or general screening. *Dehghani* assumed but did not decide that s. 7 was engaged but held that there was no denial of the principles of fundamental justice because the legislation providing a credible basis hearing after the examination took place, which included the right to counsel, satisfied *Singh*'s requirement for an oral hearing on the refugee claim. Moreover, *Dehghani* reasoned that counsel at the POE would create another inquiry "possibly just as complex and prolonged as the inquiry provided for under the Act and

---

[95] *CCR*, paras 72-73.
[96] *Carter v. Canada (Attorney General)*, 2015 SCC 5, para 64.
[97] *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47, Art. 17; *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32, para 31.
[98] *G. (J.)*, para 76.

Regulations", creating "unnecessary duplication."[99]

101. But *Dehghani* pre-dates s. 101(1)(e) of the *IRPA*, which bars most individuals from entering Canada to institute a refugee claim unless they meet a narrow *STCA* exemption. As *Ha* noted, *Dehghani* "specifically relied on the fact that Dehghani would be later entitled to a full inquiry at which he would have the right to have counsel present". In addition, *CCR 2023* determined that at the Canada-U.S. land border "safety valves" must be considered, in addition to the legislative exemptions, when determining eligibility in advance of being issued a removal order. Moreover, asylum seekers who present at the U.S.-Canada land border (as in *Ha*) do "not get another hearing where they will be entitled to have counsel present."[100] A finding of ineligibility bars an individual from entering Canada to institute a refugee claim and turns them back to the U.S. authorities where they face possible detention and deportation.

The principles of fundamental justice

102. The principles of fundamental justice include the right to procedural fairness, and in some circumstances, the right to counsel, as the right to procedural fairness encompasses "an opportunity to present his or her case effectively."[101]

103. As noted above at para 79, *G.(J.),* set out three factors to determine whether an "opportunity to present his or her case effectively" requires a right to counsel: "the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the appellant".[102]

104. Seriousness of the interests at stakes: As in *G.(J.),* the stakes are "of the highest order", as noted as paras 10 to 14, and often implicate s. 7 interests.[103] Refugee examinations can lead to a removal order, triggering a risk of detention and *refoulement*. Admissibility examinations/interviews can result in the issuance of removal orders. Similarly, spousal sponsorship applications and interviews involve separation of families.

105. *G.(J.)* distinguished between temporary and permanent separation from the parent,

---

[99] *Dehghani*, p 1078. *CCR* now confirms that s. 7 is engaged by secondary examinations that create the risk of *refoulement* and detention in the U.S, notwithstanding the existence of downstream curative mechanisms – i.e. safety valves: *CCR*, paras 72-73.
[100] *Ha*, para 54.
[101] *G. (J.)*, para 73.
[102] *G. (J.)*, para 75.
[103] *G. (J.)*, para 76.

stating that proceedings involving permanent separation heighten the interests.[104] As noted at paras 12 to 14, spousal sponsorships refusal can lead to permanent separation, refugee ineligibility and admissibility determinations can lead to a removal order or denial of entry to Canada, both serious matters, and humanitarian and compassionate applications can be decided contrary to the best interests of child.

106. Complexity of the proceedings: As noted above at para 41, individuals who lack "superior intelligence or education, communication skills, composure, and familiarity with the legal system" cannot effectively navigate the complexities of the immigration and refugee processes without counsel.[105]

107. Capacity of the individuals: Barriers in navigating the immigration and refugee process arise from language, culture, and education, the latter being a factor that *G. (J.)* noted was relevant in child custody proceedings.[106] Some applicants may face further barriers from mental health and trauma. As noted above at paras 37 to 45, these barriers limit an individual's ability to proceed with refugee POE examinations, admissibility examinations/interviews, and spousal interviews.

108. As a result, the principles of fundamental justice require the recognition of the right to counsel in the above-mentioned circumstances.

Issue 6: Does s. 15 of the *Charter* grant the right to counsel?

109. The failure to recognize the right to counsel for non-citizens in immigration and refugee applications, and examinations/interviews, violates s. 15, by discriminating based on: (a) national or ethnic origin (linked to language, culture, and education); and (b) disability (linked to mental health and trauma). Counsel can mitigate the discriminatory effects of barriers that disproportionately burden individuals from these groups in immigration and refugee processes. Recognition of the right to counsel is required by the duty to accommodate under s. 15.

[104] *G. (J.)*, para 87.
[105] *G. (J.)*, para 80.
[106] *G. (J.)*, para 89.

Test for s. 15

110. The test for s. 15 has two steps: (a) does the law or policy draw a distinction; and (b) does the distinction reinforce, perpetuate, or exacerbate disadvantage.[107]

111. For Step 1, a facially neutral law or policy draws a distinction if it has a disproportionate impact on a protected group that is forced to take on burdens more often than others. In addition:[108]

a. the requisite evidence consists of evidence regarding the claimant group's situation and evidence about the outcomes of the impugned law or policy in practice;
b. the evidentiary burden should bear in mind the asymmetry of knowledge between claimants and the state;
c. no specific form of evidence is required;
d. expert evidence, case studies, or other qualitative evidence may be sufficient, and statistics may not be available;
e. distinctions need not be the only or the dominant cause of the disproportionate impact, and need only create or contribute to the disproportionate impact; and
f. the causal connection may be satisfied by a reasonable inference.

112. In addition, under Step 1, a law may draw a distinction even if it does not affect all members of the protected group in the same way. In *Brooks*, the Supreme Court held that a plan which denied benefits to employees based on pregnancy discriminated based on sex, even though it did not burden all women employees. By extension, a facially neutral rule can also disproportionately burden members of a sub-group defined by a prohibited ground under s. 15 and draw a distinction for the purposes of Step 1.[109]

113. For Step 2, courts must examine the impact on the claimant group – whether the law or practice reinforces, perpetuates or exacerbates that group's disadvantage. In addition:[110]

a. the claimant need not prove that the government intended to discriminate;
b. courts may rely on judicial notice; and
c. courts may infer that a law or policy has the effect of reinforcing, perpetuating or exacerbating disadvantage.

---

[107] *Fraser v. Canada (AG)*, 2020 SCC 28, paras 53-55.
[108] *R. v. Sharma*, 2022 SCC 39, para 49 [***Sharma***].
[109] *Brooks v. Canada Safeway*, [1989] 1 SCR 1219.
[110] *Sharma*, para 55.

Section 15 and the duty to accommodate

114. A law or policy violates s. 15 if it fails to accommodate members of a protected group. The duty to accommodate requires governments "to take positive action to ensure that members of disadvantaged groups benefit equally from services offered to the general public". *Eldridge* is the leading example. The Supreme Court held that publicly funded hospital and physician services provided without sign language interpretation were facially neutral but had a disproportionate impact based on disability because the hearing impaired could not benefit from those services equally (Step 1), and the failure to fund medical interpretation was discriminatory because the government breached its duty to accommodate (Step 2).[111]

115. While the duty to accommodate under s. 15 has thus far been adjudicated in the context of disability, it is in principle applicable to every prohibited ground of discrimination. In this case, the duty to accommodate arises not only in relation to disability (mental health and trauma), but also national or ethnic origin (language, culture and education).

116. In addition, the "positive action" required by the duty to accommodate in this case does not require the expenditure of public funds. The issue of "undue hardship" therefore does not even arise. Rather, the duty to accommodate here requires the Respondents to affirmatively recognize the right to counsel who have been retained and paid for by applicants at their own expense by interacting with and treating them as the exclusive point of contact and giving them full participatory rights. It also requires the Respondents to not discourage applicants from retaining counsel at all.[112]

National and ethnic origin

117. The Respondents' failure to recognize the right to counsel discriminates based on national origin and ethnic origin.

118. National origin and ethnic origin are distinct. Section 15 prohibits discrimination based on "national or ethnic origin", and *Canadian Doctors for Refugee Care* recognized that the use of the disjunctive "or" means that ethnic origin and national origin are not

---

[111] *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 62, para 79 [***Eldridge***].
[112] *Eldridge*, para 79.

synonymous.[113] Ethnic origin denotes one's ethnicity and is closely tied to race and/or colour. National origin refers to persons born in a particular country or who come from a particular country.

119. National origin and ethnic origin are often interrelated. This is true in the immigration and refugee context. Applicants, by definition, have national origins other than Canada. The two grounds are linked – differences in ethnic origin are a product of the difference in national origin.

120. National and ethnic origin are tightly linked to language, culture, and education, based on the expert evidence before it:

a. Language: Most applicants in immigration and refugee processes lack fluency in English or French because of their national origin.[114]
b. Culture: A significant number of applicants in immigration and refugee processes may defer to the Respondents, because of their trust in Canadian government institutions more generally. Many of them come from countries where governments are corrupt, authoritarian, ineffective, adversarial and/or unhelpful.[115]
c. Education: A significant number of applicants in immigration and refugee processes have lower levels of education due to their national and/or ethnic origin.[116]

121. The failure to recognize the right to counsel is facially neutral, but draws a distinction based on national and ethnic origin, because of the barriers they create based on language, culture and education. While this may not be true of **every** applicant, based on *Brooks*, it need only be true for a sub-group of applicants. Specifically:

a. Language: Applicants may not understand how to determine whether they qualify for a particular program and properly complete forms or portals; may be unable to respond to correspondence from IRCC; and may inadvertently provide inaccurate or incomplete answers to questions, which may amount to misrepresentation.[117]
b. Culture: Applicants may be surprised by aggressive questioning and be unprepared to respond.[118]

---

[113] *Canadian Doctors For Refugee Care v. Canada (Attorney General)*, 2014 FC 651, para 750.
[114] See para 38.
[115] See para 39.
[116] See para 41.
[117] See para 38.
[118] See para 39.

c. Education: Applicants may be unable to navigate the complexities of the *IRPA* and the *IRPR*, Ministerial Instructions and TPPs, portals and application forms, and examinations/interviews, which can be difficult for even a sophisticated lay applicant to navigate on their own.[119]

122. These distinctions are discriminatory, because counsel can mitigate their impact and the failure to recognize the right to counsel is a breach of the duty to accommodate.

a. Language: The lack of fluency in English and French already places immigration and refugee applicants at a disadvantage, because those are the two official languages of Canada. Counsel can ensure that questions are properly understood and answered through the assistance of a professional interpreter or through direct communication in their native language.[120]

b. Culture: Many applicants come from countries where governments are corrupt, authoritarian, ineffective, adversarial and/or unhelpful. This is one of the reasons they apply to Canada. This leads applicants to not advocate for themselves. Counsel can bridge the gap created by cultural differences between an officer and an applicant by explaining how specific cultural differences influence understanding of, and compliance with, immigration laws.[121]

c. Education: Lower levels of education also place immigration and refugee applicants at a disadvantage in Canada. Counsel can mitigate this barrier by carefully explaining the processes and questions to applicants.[122]

Disability

123. The Respondents' failure to recognize the right to counsel discriminates against applicants with mental health issues and trauma, based on disability. The Supreme Court has repeatedly held that mental health is a form of mental disability and hence it falls within the prohibited ground of disability under s. 15.[123] In addition, trauma is a clinically recognized mental health issue, and is therefore, a form of mental disability under s. 15.[124]

124. The failure to recognize the right to counsel is facially neutral, but draws a distinction based on disability, because of the barriers it creates to participating in

---

[119] See para 41.
[120] *R. v. Tran*, [1994] 2 SCR 951; see para 38.
[121] See paras 39-40.
[122] See para 41.
[123] *R. v. Swain*, [1991] 1 SCR 933, pp 993-994; *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625, para 79; *Ontario (Attorney General) v. G*, 2020 SCC 38, paras 61-63 .
[124] Pain Affidavit, paras 11-14, p 734 [AR].

immigration and refugee processes. While this may not be true of **every** applicant, based on *Brooks*, it need only be true for a sub-group of applicants:

a. Mental health: Individuals with mental health issues may have difficulty responding to questions in application forms and interviews, if they shut down or have emotional responses to questions. An individual may be unable to provide the requested responses and necessary evidence to support an application.[125]
b. Trauma: Trauma may be caused by actual or threatened death, serious injury, or sexual violence. Unresolved trauma can lead to Posttraumatic Stress Disorder which can include "functional impairment" which may include the inability to accurately complete immigration application forms and effectively participate in immigration interviews.[126]

125. These distinctions are discriminatory, because counsel can mitigate their impact and the failure to recognize the right to counsel is a breach of the duty to accommodate:

a. Mental health: Counsel can ensure that an individual submits a diagnosis as evidence to explain their limitations, spend the time necessary to organize their evidence into a coherent chronology that addresses all relevant issues, and ensure that all relevant information is presented at an examination/interview. This role is particularly important as the *IRPA* does not provide for designated representatives in non-IRB processes.[127]
b. Trauma: In addition to the points listed above, counsel can ensure that all relevant information comes to light and help dispel any IRCC officer's myths that victims of violence will take certain steps. Counsel also play a different role than officers, including taking many hours to gain a client's trust so that sensitive information is disclosed to them, which counsel can ensure is disclosed in a portal or at an interview.[128]

Issue 7: Are these breaches of ss. 7 and 15 of the *Charter* justified under s. 1?

126. The Applicant reserves the right to address the Respondents' s. 1 submissions in their Reply Memorandum.

Issue 8: What is the appropriate relief?

127. If leave is granted and the judicial review application is allowed, the Court should

[125] See para 44.
[126] See para 42.
[127] See para 44.
[128] See paras 42-43.

issue a declaration that the *Immigration and Refugee Protection Act* is underinclusive and therefore constitutionally invalid under s. 52 of the *Constitution Act, 1982*. The right to counsel may be legally recognized by:

a. enacting amendments to the *Immigration and Refugee Protection Act* and promulgating regulations as necessary; and

b. the Respondents revising their existing policies or adopting new policies to recognize the right to counsel as mandatory, and to remove any language on web pages or forms that discourage retaining counsel.

128. The Court should issue a declaration pursuant to s. 18.1(3)(a) of the *Federal Courts Act* that there is a right to counsel in immigration and refugee applications, and examinations/interviews under the common law.

129. The Court should issue the following declarations under s. 24(1) of the *Charter*:

a. that there is a right to counsel in immigration and refugee applications, and examinations/interviews under s. 7 of the *Charter*, in contexts where s. 7 interests are engaged; and

b. that there is a right to counsel in immigration and refugee applications, and examinations/interviews under s. 15 of the *Charter*.

130. The Court should award costs to the Applicant, which will be addressed should leave be granted. Because the Applicant has brought the case in the public interest, if it is unsuccessful, costs should not be awarded against it.

PART IV – CONCLUSION

131. The Applicant submits that there is a fairly arguable case for judicial review.

PART V – ORDER REQUESTED

132. The Applicant respectfully requests that this Honourable Court allow leave to commence judicial review.

All of which is respectfully submitted at Toronto, this 2nd day of September 2025.

S. Choudhry

Sujit Choudhry Maureen Silcoff
Counsel for the Applicant

Registry No.: IMM-12116-25

FEDERAL COURT

B E T W E E N:

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

- and-

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS,
AND
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA**

Respondents

APPLICANT'S MEMORANDUM OF LAW AND ARGUMENT

Sujit Choudhry
Circle Barristers
325 Front St. W., Suite 200
Toronto, ON M5V 2Y1
Tel: (416) 436-3679
sujit.choudhry@circlebarristers.com

Maureen Silcoff
Silcoff, Shacter
Barristers and Solicitors
951 Mount Pleasant Rd.
Toronto, ON M4P 2L7
Tel: (416) 322-1480
msilcoff@silcoffshacter.com

Solicitors for the Applicant

FEDERAL COURT

BETWEEN:

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, and
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondents

STATEMENT PURSUANT TO RULE 10(2)(a)(vii)

The Applicant proposes that this matter be heard in the English language.

All materials will be filed in the English language.

Dated this 2nd day of September 2025 at Toronto, Ontario.

Sujit Choudhry
Circle Barristers
325 Front St. W., Suite 200
Toronto, ON M5V 2Y1
Tel: (416) 436-3679
sujit.choudhry@circlebarristers.com

Maureen Silcoff
Silcoff, Shacter
Barristers and Solicitors
951 Mount Pleasant Rd.
Toronto, ON M4P 2L7
Tel: (416) 322-1480
msilcoff@silcoffshacter.com

Solicitors for the Applicant

Registry No.: IMM-12116-25

FEDERAL COURT

B E T W E E N:

CANADIAN IMMIGRATION LAWYERS ASSOCIATION

Applicant

- and-

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION,
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS,
AND
THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA**

Respondents

APPLICATION RECORD

Sujit Choudhry
Circle Barristers
325 Front St. W., Suite 200
Toronto, ON M5V 2Y1
Tel: (416) 436-3679
sujit.choudhry@circlebarristers.com

Maureen Silcoff
Silcoff, Shacter
Barristers and Solicitors
951 Mount Pleasant Rd.
Toronto, ON M4P 2L7
Tel: (416) 322-1480
msilcoff@silcoffshacter.com

Solicitors for the Applicant