Background Paper **BP-190E**

CANADA'S IMMIGRATION PROGRAM

Penny Becklumb
Law and Government Division

Revised 10 September 2008

Library of Parliament
Bibliothèque du Parlement

Parliamentary Information and Research Service

The Parliamentary Information and Research Service of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Analysts in the Service are also available for personal consultation in their respective fields of expertise.

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

Page

Page

CANADA
LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

CANADA'S IMMIGRATION PROGRAM*

GENERAL

Canadian immigration and refugee protection issues present continual challenges and engender almost unending debate among lawmakers, public servants, and the public. Strict application of the legislation and regulations occasionally results in ordinary people hiding in churches in order to try to stave off deportation. Generous humanitarian impulses, as in the April–June 1999 reception of the Kosovo refugees, are offset by public distaste for those who arrive "illegally." There is much to consider, in addition to the human factors: immigration law is complex, the field is litigious, and the volume of applications Citizenship and Immigration Canada receives each year is enormous.

A. The Legal Framework

The foundation of Canada's immigration program is the *Immigration and Refugee Protection Act*(1) (the Act), the regulations that accompany it,(2) and the decisions of the courts and the Immigration and Refugee Board.(3) Also important are the various components of the immigration manuals, which contain extensive guidelines and instructions to officials administering the program, although the Act or regulations would prevail in the case of conflict.

---

* The original version of this document was prepared by Benjamin Dolin and Margaret Young, formerly of the Library of Parliament.

(1) *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which came into force, for the most part, on 28 June 2002.

(2) *Immigration and Refugee Protection Regulations*, S.O.R./2002-227, which came into force, with some exceptions, on 28 June 2002.

(3) Functions of the "IRB" or "Board" are discussed below.

Canada's immigration and refugee system is administered mainly by three government bodies: Citizenship and Immigration Canada (CIC), the Canada Border Services Agency (CBSA), and the Immigration and Refugee Board of Canada (the IRB or Board). CIC is the principal government department responsible for immigration and refugee matters. For example, CIC selects applicants to immigrate to Canada, issues visas for tourists, workers and students, administers programs to resettle refugees from abroad, and decides which applications for refugee status made from within Canada should be referred to the Board.

The CBSA is responsible for managing and securing Canada's borders. Created in 2003, it assumed responsibility for the intelligence, interdiction and enforcement functions formerly with CIC, the customs program formerly with the Canada Customs and Revenue Agency, and the passenger and initial import inspection services at ports of entry formerly with the Canadian Food Inspection Agency. Accordingly, the CBSA detains people for immigration reasons, and removes people who are inadmissible to Canada.

The Board is Canada's largest administrative tribunal. It makes decisions on refugee claims made from within Canada, conducts admissibility hearings and detention reviews, and hears appeals on certain immigration matters. As such, it is independent of both CIC and the CBSA.

B. Recurring Policy Issues

High-profile immigration and protection cases are reported in the press regularly. A significant number involve criminality among immigrants and the difficulty of deporting such people. Other cases involve immigrants who are possible security risks. Still others concern nannies who have violated the conditions of their work permits or families with medical problems engaging the public, press and churches in order to try to avoid removal.

While some immigration or refugee cases are unique, many raise general questions that continue to be relevant year after year. They include:

- Are immigration levels high enough? Are they too high?
- What kinds of immigrants are best for Canada?
- What settlement services are needed for new immigrants?

- How can immigrants' educational and training credentials be recognized fairly and quickly?
- What should be our policy for refugees? Does Canada accept more refugee claims than other countries?
- How should we respond to refugee claimants who arrive without documents?
- How can criminals and security risks be prevented from entering Canada?
- What is the best balance between facilitating the movement of people and exercising control of our borders?
- Why do we seem to have such trouble removing people who have no right to be in Canada and what can be done about it?
- Should we continue to deport people to countries they do not know when they have spent most of their lives in Canada?
- How can Canada fulfill its international humanitarian commitments and provide leadership?
- In a post-9/11 world, how do we defend our security interests without unduly limiting individual rights? In the wake of the case of Maher Arar, should there be safeguards or protocols on the use of information shared with other governments?

Needless to say, this paper does not answer these questions. The intention is rather to provide a general framework whereby readers may become aware of immigration issues, the immigration program and background information for what can be a very complex area of law, and government policy and administration.

IMMIGRATION AND DEMOGRAPHY: WHAT'S THE LINK?

Recently, the question of immigration has been linked closely with Canada's future as the implications of demographic changes become clearer. Given our country's relatively low birth rate and aging population, many inside and outside government have seen immigration – and greatly increased immigration – as essential both to stave off severe labour market dislocation and to protect social programs. Others are not so sure. The implications of our demographics and the current debate surrounding it thus deserve a special section of their own.

Some key demographic facts in brief are as follows.

A. Our Population

- Canada's fertility rate was 1.54 in 2005, the highest total fertility rate in seven years, due mostly to women in their 30s. This level is still far short of 2.1, the replacement level fertility, but is up from a record low of 1.49 in 2000.(4)
- Between 2001 and 2006, Canada's population increased by 5.4%. This growth, which was greater than that of any other member of the G8, was mainly due to immigration.(5)

B. Our Ages

- Canada's large "baby boom" generation, those 10 million Canadians born in the 20 years between 1947 and 1967, has begun entering their 60s, and has started retiring.
- As in almost every other developed nation in the world, Canada's population is aging. The median age is now 38.8 years, compared to 37.2 years in 2001.

C. Our Labour Market

- In the first half of the 1990s, immigration accounted for 70% of net labour force growth.(6)
- By 2011, immigration is expected to account for all net labour market growth.(7)
- Skilled labour shortages are projected, and in some sectors and regions, are already being experienced.

Assessing the foregoing, many take the view that Canada's immigration levels should remain high, or increase significantly – to 1% of the population or even much more. Some focus generally on overall demographic needs, while others stress labour market requirements, but the result is the same – support for high, and higher, levels of immigration, to deal with both immediate needs and the longer-term outlook.

---

(4) Statistics Canada, *The Daily*, "Births," 21 September 2007, available at http://www.statcan.ca/Daily/English/070921/d070921b.htm. The "fertility rate" is a hypothetical figure that represents the total number of children born on average to each woman aged 15 to 49. Canada's rate fell from 3.8 in 1960 to 1.65 in 1987, rising slowly to about 1.7 in 1992, but hovering around 1.6 for the rest of the 1990s. Replacement level for Canada is considered to be 2.1 children per woman. The last year that this level was achieved was 1971.

(5) The population of the United States grew by 5.0% during the same period. Net international migration accounted for two thirds of Canada's population growth. Source: Statistics Canada, *The Daily*, "Population and dwelling counts," 13 March 2007.

(6) Canada's Innovation Strategy, *Knowledge Matters: Skills and Learning for Canadians*, Section 5.1.

(7) Ibid.

A contrary view exists. Its proponents advance a number of different arguments. For example, they point out that although immigration can affect the labour market, and the total population, it has little effect on the age structure of the population. Even if Canada were to quadruple its immigration levels and admit about 1 million newcomers each year for the next 50 years, the median age would continue to rise to about 44.1 by 2056.(8) Only a higher fertility rate can significantly affect the age structure.(9) Nor can immigration "solve" the problems of an aging population. Demographers point out that Canada's baby boom generation has actually delayed the aging of our population relative to Western European countries and Japan. We will not reach the age structures of some European countries for approximately 20 years, so we have time to adjust our pension and medical systems and learn from their experience.

Some demographers downplay the view that labour market shortages are looming. They point to the fact that baby boomers should not be lumped together as a large group all now approaching their 60s. In fact, the baby boom generation spans about 20 years. So while the first of the baby boomers are now retiring, the younger end of the boomers are still in their 40s, working to pay off their mortgages and raise teenagers. In addition, demographers note that the baby boomers' children, dubbed the "echo generation," will be entering the labour market and fulfilling the needs of the economy in the coming years as the baby boomers retire. However, once the effects of the echo generation have been felt in the labour market, more foreign-trained professionals will be needed to cope with the ensuing "bust."(10) Demographers also point out that there is little correlation between the size of a country and its economic well-being.

Some environmentalists point out the link between population growth and environmental degradation and resource depletion, and question the basic assumption that Canada's population needs to continue to grow. They note that the current pattern of immigrant settlement largely in Canada's three major cities leads to more urban congestion. Although any suggestions that potential immigrants should be compelled in some way to live in the less populated areas has to date been controversial, ways to encourage immigrants to do so continue to be explored.

---

(8) Statistics Canada, *The Daily*, "Canada's population by age and sex," 26 October 2006, available at http://www.statcan.ca/Daily/English/061026/d061026b.htm.

(9) Ibid.

(10) The observations are taken from comments made by economist and demographer David Foot at a Waterloo Region Immigrant Employment Network forum in Kitchener, Ontario, 14 November 2007, as reported by Michael Hammond, "Plenty of boomers to fill jobs," *The Record*, [Kitchener-Waterloo], 15 November 2007, p. C10.

Others point out that the notion that older Canadians will be "dependent" on younger workers is false. They note that the health of those over 65 is better than in the past, that seniors pay taxes too, and that many make economic and non-economic contributions to society. Our view of "old age" is outdated, they argue.

According to the labour force survey, recent immigrants to Canada face challenges integrating into the labour market.(11) They experience more than double the unemployment levels of their Canadian-born counterparts, even though they are more likely to have a university education.(12) There may be numerous reasons for this situation, including: inadequate systems for evaluating foreign education and training credentials and providing for any necessary upgrading; a reluctance of Canadian employers to hire workers without Canadian experience or less than complete language fluency; and negative attitudes on the part of some employers toward hiring newcomers, particularly visible minorities. Some have argued that, until these problems are ironed out, it would be fairer to potential immigrants to keep immigration levels modest, or at least provide better information to prospective immigrants.

Finally, some commentators note that the immigration program costs money. At the federal level, significant resources are required for overseas and inland processing, for settlement and integration programs, and for the additional enforcement activities that higher immigration levels could be expected to bring. Such costs are only partly offset by user fees charged to applicants. Provincially, many newcomers require settlement services and their children typically need second-language instruction in English or French. Some immigrants need social assistance, and there are the medical services to which all permanent residents are entitled.

---

(11) The Labour Force Survey is administered by Statistics Canada. It is the agency's only source of current, monthly estimates of total employment and unemployment. It is a monthly survey involving around 50,000 Canadian households. The goal of the survey is to provide a detailed, current picture of the labour market across the country.

Beginning in January 2006, questions seeking the following information were added to the Labour Force Survey questionnaire to identify immigrants to Canada:

- country of birth;
- whether the respondent is a "landed immigrant";
- month and year the respondent was landed; and
- country where the respondent received the highest level of education.

With the inclusion of these questions, the Labour Force Survey now provides Canada with an up-to-date source of information on the labour market performance of immigrants.

(12) Statistics Canada, *The Daily*, "Study: Canada's Immigrant Labour Market," 10 September 2007.

So, is there a "right" immigration level for Canada? Clearly any such discussion must cover demography, economics, public finance, environmental factors, Canadian values and absorptive capacity (particularly of our large cities), and must also be politically sensitive. Policy makers need to avoid overselling immigration as a complete solution to demographic trends. At the same time, where significant labour market shortages appear, the immigration program should ideally be nimble enough to assist in helping to alleviate them. Meanwhile, Canada has a significant advantage, shared by the United States, in that our populations are younger than those of other Western democracies and Japan, and can learn from their experiences.(13) We also have another advantage over those countries. In contrast to their current general antipathy to immigration, our tool kit for addressing the changes our aging population will bring includes a sophisticated immigration program, whatever the actual levels may be from time to time.

GOALS OF THE IMMIGRATION PROGRAM

Current demographic questions aside, why does Canada have an immigration program? Three purposes are generally cited in answer to this question, to which we may add several more. Each purpose results in a specific component of the program.

> **A. The social component** – Canada facilitates family reunification and permits the nuclear family unit (spouses, dependent children) to immigrate with principal applicants. Objective 3(1)(d) of the Act states the objective of "…see[ing] that families are reunited in Canada."
>
> **B. The humanitarian component** – As a signatory to the *Convention relating to the Status of Refugees* and the *Convention Against Torture*, Canada hears and decides claims for protection made by people arriving spontaneously in the country. It also assists people overseas by accepting for permanent residence government-assisted and privately sponsored refugees and others in need of protection. Objectives 3(2)(b) and (d) of the Act state the goals of "…fulfil[ling] Canada's international legal obligations with respect to refugees and affirm[ing] Canada's commitment to international efforts to provide assistance to those in need of resettlement"; and "offer[ing] 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 treatment or punishment."

(13) It may be noted, however, that the United States has a significantly higher fertility rate than Canada.

> **C. The economic component** – Canada wishes to attract skilled workers and business immigrants who will contribute to the economic life of the country and fill labour market needs. Objective 3(1)(c) states the goal of "… support[ing] the development of a strong and prosperous Canadian economy …."

To the above principal objectives of the program may be added several other factors. Canada sees itself as a nation of immigrants. Immigrants at the turn of the 20th century settled the West; after World War II they arrived in our largest cities and contributed substantially to building those cities' physical infrastructure and enriching their cultural life. In accepting thousands of Indochinese refugees in 1979-1980, Canadians became more attuned to the plight of refugees and their needs. Thus, our history has made Canadians generally more accepting of immigrants and refugees, and of the multicultural society that results. These views are less common in countries without that history.

CATEGORIES OF IMMIGRANTS

A. Immigration for Social Purposes – The Family Class

As mentioned above, one of the objectives of Canada's immigration program is to reunite families. Family class immigration reached a high of 112,668 in 1993, before beginning to decline. The level in 2007 was 66,230 family members,[(14)] comprising 28% of those admitted as new permanent residents that year. It should be noted, however, that those figures do not include family members who accompany a principal applicant to Canada upon initial immigration; nor do they include those dependent family members of refugees selected abroad and who may be processed as part of the same application for permanent residence for up to one year. Thus, the family component of the immigration program is larger than the figures for the "family class" would suggest, and the economic program (in the sense of the number of individuals actually selected for economic reasons) is smaller.

(14) These figures are broken down into spouses, partners and children (48,236) and parents, grandparents, and others (17,994).

The relationships that are part of the family class are found in the following table:

Members of the Family Class
• Spouses, common-law partners, and conjugal partners[15]
• Dependent children[16]
• Children intended for adoption
• Parents, grandparents, and their dependent children
• Brothers, sisters, nephews, nieces or grandchildren if they are: orphaned, not a spouse or common-law partner, and under 18
• Any relative if the sponsor is alone in Canada and has none of the above family members to sponsor

Same-sex couples are formally recognized and accorded the same rights as opposite-sex couples.

B. Immigration for Humanitarian Purposes – Refugees and Those in Refugee-like Situations

"Protected persons" includes refugees and those in refugee-like situations. In 2007, Canada admitted 27,956 protected persons, comprising 11.8% of those admitted as new permanent residents that year. The number of refugees selected from abroad was about equal to the number determined to be refugees after arriving in Canada (11,162 and 11,700, respectively, each comprising approximately 40% of the total number of refugees). The remaining new arrivals in this class were dependants of protected persons who immigrated from abroad to join their family member(s) (5,094).

(15) A common-law partner of a sponsor is a person who is cohabiting in a conjugal relationship with the sponsor and the cohabitation has been for a period of at least one year. If a conjugal relationship has existed for at least one year but without cohabitation because of persecution or penal control, the common-law relationship is still considered to exist. A conjugal partner of a sponsor is a person who resides outside of Canada who has been in a conjugal relationship with a sponsor for at least one year.

(16) Dependent children are children under 22 who are not a spouse or common-law partner at the relevant time; children who do not meet these criteria may still be considered dependent children if they are full-time students or dependent on their parents by reason of a physical or mental disability.

1. Selection of Refugees Abroad

For many years, Canada has fostered the resettlement of refugees and those in refugee-like situations through private and government sponsorships. There are three categories of refugees or people in similar situations who may be selected abroad and admitted to Canada as permanent residents on humanitarian grounds under Canada's "Refugee and Humanitarian Resettlement Program." These three groups are:

- **The Convention Refugees Abroad Class** – Members of this class must be in need of resettlement (that is, there is no reasonable prospect now or in the near future of another permanent solution for them) and must meet the definition of Convention refugee: they must be outside their own country and have a well-founded fear of persecution for reasons of race, religion, political opinion, nationality or membership in a particular group. They may be sponsored privately or assisted by the government.
- **The Country of Asylum Class** – Members of this class must be in need of resettlement, be outside their own country and must have been, and continue to be, seriously and personally affected by civil war, armed conflict or a massive violation of human rights. There is no government sponsorship available for members of this class.
- **The Source Country Class** – Members of this class must be in need of resettlement and must be living in one of the countries that meet specified criteria. The list of countries is found in a schedule to the regulations.[17] Members must be seriously and personally affected by civil war or armed conflict in that country, must have been detained or imprisoned as a result of legitimately expressing themselves or exercising their civil rights, or meet the definition of Convention refugee.[18]

Canada selects refugees from abroad for resettlement when there is no other durable solution available within a reasonable period of time. Canada's resettlement program has a global scope, with 10,000 to 12, 000 refugees selected annually from around the world.

The resettlement program has two components: refugees selected by the government (or government-assisted refugees), and those selected through private sponsorship. Since 2002, there is a requirement for either a sponsorship undertaking or a referral from an organization with an agreement with the government or from the United Nations High Commissioner for Refugees (UNHCR). With some exceptions, people cannot apply directly to the Canadian government for recognition as refugees. Government-assisted refugees are

(17) Currently, Colombia, Democratic Republic of Congo, El Salvador, Guatemala, Sierra Leone and Sudan are members of the source country class.

(18) Individuals in the last two groups are together referred to as "humanitarian – protected persons abroad" in the regulations. These humanitarian classes of people were first established in 1997.

generally referred by the UNHCR, and their initial resettlement in Canada is entirely supported by the Government of Canada or Quebec. Privately sponsored refugees are identified by community groups and supported by them for a year upon arrival in Canada. Private sponsorship complements the government efforts, using private resources.

Refugees must qualify for entry under the Act, and must pass medical and security screening before they are admitted to Canada. Between 1998 and 2007, Canada received an average of 3,130 refugees yearly through private sponsorship, and an average of 7,950 refugees yearly through government sponsorship.(19)

Group processing is a relatively recent approach to identifying refugees abroad and bringing them to Canada. Under this approach, Canada and the UNHCR identify entire refugee populations, as opposed to individuals, and resettle these populations in the same community. Group processing exempts individuals within the group from being interviewed: the group as a whole is determined to be eligible.

Group processing has been used to resettle long-term refugees with little prospect for return to their country of origin, such as the Sudanese and Somali refugees resettled in 2003 and the Karen refugees resettled in 2006. It may also be used to respond quickly in times of crisis, as was the case with the Kosovo resettlement in 1999–2000. Groups of refugees are resettled in the same community, allowing them to maintain ties and provide support for improved integration.

2. The Refugee Status Determination System in Canada

The current refugee status determination system, and the Immigration and Refugee Board, began operation in 1989. The system was modified by legislation passed in 1992 and 1995, and further modified by the 2001 *Immigration and Refugee Protection Act*.

The refugee protection system must balance a number of factors. The law must embody the essence of the *Convention Relating to the Status of Refugees*, and its Protocol, which Canada signed in 1969. This requires signatories not to return people in any manner whatsoever to the frontiers of territories where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group or political opinion. The law must also reflect Canada's obligations under the *Convention Against Torture and Other Cruel,*

(19) Citizenship and Immigration Canada, *Facts and Figures 2007.*

Inhuman or Degrading Treatment or Punishment. Of crucial importance is the *Canadian Charter of Rights and Freedoms*. In 1985, the Supreme Court of Canada ruled that the Charter protected refugee claimants, and since that time there have been a number of important decisions affecting both the substance and procedures of immigration and refugee law.

At the same time, the law regarding refugee claimants must be stringent enough to counteract the perception that Canada does not have control of its borders. The government has long feared that, without control, support for all immigration and refugee programs would be endangered. Moreover, following the events of 11 September 2001, there has been significant pressure to put in place legal and administrative measures to respond to American fears that the United States is more vulnerable because of perceived weaknesses in the Canadian immigration and refugee protection system.

It is the government's view that control of the number of claimants in Canada is operationally essential as well, given the great number of potential claimants worldwide. Thus, deterring the arrival of new claimants in Canada by a variety of means is an important government goal.(20) The contradiction between Canada's having a world-class refugee status determination system and, at the same time attempting to block access to it, is real and irresolvable.

The previous *Immigration Act* contained only provisions relating to claims for Convention refugee status. Other grounds for protection had developed over time in the regulations and in administrative practice, and were required by precedents set by the courts. The *Immigration and Refugee Protection Act* consolidated this broader focus, using the term "claim for refugee protection." Those who are successful are called "protected persons," being either "Convention refugees" or people "in need of protection." Jurisdiction over protection decisions is still divided between the Immigration and Refugee Board and Citizenship and Immigration Canada, but the Board's mandate was widened with the new Act.

(20) Methods include the imposition of a temporary resident visa requirement on individuals from countries that produce significant numbers of claimants; fines and charges for transportation companies that bring undocumented individuals to Canada; and a network of migration integrity officers (formerly immigration control officers) overseas who work with airlines to prevent those without valid documents from boarding aircraft.

Not everyone may make a claim to protection in Canada. Immigration officers (CIC employees) screen applications for refugee status made from within Canada. Those to whom any of the following criteria apply are not eligible for protection:(21)

- Claimants under a removal order;
- Claimants who have already received refugee protection in Canada, or in another country to which they can be returned;
- Claimants who have made claims previously that the Board has rejected, or who have made claims that were ineligible, withdrawn or abandoned;
- Claimants who have been found to be inadmissible on grounds of security, violating human or international rights, or serious or organized criminality. Serious criminality is defined as either: (a) a conviction in Canada that carries a maximum punishment of 10 years or more, or for which a term of imprisonment for more than 6 months was imposed; or (b) a conviction or an act committed outside Canada that, if committed in Canada, would carry a maximum punishment of 10 years or more;
- Those who come, directly or indirectly, from a country designated by the regulations as a "safe third country" (although those words are not in the statute). The Act establishes criteria that must be applied when drawing up agreements with other countries regarding responsibility for determining claims, and for designating countries.

The events of 11 September 2001 provided an impetus for Canada and the United States to reach an agreement on which country would be responsible for examining claims in cases where the claimant entered from the other country (the "Safe Third Country Agreement").(22) The Agreement was signed on 5 December 2002 and came into effect on 29 December 2004.(23) It embodies the general principle that claimants should have their claims examined by the first of the two countries in which they are physically present. However, it covers arrivals only at land border ports of entry, and includes a number of exceptions. For example, in general, a refugee claimant may enter Canada from a United States land crossing if he or she already has a family member legally living in Canada, or if he or she is an unaccompanied minor.

---

(21) An immigration officer will not refer their case to the Board for a determination.

(22) A previous attempt had foundered in the mid-1990s.

(23) The Agreement is formally titled an "Agreement Between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries," but is commonly referred to as the "Safe Third Country Agreement."

Provisions governing the return of refugee claimants to a safe third country have been in the law since 1989, but were not implemented before the Safe Third Country Agreement with the U.S. Advocates for refugees in Canada (and in the United States) have always been staunchly opposed to the safe third country provisions, and remain so. In addition to being opposed in principle – they argue that claimants should be permitted to choose their country of asylum – they feel that in a number of respects the Canadian system is fairer to claimants. They point to the higher rates of detention in the United States, detention that is often in the same facilities as criminals; to the restricted ability to work pending hearings; to time restrictions on making a claim; to an interpretation of the Refugee Convention that is often more restrictive than that in Canada; and to the wishes of francophone claimants. In addition, claimants in Canada have more access to legal aid, and to social assistance if needed.

Immediately after the Safe Third Country Agreement came into force, Citizenship and Immigration Canada recorded a significant drop in the number of refugee protection claims made at Canada–U.S. land border points of entry.(24) During 2005, 303 refugee claimants were returned to the United States under the terms of the agreement.(25)

3. Pre-Removal Risk Assessment

In addition to the refugee determination process, the Act now contains a process called the pre-removal risk assessment (PRRA) that permits most individuals to apply to specialized departmental officials for protection before actually being removed from Canada. For example, a claimant for refugee protection whose claim was rejected by the Immigration and Refugee Board may make a protection application on the ground that there is new evidence, or evidence that it was not possible or reasonable to provide at the original hearing.

In many cases, the test for risk is broad: the grounds in the Refugee Convention, the Convention on Torture, and the risk to life or the risk of cruel and unusual treatment or punishment. If protection is granted, those individuals are allowed to apply for permanent residence. In specified cases, including those inadmissible to Canada on grounds of security, organized or serious criminality, and violating human or international rights, the test is narrower, and a successful application results only in a stay of removal. In making the decision in these kinds of cases, questions relating to any danger to the public in Canada on criminal or security grounds, and the nature and severity of the acts committed by the person, must be considered.

---

(24) Citizenship and Immigration Canada, "First Statistics Under Canada–U.S. Safe Third Country Agreement Show Decline in Refugee Claimants," June 2005.

(25) Citizenship and Immigration Canada, "A Partnership for Protection – One Year Review," November 2006.

The regulations establish strict timelines for making a protection application and submissions.(26) Although normally PRRA decisions will be made without oral hearings, the regulations establish the criteria as to when a hearing is required. The criteria relate to the person's credibility and go directly to the essence of the risk he or she claims to fear, and how central the person's evidence is to the protection decision.

The acceptance rate under the PRRA is reported to be between only 2 and 4%.

C. Immigration for Economic Purposes – The Economic Class

The third main category of immigrants Canada admits each year is the economic class – skilled workers and business people who are expected to fill labour demands and contribute economically, along with their family members. In 2007, Canada admitted 131,248 economic class immigrants and their dependants, which represented 55.4% of new permanent residents that year.

In recent years, some doubts have been expressed about the size and efficacy of the explicitly economic side of the immigration program. The principal concerns expressed by commentators and the government arise from differing perspectives. First, as noted above, the retirement of the baby boom generation beginning in this decade has led to fears that our workforce will not be sufficiently large or skilled to enable us to maintain our standard of living and support the growing numbers of aging Canadians. At the same time, shortages of skilled and professional workers in some fields have already been identified, and are predicted to continue. Immigration is seen by many as at least a partial solution to these problems.

Another perspective notes that some economic immigrants in recent years have not been as successful economically as we, and they, would have hoped. The selection system has been criticized on the grounds that it is slow and not responsive to Canada's current labour demands. By 2008, a reported 925,000 applications were waiting to be processed. Experts were predicting that application processing times would continue to increase and, within several years, could be as long as 10 years. In March 2008, the government introduced proposed changes to the immigration system to allow the Minister of Citizenship and Immigration to issue instructions to immigration officers directing which categories of applications are to be fast

(26) Applicants who file their applications within the required time limits receive an automatic stay of removal. Applicants who do not, or who have filed subsequent applications, do not receive an automatic stay.

tracked and which are to be retained, returned or otherwise disposed of.[27] There was significant opposition to these measures. Critics argued they would reduce transparency, predictability and fairness in the immigrant selection process. However, the amendments, which were included in a budget implementation bill and therefore were a matter of confidence, were passed and received Royal Assent on 18 June 2008.

It remains to be seen whether these changes will result in an immigration system that brings the workers Canada needs here faster. Even if it does, there is growing recognition that new immigrants' settlement potential in Canada may well continue to be compromised until problems with foreign credential recognition and training are solved.

1. Skilled Workers

Skilled workers are independent immigrants selected to contribute to the economy through their education, skills and training. To qualify as a skilled worker, the applicant must have worked for at least one year within the last 10 in one of the specified skill types or levels as set out in the National Occupational Classification.[28] Essentially, this means they must have worked as a manager, or held employment requiring college, university or technical training; they must also show proof of a specified level of funds available to support themselves when they arrive in Canada, unless they have already arranged employment. The selection grid ("points system") (Appendix 4) then regulates their admission.[29] Officers retain the discretion to substitute their own assessment, positively or negatively, when they feel that an applicant's point total does not accurately reflect his or her potential for successful establishment.

The selection grid awards points for education, language ability, employment experience, age, arranged employment and adaptability. Maximum points for each of the six selection factors range from 10 for adaptability to 25 for education. Points from all six factors are added to produce an applicant's total score. The pass mark is 67. Spouses or common-law partners have some advantage in that they may choose which of them is likely to score the most points, and therefore should be the principal applicant. The lower-scoring spouse is then considered a dependant in the applications.

---

(27) The changes were included in the *Budget Implementation Act, 2008*, S.C. 2008, c. 28, Part 6 (Bill C-50).

(28) There is also the possibility of designating occupations as restricted should there be too many applicants and thus a possible disruption of the Canadian labour market.

(29) The selection system also plays a role in the selection of business immigrants, but to a much smaller degree. Note that Quebec has its own points system.

While much attention has been focused on the point system and its effects, another problem has come to public attention. It involves undocumented workers, particularly in the construction industry, and particularly in the Greater Toronto Area. No one, including the government, has reliable figures on the total number of individuals involved across the country. Estimates range from 80,000 to 500,000. This particular population would seem to be composed largely of failed refugee claimants and people who have overstayed a temporary resident visa (visitor visa).

In each of 1973 and 1983, "amnesty" programs were put in place to regularize the status of illegal immigrants. In both cases, the programs failed to meet their objectives when few people applied. It was believed that many illegal workers were deterred by conditions imposed, including the requirement that they pay taxes from the previous taxation years during which they worked illegally in Canada.

Critics of such "amnesty" programs point out that regularizing the status of illegal immigrants simply encourages more foreign nationals to come to Canada illegally. In addition, they argue that it is unfair to allow cheaters to jump the queue and become permanent residents when hundreds of thousands of law-abiding applicants have been waiting abroad for years for such a chance.

2. Business Immigrants[30]

There are three categories of business immigrant: investors, entrepreneurs and the self-employed.

Investors are required to demonstrate that they have business experience according to an objective standard, and have accumulated a net worth of at least $800,000 by legal means. They must deposit $400,000 with the federal government, which distributes the money to participating provinces for investment. Investors receive no interest on the money, which they receive back in full after five years.[31]

Entrepreneurs are also required to demonstrate that they have business experience, by having managed and controlled a business at a defined level, and have accumulated a net worth of at least $300,000 by legal means. Their admission as permanent residents is conditional on owning at least one-third of a Canadian business (as defined in the regulations) and creating at least one full-time job for a person unrelated to them. They must actively participate in the management of that Canadian business for at least one year.

---

(30) Quebec has rules that differ from those described in this section.

(31) The "cost" of the investment to the investor, therefore, is typically the amount it costs to borrow $400,000 for five years. The program has often been criticized as merely offering "passports for sale."

Both entrepreneurs and investors are subject to a modified selection grid, which awards up to 35 points for their business experience, and also awards points for age, education, language and adaptability.

Individuals may be admitted in the self-employed category if they will make a significant contribution to the cultural, artistic or athletic life of Canada,[32] or if they will manage a farm in Canada.

3. Provincial Nominees

Since 1998, federal and provincial governments have made an effort, through the provincial nominee program, to meet the specific labour market or investment needs of individual provinces other than Quebec.[33] Nine provinces and one territory now have agreements under which they may nominate prospective immigrants using their own criteria.[34] The federal government then processes their applications, with most being accepted.[35] Since the inception of the provincial nominee program, the number of permanent residents admitted each year under the program has grown significantly, from 477 in 1999 to 17,095 in 2007, representing 7.2% of new permanent residents.[36]

D. Issues

1. Long Processing Times

Over the years, the length of time it can take to process immigration applications has frequently been controversial. Delays have occurred in various parts of the world, and for differing reasons. Processing times have always been long in some places – India, for example, where demand has been strong, computerization has lagged, and documents must be very carefully checked.

---

(32) They must either have been self-employed in cultural or athletic activities or have participated in such activities at a world-class level.

(33) See below for details regarding the Canada-Quebec Accord.

(34) Nunavut and the Northwest Territories do not have “provincial” nominee programs. Quebec has signed the Canada–Quebec Accord, described below.

(35) Statutory requirements relating to health, criminality and security apply.

(36) Provincial nominees are categorized as economic class immigrants. Therefore, the figure 7.2% is included in the 55.4% total for economic immigrants.

In recent years, demand for immigration from Asia has been particularly strong.(37) At the same time, processing times have increased significantly, to the point where the posted time for 50% of skilled worker applications from Beijing to be finalized is 68 months. In Hong Kong, that wait is 29 months. In New Delhi, skilled workers can expect to wait about 70 months to have their cases finalized.

In the past, informed applicants could submit their applications at a processing post with lower volumes than in their home country (so-called "offshore processing"). As of May 2003, however, all applicants for permanent residence must apply in their country of residence or country of nationality, which has exacerbated the situation in Asia.(38)

The number of immigration applications that can be processed at any post in a given period depends, in large part although not completely, on the resources dedicated to the task. Although the Asian posts have significant resources, it is clear that with more resources, more immigrants from that area could be accepted. Indeed, it is widely thought that *all* of the people in Citizenship and Immigration Canada who process immigration applications could be redeployed to Asia and the planned immigration levels could still be met. Such a move, of course, is out of the question as it would be unfair to those in other areas of the world, and would eliminate the diversity of the immigrant flow.

Meanwhile, some criticize the Department for not devoting more resources to the area and point to the unfairness of a situation that, in effect, may make it impossible in any practical sense for a Chinese person to immigrate to Canada in the economic class. Without greatly increased resources, however, it is difficult to see how these difficulties can be resolved.

2. The Economic Success of Recent Immigrants

Recent research has confirmed what had been posited for some time: recent immigrants are not prospering to the same extent as previous immigrants. A Statistics Canada research paper entitled *Will they ever converge? Earnings of immigrant and Canadian-born*

(37) China has produced more immigrants to Canada than any other country since 1998. The student flow from China is second only to that from Korea. India has consistently produced the second-highest number of immigrants.

(38) Residence must be legal and have been for a period of at least one year. Applicants from countries with no processing post must apply to the post specified by Citizenship and Immigration Canada.

workers over the last two decades[39] indicates that between 1980 and 2000, the real earnings of recent male immigrants (defined as immigrants who had arrived in the five years prior to each date) not only decreased by 7% on average,[40] but the gap between their earnings and those of their Canadian-born counterparts more than doubled (from 17% lower in 1980 to 40% lower in 2000).

More recently, in 2007, Canadian statistics reveal that the unemployment rate gap between immigrants and the Canadian-born is also widening.[41] Young immigrant women have an especially difficult time in the labour market.[42] At the same time, immigrants to Canada are much more likely to have a university education than Canadian-born men and women.[43] These findings suggest that a foreign education and work experience does not bring the economic returns in Canada that might be expected.

Another Statistics Canada study also indicates that recent immigrants are faring less well than their predecessors. *The wealth position of immigrant families in Canada*[44] indicates that immigrant families who came to Canada before 1976, even those who came with fewer assets than those already in the country, are now wealthier than Canadians born in Canada. Their median wealth is $87,000 higher than the median wealth of comparable Canadian-born families. Moreover, the wealthiest immigrants are richer than the richest Canadians. In contrast, immigrant families who came to Canada between 1986 and 1999 had a median wealth of $46,000 *less* than that of comparable Canadian-born families.[45]

---

(39) Mark Frenette and René Morissette, Statistics Canada, Analytical Studies Branch research paper series, October 2003, available at http://www.statcan.ca/english/IPS/Data/11F0019MIE2003215.htm.

(40) Within the group as a whole, there were significant differences. The real wages of male immigrants with no university degree fell by 14%; younger immigrants (but not older ones) with a university degree had a 3% increase in earnings.

(41) From 2006 to 2007, the employment rate among core working-age (25–54) immigrants rose by 2.1% or 52,000 jobs. While this was stronger than the 1.3% growth rate among the Canadian-born in the same age group, it nevertheless resulted in a wider employment rate gap because the population of immigrants increased much faster than their employment: Statistics Canada, *The Daily*, "Canada's immigrant labour market," 13 May 2008.

(42) Statistics Canada, *The Daily*, "Canada's immigrant labour market," 10 September 2007.

(43) Ibid.

(44) Xuelin Zhan, Statistics Canada, Research Paper, Analytical Studies Branch research paper series, November 2003. The paper can be found at http://www.statcan.ca/english/research/11F0019MIE/11F0019MIE2003197.pdf.

(45) A similar pattern was found for non-family units.

At the same time, low-income rates of immigrants since 1980 have increased steadily (although somewhat less in the late 1990s).(46) As the low-income rate of the Canadian-born population was declining (from 17.2% in 1980 to 14.3% in 2000), the low-income rate of recent immigrants (that is, those in Canada less than five years) increased from 24.6% to 35.8%, peaking at 47% in 1995. Even counting all immigrants as a group, the rate still rose from 17% to 20%. The increasing low-income rate was no respecter of age, family type, language, or education, although immigrants from Africa and Asia were more affected.

The implications for policy makers of the above data, and the trends they reveal, remain to be seen.

3. Immigration Consultants

Immigration consultants are "non-lawyers who, for a fee, provide advice and assistance in immigration matters, or representation before immigration tribunals."(47) During the 1990s, there were allegations of unacceptable practices in the immigration consulting industry, including incompetency and fraud. In May 2003, an advisory committee established by the Minister of Citizenship and Immigration studied the matter and presented a report recommending that the government create a self-regulatory body to regulate immigration consultants.(48) The government followed almost all of the committee's recommendations and in the fall of 2003 established the Canadian Society of Immigration Consultants (CSIC) as a federally incorporated body to regulate immigration consultants.

However, despite the establishment of CSIC, complaints about unacceptable practices in the immigration consulting industry have persisted. In April 2008, the House of Commons Standing Committee on Citizenship and Immigration began a study of the subject. In its final report released in June of that year, the committee concluded that CSIC does not have the tools it needs to effectively regulate the profession and sanction those who practise

---

(46) Garnett Picot and Feng Hou, Statistics Canada, Research Paper, Analytical Studies Branch research paper series, June 2003. The paper can be found at http://www.statcan.ca/english/research/11F0019MIE/11F0019MIE2003198.pdf.

(47) House of Commons, Standing Committee on Citizenship and Immigration, *Immigration Consultants: It's Time to Act*, Report 9, 1st Session, 35th Parliament, November 1995, p. 1.

(48) Report of the Advisory Committee on Regulating Immigration Consultants, May 2003.

immigration consulting without being authorized.(49) Accordingly, the committee recommended that CSIC be re-established under a federal statute that gives it powers similar to those exercised by provincial law societies for regulating lawyers. At the time of writing, the government had not yet responded to the report.

JUDICIAL REVIEW(50)

Any person who wishes to challenge a decision, a determination or an order made under the *Immigration and Refugee Protection Act*, whether made in Canada or abroad, may make an application to the Federal Court. Leave, or permission, is required for the application to proceed. All applications for leave to apply for judicial review are decided by one judge, normally without personal appearance by the parties. There is no appeal from a decision on a leave application.

The grounds for judicial review are those set out in the *Federal Courts Act*. They are that the body or person:

- acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- erred in law in making its decision, whether or not the error appears on the face of the record;
- based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it;
- acted, or failed to act, by reason of fraud or perjured evidence; or
- acted in any other way that was contrary to law.

Applicants who succeed in their leave applications are able to appeal the actual decision on judicial review to the Federal Court of Appeal only if the judge certifies at the time of rendering judgment that a serious question of general importance is involved and states the question.

(49) House of Commons, Standing Committee on Citizenship and Immigration, *Regulating Immigration Consultants*, Report 10, 2nd Session, 39th Parliament, June 2008.

(50) For an overview of immigration and refugee case law, see Appendix 5.

REMOVALS

People who breach the Act may be issued an order for their removal from Canada. There are three kinds of removal orders:

> **Departure orders**. These require a person to leave Canada within 30 days, and to confirm their departure with an immigration officer. If they comply, they may return to Canada at any time. If they do not comply, the departure order automatically becomes a deportation order.
>
> **Exclusion orders**. People who have been removed under an exclusion order may not legally return to Canada for one year unless they have the written permission of an immigration officer. In cases of misrepresentation, the time period is two years.
>
> **Deportation orders**. These apply to the most serious cases; those removed under a deportation order may not legally return to Canada unless they have the written permission of an immigration officer.

Individuals who do not have status in Canada who make a claim for refugee protection will receive a removal order that will not come into force until their claim is decided. Although some removal orders may be appealed to the Immigration Appeal Division, others may not, including those based on inadmissibility on grounds of security, violating human or international rights, serious criminality or organized criminality. In this context, serious criminality relates to a crime that was punished in Canada by a term of imprisonment of at least two years.(51)

The CBSA, which is responsible for detentions and removals under the Act, prioritizes removals according to the following order:

- serious criminals and those who pose a threat to national security;
- other criminals;
- failed refugee claimants; and
- other people who do not comply with the Act.

---

(51) Denying appeal rights for serious criminality is a new feature in the law. Previously, in order to deprive a person of appeal rights on the ground of serious criminality, an opinion was required of the Minister that the person posed a danger.

There is no question that the issue of removals receives a significant amount of public attention. In some cases, removal orders are not executed; in others, there is what is often perceived as an inordinate delay; in still others, people are removed, but later manage to return to Canada. In some situations, the reasons for delays or non-removals are clear and usually understandable:

- a person may make a refugee claim; if it is accepted, the removal order is cancelled;
- other judicial processes may require the person's presence;
- the individual may be in jail;
- appeals may not be exhausted; or
- there may be a temporary moratorium on removals to a country because of dangerous conditions there.

In other situations, delays or non-removals may be harder to explain. People may evade apprehension despite being included in nation-wide data banks. Travel documents may be difficult to obtain from the country to which the person will be removed, a difficulty that may be increased if the person has managed to hide his or her identity or even citizenship. Appeals and judicial reviews may last literally for years in some cases.

In a May 2008 report to Parliament, the Auditor General found that the CBSA had made a number of improvements in its management of detentions and removals since the last audit in 2003. The agency better estimates the number of outstanding cases and it sets up processes to help it focus its efforts on removing the higher-risk individuals, the Auditor General reported. However, she also noted that there is a growing number of people who might be in Canada illegally. Specifically, at the time of the audit, there were 41,000 individuals with outstanding immigration warrants for removal whose whereabouts were unknown to the agency.

The Auditor General raised several other issues in the 2008 report. She commented that the CBSA's information on detentions was incomplete, that detention decisions were inconsistent, that standards for detention facilities were not monitored, and that the CBSA was not managing detention costs effectively. The CBSA agreed with the two specific recommendations the Auditor General made in this regard, and committed to working towards further improvements.

Finally, court decisions affect the government's ability to remove people. See, in particular, the *Pushpanathan* case in Appendix 5.

SECURITY CERTIFICATES

Division 9 of the *Immigration and Refugee Protection Act* contains provisions for dealing with removal cases involving sensitive information that the government wants to keep entirely or partly confidential. It may be security or criminal intelligence information, or information that was obtained in confidence from the government of a foreign country, for example. When a removal based on such information is deemed advisable, the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration may jointly sign a certificate stating that a permanent resident or foreign national is inadmissible and the grounds for that assertion. The certificate is then referred to the Federal Court, along with the secret information on which it is based, and a summary of that information is disclosed to the person named in the certificate.

If the judge determines the certificate is not reasonable, it is quashed. If the judge determines the certificate is reasonable, it becomes an enforceable removal order.

In 2006, three men named in security certificates challenged the constitutional validity of the security certificate procedure before the Supreme Court of Canada.(52) The Court released its decision on 23 February 2007, overturning an earlier decision of the Federal Court of Appeal.(53)

The Court found that two provisions of the *Immigration and Refugee Protection Act* relating to security certificates violated the *Canadian Charter of Rights and Freedoms.* First, section 78(*g*) was found to violate section 7 of the Charter, because it allowed "for the use of evidence that is never disclosed to [the person named in a security certificate] without providing adequate measures to compensate for this non-disclosure." Section 7 of the Charter guarantees to "everyone" the right to "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The Court found a second Charter infringement relating to the time allowed before a mandatory review of a decision to detain someone named in a security certificate (section 84(2) of the *Immigration and Refugee Protection Act.*) That provision was found to violate "the guarantee against arbitrary detention in s. 9 of the *Charter*, a guarantee which encompasses the right to prompt review of detention under s. 10(c) of the *Charter*."

---

(52) The three men were Adil Charkaoui, Hassan Almrei and Mohamed Harkat.

(53) *Charkaoui* v. *Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350.

In response to the first Charter violation, the Court declared the procedures for judicial review of security certificates and detention to be of no force or effect. However, it suspended this declaration for one year in order to give Parliament time to amend the law.(54)

The government's legislative response to the Supreme Court ruling came late in 2007, when it introduced a bill to amend the security certificate procedure. Bill C-3 proposed a number of changes to the procedure, but the principal thrust of the bill was to involve a "special advocate" in the procedure to protect the interests of the person named in the security certificate. The special advocate would receive a copy of all the secret information, and then, on behalf of the person named in the certificate, challenge its reliability, sufficiency and relevance. As well, the special advocate would cross-examine witnesses and make submissions on behalf of the person, and even challenge the need to keep the information secret.

Most witnesses appearing before both the House of Commons and Senate committees that studied the bill were opposed to the amendments. They believed that the amendments did not go far enough to protect the interests of the person named, and that more could be done to make the process fair. The House of Commons made some amendments to Bill C-3, but with the Court-imposed deadline looming, Bill C-3 passed through the Senate in just six days with no further amendments.

However, in its report to the Senate on Bill C-3, dated 12 February 2008, the Special Senate Committee on Anti-terrorism cited various concerns it had with the new process, including the inability of the special advocate to communicate with the person named in the security certificate, except with the judge's authorization, after the special advocate has received the confidential information. The committee then proposed to conduct a full study on the security certificate process in the months to come.

The amended security certificate procedure came into force on 22 February 2008. On 23 April 2008, and before the Senate committee had completed its study of the matter, one of the men named in a security certificate, Adil Charkaoui, commenced a challenge of the amended procedure in Federal Court. At the time of writing, that matter had not been decided.

---

(54) In relation to the second violation, the Court struck down the offending section 84(2) of the Act and modified section 83 to effect this result: every individual named in a security certificate is entitled to a review of his or her detention within 48 hours, and thereafter at six-month intervals.

THE ROLE OF THE PROVINCES IN IMMIGRATION

Section 95 of the *Constitution Act, 1867* gives the federal government and the provinces concurrent legislative powers over immigration. The provinces are limited in that any laws they may pass must not be "repugnant to any Act of the Parliament of Canada."

The *Immigration and Refugee Protection Act* contains several provisions relating directly or indirectly to the provinces. One of the objectives of the Act is "to support the development of a strong and prosperous Canadian economy in which the benefits of immigration are shared across Canada." The Act requires the Minister to consult the provinces regarding yearly immigration levels, the distribution of immigrants throughout Canada, and measures to facilitate their integration. The Minister may consult with the provinces on immigration and refugee protection policies so as to facilitate cooperation and be aware of the effect of federal policies on the provinces.

The Act permits the Minister to enter into agreements with the provinces. All provinces have entered one or more agreements with the Minister.(55) One such type of immigration agreement is the "provincial nominee agreement" which allows provinces and territories to specify what skills, education and work experience are needed of immigrants to the province or territory, and to nominate for immigration candidates fulfilling those criteria. In 2007, about 17,000 provincial nominees and their dependants were admitted to Canada as permanent residents.(56)

Quebec is the only province that has not entered into a provincial nominee agreement with the federal government. Instead, it has signed the *Canada–Quebec Accord*,(57) which is by far the most extensive provincial–federal immigration agreement.

Under the Accord, Quebec sets its own immigration levels, establishes the financial criteria for sponsors, and selects independent immigrants, for whom Quebec has developed its own points system. Both the federal and provincial grids have many of the same features, with points for age, education, employment experience and so on.

---

(55) On 21 November 2005, Ontario was the last province to conclude such an agreement with the federal government.

(56) Provincial nominee programs are considered economic class immigrants and are discussed under that section earlier in this paper.

(57) Which came into effect in April 1991, replacing the former Cullen-Couture Agreement.

The Quebec grid also contains a number of factors not previously present federally. Spouses can boost Quebec applicants' points by up to 16 depending on their knowledge of French, education, occupation and age. The new federal grid has a potential for a spouse to contribute 18 points to the principal applicant's score. In the Quebec grid, but not federally, there are up to 8 points available for families with children, depending on their ages.

Under the Canada-Quebec Accord, Quebec assumed control of all settlement and integration programs for immigrants destined to that province. Canada agreed to transfer money to Quebec for those programs: $75 million in the initial year (1991-1992), rising to $90 million for 1994-1995. The amount of money is now set by means of a formula, but $90 million is the minimum amount receivable. For 2006–2007, the transfer was $193.9 million.

In addition to selecting their own immigrants, provinces and territories also play an important role in funding, and in some cases delivering, settlement and integration services for newcomers. More information on this topic is provided in the next section.

SETTLEMENT AND INTEGRATION

With a large proportion of immigrants to Canada coming from developing countries and often speaking neither English nor French, services to assist them to settle in and adapt to Canada are an important part of the immigration program. Some of these programs are delivered by Citizenship and Immigration Canada itself, but most are delivered by private sector organizations, funded by the Department.

The Department has also entered into agreements with British Columbia and Manitoba, which have assumed the direct administration and delivery of settlement programs. In the other provinces, the federal government continues to deliver the programs through service provider organizations.(58)

The following is a brief description of current (non-Quebec) settlement programs. The figures provided below are taken from the 2008–2009 *Report on Plans and Priorities*(59) of Citizenship and Immigration Canada. The government also provides some money directly to the provinces to assist them in carrying out their own programs benefiting newcomers.

---

(58) As noted previously, Quebec is entirely responsible for settlement and integration, with money granted by the federal government for that purpose.

(59) The report may be found at http://www.tbs-sct.gc.ca/rpp/2008-2009/inst/tbd/tbd00-eng.asp.

A. Language Training

An ability to speak one of Canada's official languages is an extremely important part of an immigrant's ability to settle successfully in Canada. Language Instruction for Newcomers to Canada (LINC) is a broadly based program available to all adult immigrants, whether destined to the labour market or not. The classes are made as accessible as possible. Immigrants may attend full-time or part-time for up to three years. Childminding is provided at some centres and transportation costs can be covered. Expenditures of $274.8 million are projected for LINC in 2008–2009.

B. Immigrant Settlement and Adaptation Program – ISAP

ISAP provides funding to not-for-profit organizations and educational institutions that offer direct services to immigrants, largely refugees, to enable them to settle in Canada as fast as possible. Services include reception and orientation, paraprofessional counselling, information, translation and interpretation, referral to other community agencies and help with finding employment. ISAP also funds professional development activities for settlement workers, including training and conferences. Expenditures on this program are expected to be approximately $192.9 million in 2008–2009.

In 2003–2004, CIC launched a new pilot program called the Enhanced Language Training (ELT) Initiative as a component of the ISAP. Its goal is to develop and deliver higher levels of language training, including job-specific language training, to help immigrants and refugees access and remain in the labour market at levels commensurate with their skills and qualifications. A formative evaluation of the program in January 2008 found that "ELT is, in general, a successful initiative that meets the immediate needs of the target audience."[(60)] Funds allocated for the program are $20 million for 2007–2008, $30 million for 2008–2009, and $40 million for 2009–2010 and on going.

C. Resettlement Assistance Program – RAP

The RAP provides for immediate services, such as reception houses, to government-assisted refugees and humanitarian cases on their arrival, and financial support for up to one year or until the person becomes self-sufficient, whichever comes first. The need for

(60) A formative evaluation of the ELT initiative was carried out between November 2006 and July 2007 by Goss Giroy Inc. on behalf of Citizenship and Immigration Canada.

assistance is assessed by subtracting the individual's basic costs from his or her available income and assets and applying the rates for welfare assistance that apply in that province. Some $49.6 million will be spent on this program in 2008–2009.

D. The Host Program

The Host Program, now available to all immigrants, began as the Host Program for Refugee Settlement. It was an attempt to give government-assisted refugees some of the advantages of the increased social contacts and assistance enjoyed by privately sponsored refugees by matching them to host groups of volunteers in various cities. Studies show that the settlement process is enhanced by such measures, particularly in the area of language skills. In 2008–2009, approximately $14.5 million will be spent on this program.

E. Immigrant Loans Program

This program provides loans to assist sponsored refugees and other protected persons to come to Canada. The regulations set a limit on the loan fund of $110 million. The loan may cover such things as the cost of medical examinations as part of the selection process, and transportation to Canada. Interest is payable on the loans, and the regulations provide a repayment schedule that varies with the amount of the loan.

In addition to the above, CIC funds a program abroad for applicants selected for permanent residence called Canadian Orientation Abroad. Run by an international service-providing organization, the program aims to provide newcomers with realistic expectations of life in Canada.

F. Issues

The settlement and integration of new immigrants raises many important questions. Some of these are briefly reviewed below.

1. Geographic Location

It has been long been the case that immigrants tend to settle disproportionally in Canada's larger centres. The right to take up residence anywhere in Canada is guaranteed to permanent residents by section 6 of the *Canadian Charter of Rights and Freedoms*. The

statistics tell the story: half of all immigrants settle in Ontario, almost 40% in Toronto. Close to 30% settle in Montréal and Vancouver. Moreover, secondary migration, that is, the movement of immigrants within the country, tends to be to British Columbia and Ontario.

Various suggestions have been made over the years as to how to encourage immigrants to settle elsewhere in the country in order to ensure that the benefits of immigration are more evenly distributed, but little progress has been made. As noted, there are hopes that the provincial nominee programs will support provinces that wish to use immigration to help meet their economic and demographic needs. For example, immigration into Manitoba doubled from 2% to 4% of the national distribution between 2002 and 2006. Manitoba has a strong provincial nominee program.

In February 2008, the government released a new guide aimed at helping smaller communities develop strategies to attract immigrants. Entitled *Attracting and Retaining Immigrants: A Tool Box of Ideas for Smaller Centres*, this resource includes information on strategies for building support, reducing barriers and creating welcoming communities. Whether the strategies recommended by the guide will make an appreciable difference for smaller communities has yet to be seen.

Geographic imbalances have a number of very significant economic and demographic effects on cities, provinces, and Canada as a whole. It is clear that the current immigrant pattern of settlement makes the populations of our large cities, and the provinces in which they are situated, even larger. This in turn tends to increase their economic and political power. Meanwhile, the small provinces stay small and the current imbalance between large and small provinces is accentuated.

Substantial migration to our largest cities also accentuates the existing economic and political power *within* provinces. The mere size of Canada's largest metropolitan areas has increased calls for new arrangements for cities, some of which are home to more people than a number of provinces put together.

Immigration also changes the demographics of an area. Provinces and cities that receive a high proportion of immigrants will be more racially and culturally diverse than those without such influences. High levels of immigration, however, may put pressure on services such as affordable housing, second language training in schools, and employment retraining programs.

Meanwhile, in areas of low immigration, the average age of residents tends to increase as the baby boomers move through their life cycle and are not replaced by immigrants and their families. Population begins to dwindle, fostering a cycle that perpetuates itself.

2. Who Should Deliver Services?

In the mid-1990s, Citizenship and Immigration Canada concluded that the provinces were best placed to administer settlement services. It hoped to enter into agreements with all of the provinces to this effect, accompanied by appropriate funds. One result would have been to reduce the federal-provincial overlap with programs in provinces that receive a large number of immigrants and operate their own settlement programs.

As noted above, the government was successful in reaching agreements only with British Columbia and Manitoba. Elsewhere (excluding Quebec) the federal government continues to administer the programs.

3. Recognition of Foreign Credentials and Experience

The best selection system in the world will ultimately be of little benefit to Canada if a significant number of our immigrants are unable to use their education and experience because their credentials, training or experience are not recognized, because inadequate assessment processes are in place, or because suitable upgrading programs have not been developed.

It has been noted, often by independent immigrants themselves, that there is a disconnect between the implicit encouragement they receive from the fact that officers abroad have selected them based on their skills, education and experience (among other factors), and the labour market difficulties many of them experience upon their arrival in Canada.

No one suggests this problem is new, or easy to solve.(61) It has been the subject of a number of studies, and anecdotes about the hardships caused to individuals abound. Immigrants in the past might have been willing to make sacrifices in the hope that their children and grandchildren would prosper, but we should not expect today's highly educated and skilled independent immigrants to do the same. Estimates of the economic value lost by undervaluing the skills of immigrants range in the billions of dollars annually.(62)

---

(61) The regulation of professions and trades is largely a provincial matter, with over 400 organizations involved.

(62) Jeffery Reitz, "Immigrant Skill Utilization in the Canadian Labour Market: Implications of Human Capital Research," *Journal of International Migration and Integration*, March 2002.

In May 2007, the federal government established a new Foreign Credentials Referral Office. While this central office cannot provide accreditation services directly, it provides information, path-finding and referral services to foreign-trained workers on the Internet, by telephone and in person.

TEMPORARY RESIDENT VISAS[63]

Temporary residents are people (other than Canadian citizens and permanent residents and certain other specified individuals) who wish to enter Canada for a limited period of time. The category comprises tourists, students and workers. All require a temporary resident visa except those who are exempt under the regulations. The citizens of over 140 countries require visas to visit Canada or transit the country. Transportation companies can be subject to substantial fines for transporting individuals without the required documents.

Visas are issued upon application at posts abroad, although a visa itself represents only pre-screening by the officer and does not guarantee admittance to the country. The officer at the port of entry takes that decision. Visitors who wish to stay longer than their visa allows may apply for an extension in Canada.

In assessing whether to issue a visa, the officer abroad must form an opinion as to whether the applicant is bona fide and will actually leave the country at the appropriate time. He or she must also screen applicants on security, criminal and health grounds. Certain visitors are required to undergo a medical examination before a visa is issued: visitors for longer than six months, those proceeding from certain designated areas of the world with a higher incidence of communicable disease than Canada, workers whose employment will be of such a nature as to involve the public health, and so on.

There is no question that the temporary resident visa system is intended to function as one of the country's main defences against illegal migration. The visa system is costly to operate and a visa requirement is imposed only when immigration control problems develop in relation to arrivals in Canada from a specific country. Following the events of 11 September 2001, there has also been pressure to coordinate visa requirements with the United States.

(63) Formerly called visitor visas.

Officers abroad normally operate by applying profiles of the kind of individuals not likely, in their view, to be bona fide visitors. For example, an unemployed, single, young male from a developing country may not be successful in his application for a temporary resident visa. In contrast, a well-established businesswoman in her fifties with property in her home country would likely encounter few difficulties.

Such "profiling" is no doubt an essential tool for officers, who must quickly process a great number of these applications (many posts offer same-day service), but it is undeniably a broad brush. Indeed, another word for "profiling" might be "stereotyping" and it can lead to the rejection of bona fide applications. For this reason, the system has been criticized as arbitrary; it may, in fact, prove difficult in individual cases to establish the reasons for rejection of an application. The question of profiling has become particularly sensitive since 11 September 2001 because it has become identified with racial profiling.

The use of temporary resident visas has also been controversial because of its link with the refugee system. The visa system makes no distinction between citizens of those countries producing genuine refugees attempting to flee oppression and those whose citizens are using the refugee system as a convenient way into the country. Advocates for refugees have therefore long been critical of the requirement of visas for citizens of refugee-producing countries. On the other hand, government officials maintain that it is a legitimate government policy to apply visas whenever control problems arise, and to deal with citizens of refugee-producing countries through normal refugee selection procedures abroad and special programs when needed.

A. Temporary Foreign Workers

Each year, tens of thousands of foreigners come to Canada on a temporary basis to work, either under sector-specific programs or the general temporary foreign worker program.

The Seasonal Agricultural Worker Program is a long-standing, sector-specific program under which foreign workers are brought to Canada for short-term employment to meet seasonal needs of Canadian agricultural producers. The governments of Mexico and various Caribbean countries recruit and select candidates for the program. Canadian agricultural employers then either subsidize or pay for the workers' round-trip airfare, as well as provide housing and cooking facilities or meals for the workers while they are in Canada.

The Live-in Caregiver Program is also long-standing. It brings thousands of workers to Canada each year on temporary work permits to look after children, the elderly or people with disabilities. The caregivers (mainly women) live in the employer's home. Caregivers who complete two years of care giving employment within three years of arriving in Canada may apply for permanent resident status.(64) Once they are permanent residents, they are eligible to apply to sponsor other family members to join them in Canada.

The general temporary foreign worker program originally brought highly skilled academics, business executives, engineers and other professionals to Canada to work on a temporary basis. The general program has grown enormously in recent years as the lists of occupations eligible to be filled by temporary foreign workers have been expanded to include unskilled workers (including cleaners and labourers, for example), low-skilled workers (such as line cooks) and skilled workers (including tradespeople).

Two reasons are generally cited for the recent large increases in the number of temporary foreign workers admitted to Canada: labour shortages in a number of sectors as well as an immigration system that does not necessarily admit people in occupations currently in demand. In many cases, such people stand a much better chance of being admitted on a temporary basis, if they can first find work.

In December 2007, there were 201,057 temporary foreign workers in the country, 115,470 of whom entered Canada for the first time that year (57%). While initial entries have increased overall, the increase in Alberta (3.6 times since 2003) and British Columbia (1.8 times since 2003) is most pronounced.

This extremely rapid growth in the program has come at a price. Allegations of marginalization, exploitation and even abuse of temporary foreign workers are increasingly being heard, even as the federal and provincial governments take steps to protect the rights and interests of these workers. Some of the factors that can make a temporary foreign worker vulnerable to mistreatment or marginalization in Canada include the threat of being repatriated; language or cultural barriers; misinformation about Canadian and provincial laws and standards for employment, housing, health care, etc.; the requirement to reside in the employer's house or at the employer's work site; and financial need.

---

(64) Caregivers must hold a work permit that specifies the employer; they may change employers, but must apply for a new work permit that reflects the changed employment.

In the summer of 2008, the government announced a new "Canadian Experience Class" (CEC) stream of immigration that had first been introduced in the 2007 budget. The CEC is expected to provide a new route for certain skilled temporary foreign workers and international students with Canadian degrees and work experience to apply for permanent resident status from within Canada. Implementation of the CEC may ameliorate some of the problems experienced by some temporary foreign workers, as it is widely believed that workers with permanent resident status are less vulnerable than those whose status is temporary.

In the spring of 2008, the House of Commons Standing Committee on Citizenship and Immigration commenced a major study on temporary foreign workers and non-status workers. Before the report was finalized, an election was called.

APPENDICES

1. PERMANENT RESIDENTS BY CATEGORY, 1980–2007
2. 2008 IMMIGRATION PLAN
3. REFUGEES BY CATEGORY, 1997–2007
4. FEDERAL SKILLED WORKER SELECTION GRID
5. IMMIGRATION AND REFUGEE PROTECTION CASE LAW

APPENDIX 1

PERMANENT RESIDENTS BY CATEGORY, 1980–2007

Category	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Number													
Family class	51,354	51,360	50,287	48,943	44,522	39,358	42,475	58,828	51,422	60,967	74,677	87,970	101,124
Economic immigrants	49,891	60,239	51,707	24,187	26,079	26,112	35,839	74,099	80,219	90,141	97,925	86,506	95,802
Refugees	40,346	14,980	16,934	13,969	15,361	16,772	19,202	21,470	26,757	36,867	40,236	54,076	52,348
Other immigrants	1,548	2,063	2,253	2,094	2,315	2,101	1,835	2,666	3,172	3,567	3,601	4,248	5,544
Category not stated	2	0	0	0	0	0	0	0	0	2	0	0	0
Total	143,141	128,642	121,181	89,193	88,277	84,343	99,351	152,063	161,570	191,544	216,439	232,800	254,818

Category	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Percentage distribution													
Family class	35.9	39.9	41.5	54.9	50.4	46.7	42.8	35.4	31.8	31.8	34.5	37.8	39.7
Economic immigrants	34.9	46.8	42.7	27.1	29.5	31.0	36.1	48.7	49.6	47.1	45.2	37.2	37.6
Refugees	28.2	11.6	14.0	15.7	17.4	19.9	19.3	14.1	16.6	19.2	18.6	23.2	20.5
Other immigrants	1.1	1.6	1.9	2.3	2.6	2.5	1.8	1.8	2.0	1.9	1.7	1.8	2.2
Category not stated	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.00	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Cont'd

Category	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number															
Family class	112,668	94,197	77,384	68,358	59,979	50,895	55,277	60,613	66,795	62,280	65,112	62,260	63,357	70,506	66,230
Economic immigrants	105,662	102,312	106,633	125,369	128,351	97,910	109,251	136,292	155,720	137,862	121,045	133,744	156,310	138,257	131,248
Refugees	30,623	20,436	28,093	28,478	24,308	22,843	24,398	30,094	27,919	25,122	25,984	32,687	35,768	32,492	27,956
Other immigrants	7,751	7,454	761	3,865	3,400	2,547	1,031	460	206	3,787	9,209	7,133	6,794	10,382	11,323
Category not stated	0	1	0	1	0	0	0	0	1	0	1	0	10	12	1
Total	256,704	224,400	212,871	226,071	216,038	174,195	189,957	227,459	250,641	229,051	221,351	235,824	262,239	251,649	236,758

ii:

Category	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Percentage distribution															
Family class	43.9	42.0	36.4	30.2	27.8	29.2	29.1	26.6	26.6	27.2	29.4	26.4	24.2	28.0	28.0
Economic immigrants	41.2	45.9	50.1	55.5	59.4	56.2	57.5	59.9	62.1	60.2	54.7	56.7	59.6	54.9	55.4
Refugees	11.9	9.1	13.2	12.6	11.3	13.1	12.8	13.2	11.1	11.0	11.7	13.9	13.6	12.9	11.8
Other immigrants	3.0	3.3	0.4	1.7	1.6	1.5	0.5	0.2	0.1	1.7	4.2	3.0	2.6	4.1	4.8
Category not stated	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Citizenship and Immigration Canada, *Facts and Figures 2006, Immigration Overview*, pp. 8–9, and *Facts and Figures 2007, Immigration Overview*, permanent residents.

APPENDIX 2

2008 IMMIGRATION PLAN

Table 1: Immigration Levels Plan 2008

Immigrant Category	2008 Ranges	
	Low	High
Federal Skilled Workers	67,000	70,000
Quebec Selected Skilled Workers	25,000	28,000
Federal/Quebec Business	11,000	13,000
Live-in Caregivers	6,000	9,000
Provincial/Territorial Nominees	20,000	22,000
Canadian Experience Class	10,000	12,000
TOTAL ECONOMIC	**139,000**	**154,000**
Spouses, Partners and Children	50,000	52,000
Parents and Grandparents	18,000	19,000
TOTAL FAMILY	**68,000**	**71,000**
Government-Assisted Refugees	7,300	7,500
Privately Sponsored Refugees	3,300	4,500
Protected Persons in Canada	9,400	11,300
Dependants Abroad	6,000	8,500
TOTAL PROTECTED PERSONS	**26,000**	**31,800**
Humanitarian & Compassionate/Public Policy	6,900	8,000
Permit Holders	100	200
TOTAL OTHERS	**7,000**	**8,200**
TOTAL	**240,000**	**265,000**

Source: Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration*, 2007, p. 9, http://www.cic.gc.ca/english/resources/publications/annual-report2007/index.asp.

APPENDIX 3

REFUGEES BY CATEGORY, 1997–2007

Category	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number											
Government-assisted refugees	7,711	7,432	7,442	10,669	8,697	7,505	7,506	7,411	7,424	7,326	7,574
Privately sponsored refugees	2,742	2,267	2,348	2,933	3,576	3,044	3,252	3,116	2,976	3,337	3,588
Refugees landed in Canada	10,634	10,182	11,797	12,993	11,897	10,546	11,267	15,901	19,935	15,892	11,700
Refugee dependants	3,221	2,962	2,809	3,497	3,749	4,021	3,959	6,259	5,441	5,948	5,094
Refugees	24,308	22,843	24,396	30,092	27,919	25,116	25,984	32,687	35,776	32,503	27,956

Source: Citizenship and Immigration Canada, *Facts and Figures 2007, Immigration Overview*, p. 11.

APPENDIX 4

FEDERAL SKILLED WORKER SELECTION GRID

Education	Maximum 25 points
You have a master's degree or PhD and at least 17 years of full-time or full-time equivalent study.	25 points
You have two or more university degrees at the bachelor's level and at least 15 years of full-time or full-time equivalent study.	22 points
You have a three-year diploma, trade certificate or apprenticeship and at least 15 years of full-time or full-time equivalent study.	22 points
You have a university degree of two years or more at the bachelor's level and at least 14 years of full-time or full-time equivalent study.	20 points
You have a two-year diploma, trade certificate or apprenticeship and at least 14 years of full-time or full-time equivalent study.	20 points
You have a one-year university degree at the bachelor's level and at least 13 years of full-time or full-time equivalent study.	15 points
You have a one-year diploma, trade certificate or apprenticeship and at least 13 years of full-time or full-time equivalent study.	15 points
You have a one-year diploma, trade certificate or apprenticeship and at least 12 years of full-time or full-time equivalent study.	12 points
You completed high school.	5 points

First Official Language				
	Speaking	**Listening**	**Reading**	**Writing**
High proficiency	4	4	4	4
Moderate proficiency	2	2	2	2
Basic proficiency	1	1	1	1
Please Note: You can score a maximum of only two points in total for basic-level proficiency.				
No proficiency	0	0	0	0
Second Official Language				
	Speaking	**Listening**	**Reading**	**Writing**
High proficiency	2	2	2	2
Moderate proficiency	2	2	2	2
Basic proficiency	1	1	1	1
Please Note: You can score a maximum of only two points in total for basic-level proficiency.				
No proficiency	0	0	0	0

Experience	Maximum 21 points
1 year	15
2 years	17
3 years	19
4 years	21
Age	Points
16 or under	0
17	2
18	4
19	6
20	8
21–49	10
50	8
51	6
52	4
53	2
54+	0

Arranged Employment **If**	**And**	**Points**
You currently work in Canada on a temporary work permit.	Your work permit is valid at the timeof the permanent resident visa application and at the time the visa is issued. And Your employer has made an offer to employ you on an indeterminate basis if the permanent resident visa is issued.	10
You currently work in Canada in a job that is exempt from confirmation by Human Resources and Social Development Canada (HRSDC) under an international agreement or a significant benefit category (for example, an intra-company transferee).	Your work permit is valid at the time of your application for a permanent resident visa and at the time the visa is issued. And Your employer has made an offer to employ you on an indeterminate basis if your permanent resident visa is issued.	10
You do not currently have a work permit and you do not intend to work in Canada before you have been issued a permanent resident visa.	You have a full-time job offer that has been approved by HRSDC. And	10

Arranged Employment **If**	**And**	**Points**
	Your employer has made an offer to give you a permanent job if your permanent resident visa is issued. And You meet all required Canadian licensing or regulatory standards associated with the job.	

Adaptability			**Maximum 10 points**
Spouse or common-law partner's level of education • Secondary school (high school) diploma or less: 0 points • A one-year diploma, trade certificate, apprenticeship or university degree, and at least 12 years of full-time or full-time equivalent studies: 3 points • A two or three-year diploma, trade certificate, apprenticeship or university degree, and at least 14 years of full-time or full-time equivalent studies: 4 points • A master's degree or PhD and at least 17 years of full-time or full-time equivalent studies: 5 points			3–5
Previous work in Canada You, or your accompanying spouse or common-law partner, have completed a minimum of one year of full-time work in Canada on a valid work permit.			5
Previous study in Canada You, or your accompanying spouse or common-law partner, have completed a program of full-time study of at least two years' duration at a post-secondary institution in Canada. You must have done this after you were 17 years old and with a valid study permit. There is no need to have obtained a degree or diploma for these two years of study to earn these points.			5
Arranged employment in Canada You can claim five additional points if you have arranged employment as described in the Arranged Employment selection factor.			5
Relatives in Canada You, or your accompanying spouse or common-law partner, have a relative (parent, grandparent, child, grandchild, child of a parent, sibling, child of a grandparent, aunt or uncle, or grandchild of a parent, niece or nephew) who is residing in Canada and is a Canadian citizen or permanent resident.			5
Total			Maximum 100
Pass Mark			67*

* From 28 June 2002 to 18 September 2003, the pass mark was 75.

Source: Citizenship and Immigration Canada, "Skilled workers and professionals: Who can apply – Six selection factors and pass mark," rev. 31 March 2007, http://www.cic.gc.ca/english/immigrate/skilled/apply-factors.asp.

APPENDIX 5

IMMIGRATION AND REFUGEE PROTECTION CASE LAW

The following are summaries of some of the leading cases in this area of law. The volume of immigration litigation in Canada is quite large, and thus reference is made only to the most significant decisions.

Singh v. *Canada (Minister of Employment and Immigration),* [1985] 1 S.C.R. 177

The Minister of Employment and Immigration, acting on the advice of the Refugee Status Advisory Committee (RSAC),[(1)] determined that a group of claimants were not Convention refugees. The Immigration Appeal Board denied the subsequent applications for redetermination of status without an oral hearing, as was the law at the time. At issue was whether the appellants could rely on the *Canadian Charter of Rights and Freedoms* to challenge the process and, if so, whether their right to security of the person was being infringed in a manner that did not accord with the principles of fundamental justice. The majority held:

- Section 7 of the Charter guarantees "everyone … the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." The term "everyone" includes every person physically present in Canada and by virtue of such presence amenable to Canadian law.

- A Convention refugee had the right under s. 55 of the *Immigration Act, 1976* not to "… be removed from Canada to a country where his life or freedom would be threatened …" The denial of such a right was held to amount to a deprivation of "security of the person" within the meaning of section 7.

- The procedure for determining refugee status claims established in the *Immigration Act, 1976* was found to be inconsistent with the requirements of fundamental justice. At a minimum, the procedural scheme set up by the Act should have provided the refugee claimant with an adequate opportunity to state his case and to know the case he had to meet. However, the process did not envisage an opportunity for the refugee claimant to be heard other than through the transcript of his examination under oath by an immigration officer, and the claimant was not given an opportunity to comment on the advice the Refugee Status Advisory Committee had given the Minister. Under the Act, the Immigration Appeal Board was required to reject an application for redetermination unless it was of the opinion that it was more likely than not that the applicant would be able to succeed. An application, therefore, would usually be rejected before the refugee claimant even had an opportunity to discover the Minister's case against him in the context of a hearing.

- The government did not demonstrate that these procedures were a reasonable limit on claimants' rights within the meaning of s. 1 of the Charter.

It was the *Singh* decision that led to the creation of the Immigration and Refugee Board (IRB).

---

(1) The RSAC was the body preceding the Immigration and Refugee Board that read transcripts of claimant interviews and made recommendations to the Minister.

***Canada (Attorney General)* v. *Ward*, [1993] 2 S.C.R. 689**

Mr. Ward was a former member of a Northern Ireland terrorist organization who had been sentenced to death by that organization for assisting hostages to escape. He made a claim to refugee status in Canada, arguing that the United Kingdom and Ireland could not protect him. The Supreme Court looked at various legal issues relating to the definition of a Convention refugee in this landmark case and held as follows:

- "Persecution" includes situations where the state is not an accomplice to the persecution but is simply unable to protect its citizens. The claimant must provide clear and convincing confirmation of a state's inability to protect, absent an admission by the national's state of its inability to protect that national. Except in situations of complete breakdown of the state apparatus, it should be assumed that the state is capable of protecting a claimant.

- In determining that Mr. Ward did not belong to a "particular social group" (one of the enumerated grounds in the definition of a Convention refugee), this basis of persecution was determined to consist of three categories: (1) groups defined by an innate, unchangeable characteristic; (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and (3) groups associated by a former voluntary status, unalterable due to its historical permanence.

- Mr. Ward, who believed that the killing of innocent people to achieve political change was unacceptable, set the hostages free in accordance with his conscience. The persecution he feared thus stemmed from his political opinion as manifested by this act.

The case was returned to the Board for rehearing in accordance with the Court's guidance. Ward was ultimately returned to the United Kingdom.

***Pushpanathan* v. *Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982**

Mr. Pushpanathan entered Canada and claimed refugee status, but his claim was never adjudicated as he was granted permanent resident status under an administrative program. He was subsequently convicted of conspiracy to traffic in a narcotic, having been a member of a group in possession of heroin with a street value of some $10 million. He was sentenced to eight years in prison. In 1991, when on parole and facing deportation, Mr. Pushpanathan renewed his claim for Convention refugee status. The Board decided that he was not a refugee by virtue of the exclusion clause in Article 1F(c) of the Convention, which provides that the Convention does not apply to a person who "has been guilty of acts contrary to the purposes and principles of the United Nations."

The majority of the Supreme Court of Canada found that the Board's decision was incorrect and allowed Mr. Pushpanathan's appeal. Article 1F(c), the Court determined, will be applicable where there is consensus in international law that particular acts constitute sufficiently serious and sustained violations of fundamental human rights as to amount to persecution, or are explicitly recognized as contrary to the UN purposes and principles. Conspiring to traffic in a narcotic is thus not a violation of Article 1F(c).

The matter was remitted to the IRB for reconsideration, where a new argument was advanced against the claimant. It was suggested that Mr. Pushpanathan was ineligible to have his claim heard under Article 1F(c) because his drug trafficking was intended to profit a terrorist group, the Tamil Tigers. Although he denied any knowledge that funds from the drug ring were being sent to the Tigers, the Board held that he was ineligible to have his claim heard. The Federal Court upheld that decision in October 2002, stating that the test for determining whether there is "a serious reason for considering" (the term used in the Refugee Convention) that a person has been guilty of acts that the Supreme Court would consider sufficient to meet the Article 1F(c) exclusion requires a low standard of proof. Formal membership in the terrorist organization or direct involvement is not required.

***Suresh* v. *Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1**

Suresh, and its companion case *Ahani* (see below), dealt with deportation orders against individuals who argued that they would face torture if returned to their home countries. Canada has ratified the *Convention Against Torture* (CAT), which explicitly prohibits state parties from returning people to torture. Article 3(1) states: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." States are not supposed to be able to deviate from this absolute prohibition. Article 2(2) of the CAT reads: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." Furthermore, the Supreme Court of Canada unanimously held when examining the issue that the prohibition on returning a person to face a risk of torture is also the prevailing international norm; that is, it is customary international law.

In direct contradiction, however, was a section of the former *Immigration Act* which permitted deportation to a country where the person's life would be threatened if the person was inadmissible for any specified reason and was designated to be a danger to the security of Canada. (This continues to be the case under the new *Immigration and Refugee Protection Act*, which came into force on 28 June 2002.) In essence, Canadian law provides that in certain situations, people may be deported to face torture.

Mr. Suresh was allegedly a member of and fundraiser for the Tamil Tigers. Although the Court allowed Suresh's appeal and ordered that he was entitled to a new deportation hearing, the legislation was upheld as valid. The principles of fundamental justice in section 7 of the Charter would guide the new hearing and the Court suggested that the Minister should "generally decline to deport refugees where on the evidence there is a substantial risk of torture." The Court set out its restrictive view of when deportation under these circumstances could take place as follows:

> We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified, either as a consequence of the balancing process mandated by s.7 of the Charter or under s.1…. Insofar as Canada is unable to deport a person where there are substantial grounds to believe that he or she would be tortured on return, this is not because Article 3 of the CAT directly constrains the actions of the Canadian government, but because the fundamental justice balance under s.7 of the Charter generally precludes deportation to torture on a case-by-case basis.

***Ahani* v. *Canada (Minister of Citizenship and Immigration)*, 2002 SCC 2**

In the companion case to *Suresh* (see above), the appellant was allegedly an assassin, trained by Iranian intelligence. In his case, the Court determined that he had not established that he faced a substantial risk of torture if returned to Iran. His appeal was therefore dismissed.

Following the judgment, Mr. Ahani began new proceedings, requesting that his deportation be stayed until the United Nations Human Rights Committee reviewed his case. He was unsuccessful in the lower courts and the Supreme Court of Canada refused to hear his appeal. He was removed from Canada.

***Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817**

Ms. Baker, a woman with Canadian-born dependent children, was facing deportation. She submitted a written application to stay in Canada on humanitarian and compassionate grounds. A senior immigration officer refused the application. Statements in the officer's notes gave the impression that he may have been drawing conclusions based not on the evidence before him, but on the fact that the appellant was a single mother of eight children (four born in Canada), had been diagnosed with a psychiatric illness, and was living on welfare. The majority of the Court held:

- A reasonable and well-informed member of the community would conclude that the reviewing officer had not approached this case with the appropriate impartiality, thus giving rise to a reasonable apprehension of bias.

- The wording of the legislation showed Parliament's intention that the decision be made in a humanitarian and compassionate manner. A reasonable exercise of the power conferred by the section required close attention to the interests and needs of children, since children's rights are central values in Canadian society. Because the reasons for this decision did not indicate that it was made in a manner that was sensitive to the interests of the Baker children, and did not consider them as an important factor in making the decision, it was an unreasonable exercise of the power conferred by the legislation.

The case was remitted for reconsideration and Ms. Baker was ultimately granted permanent resident status.

***Ribic* v. *Canada (Minister of Employment and Immigration)*, (20 Aug. 1985), I.A.B. T84-9623**

Permanent residents facing deportation under the former Act could apply to the Immigration Appeal Division of the IRB for an order staying or quashing their removal order on the ground that, "having regard to all the circumstances of the case, the person should not be removed from Canada."(2) Circumstances considered at these hearings were enumerated in the *Ribic* decision and include:

- The seriousness of the offence;
- The possibility of rehabilitation;

(2) Note that the new *Immigration and Refugee Protection Act* has a similar provision for considering humanitarian concerns when a permanent resident is facing deportation, although there are restrictions on who may access the Immigration Appeal Division.

- The length of time spent in Canada and the degree to which the appellant is established here;
- The appellant's family in Canada and the dislocation to the family that deportation would cause;
- The support available to the appellant, not only within the family but within the community; and
- The degree of hardship that would be caused to the appellant by his/her return to the country of nationality.

***Chieu* v. *Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84**

In 1991, Mr. Chieu's sister sponsored him, as well as other family members, to come to Canada. On his application for permanent residence, he misrepresented his marital status, stating he was single with no dependants, in order to be eligible to be sponsored as an accompanying dependant of his father. Once in Canada, he applied to sponsor his previously undisclosed wife and child. As a result, an immigration inquiry was convened and he was ordered deported for misrepresentation. An appeal to the Immigration Appeal Division on humanitarian grounds was denied. The Board held that it could not consider potential foreign hardship, one of the *Ribic* factors (see above).

The Supreme Court of Canada held that the factors set out in *Ribic* remain the proper ones for the Appeal Division to consider. The Board is thus obliged to consider every relevant circumstance, including potential foreign hardship, provided that the likely country of removal has been established by the individual facing removal. As this had not been established by Mr. Chieu, the matter was remitted to the Board for a rehearing.

***Law Society of British Columbia* v. *Mangat*, [2001] 3 S.C.R. 113**

Mr. Mangat was an immigration consultant in Vancouver. Although he was not a member of the British Columbia bar, he and other employees of his firm acted as counsel in various immigration proceedings. The Law Society of British Columbia brought an application seeking a permanent injunction against Mr. Mangat and his associates to prevent them from engaging in the practice of law in contravention of the B.C. *Legal Profession Act*. The consultants conceded that they were engaged in the practice of law within the meaning of the provincial *Legal Profession Act*, but contended that they were permitted to do so under the former *Immigration Act*, which allowed (as does the new Act) non-lawyers to appear on behalf of clients before the IRB.

The Supreme Court of Canada determined that since the subject matter of the representation of people by counsel before the IRB has federal and provincial aspects, the federal and provincial statutes and rules or regulations will coexist insofar as there is no conflict. Where there is a conflict, the federal legislation will prevail according to the paramountcy doctrine, thus safeguarding the control by Parliament over the administrative tribunals it creates.

Non-lawyers may therefore appear before the IRB (although by the time the case reached the Supreme Court of Canada, Mr. Mangat had completed law school and become a member of the Bar).

***Charkaoui* v. *Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350**

Three men named in security certificates, Adil Charkaoui, Hassan Almrei and Mohamed Harkat, challenged the constitutional validity of the security certificate procedure set out in the *Immigration and Refugee Protection Act*. The Supreme Court of Canada overturned an earlier decision of the Federal Court of Appeal in finding that two different provisions of the Act relating to security certificates violated the *Canadian Charter of Rights and Freedoms*.

First, Charter section 7 was found to be violated by section 78(*g*) of the Act, which allowed "for the use of evidence that is never disclosed to [the person named in a security certificate] without providing adequate measures to compensate for this non-disclosure." Two procedures relied on this section: that for determining whether a security certificate was reasonable, and that for reviewing a related detention. Therefore both procedures infringed section 7, which guarantees to "everyone" the right to "life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The Court found that these section 7 infringements could not be justified under the Charter's section 1 limitations clause as "minimal impairments" of the rights of the person named in a certificate. The Court was of the opinion that the government could do more to protect the person's rights and noted the use of special counsel "to objectively review the material with a view to protecting the named person's interest, as was formerly done for the review of security certificates by [the Security Intelligence Review Committee] and is presently done in the United Kingdom."

The second Charter infringement the Court found relates to section 84(2) of the Act, which did not provide for review of a foreign national's detention until 120 days after the reasonableness of the security certificate had been judicially determined. The Court found that this section violated "the guarantee against arbitrary detention in s. 9 of the *Charter*, a guarantee which encompasses the right to prompt review of detention under s. 10(*c*) of the *Charter*."

In response to the first Charter violation, the Court declared the procedures for judicial review of security certificates and detention to be of no force or effect. However, it suspended this declaration for one year in order to give Parliament time to amend the Act. In relation to the second violation, the Court struck down the offending section 84(2) of the Act and modified section 83 to effect the result that both foreign nationals and permanent residents are entitled to a review of their detention within the first 48 hours, and thereafter at six-month intervals.

Parliament amended the security certificate procedure in February 2008 (Bill C-3). At the time of writing, the new procedure was being challenged in court.