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Immigration Policy Primer
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EXECUTIVE SUMMARY

This document provides an overview of the various factors and players that shape Canada's immigration policy, sheds light on the legislative framework and the roles and responsibilities of the various levels of government, and presents a few of the essential components and instruments in this field.

In 2021, Canada welcomed 406,000 permanent residents, and the country plans to gradually increase its intake levels to 500,000 new admissions per year by 2025. These new levels will then be maintained into 2026. The increase aims to support various national priorities, such as solving the labour shortage, meeting humanitarian commitments in response to global crises and family reunification. These priorities reflect the objectives in Canada's immigration policy as set out in the *Immigration and Refugee Protection Act (IRPA)*. Those include, but are not limited to, economic development, granting refugee status to persecuted people and promoting the integration of permanent residents.

Canada's immigration policy is implemented by the federal government in partnership with the provinces and territories, with which it shares jurisdiction in the area of immigration. However, that sharing is not equal because the roles and responsibilities differ from one province or territory to another; however, it still enables all of them to play a more active role in selecting immigrants from the economic immigration category in order to better meet the specific needs of their labour market.

As for federal jurisdiction, the IRPA is the main statute governing immigration, while the *Immigration and Refugee Protection Regulations* are an important policy instrument that specify immigration procedures and processes. The federal government can also issue ministerial instructions to more flexibly and effectively manage the processing of immigration applications and to introduce pilot programs. In addition, it can establish operational guidelines that help ensure that the immigration policy is consistently applied, even though they don't have the force and effect of law. Those guidelines are distributed in the form of instructions, operational bulletins or manuals for guidance.

The Immigration and Refugee Board of Canada also performs an essential function. It is an administrative tribunal divided into four divisions with various mandates, such as processing claims for refugee protection made in Canada and detention reviews. Regarding those, the courts of justice regularly issue decisions that affect implementation of the immigration policy.

IMMIGRATION POLICY PRIMER

1 INTRODUCTION

Since 2018, Canada has taken in more than 320,000 permanent residents every year, (other than in 2020).¹ However, in 2021, a record number – in the country’s history – of permanent residents were admitted in a single year: more than 406,000.²

In addition, many more people come to Canada to visit, study or work on a temporary basis. The objectives of Canada’s immigration policy are clearly articulated in the *Immigration and Refugee Protection Act* (IRPA). These objectives include the following:

- to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;
- to support the development of a strong and prosperous Canadian economy in which the benefits of immigration are shared across all regions of Canada;
- to see that families are reunited in Canada;
- to offer safe haven to persons with a well-founded fear of persecution as well as those at risk of torture or cruel and unusual treatment or punishment;
- to promote the successful integration of permanent residents into Canada while recognizing that integration involves mutual obligations for new immigrants and Canadian society;
- to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding, and cultural, educational and scientific activities;
- to protect public health and safety and to maintain the security of Canadian society; and
- to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks.³

In order to meet these objectives, the government establishes policies and programs in areas such as:

- eligibility criteria for immigration;
- requirements for entering and remaining in Canada and grounds for inadmissibility;⁴
- integration into Canadian society; and
- ways in which the IRPA should be enforced.

Furthermore, in consultation with the provinces and territories, which share jurisdictional responsibility for immigration, the federal government decides how many immigrants of each category will be accepted in a given year (referred to as the Immigration Levels Plan).⁵ This plan specifically sets out the maximum and minimum number of immigrants and refugees for each permanent immigration category and each pilot program implemented. The Minister of Immigration, Refugees and Citizenship revisits the plan each year to adjust the planned levels as required. The Immigration Levels Plan is an important policy document that not only determines how resources of Immigration, Refugees and Citizenship Canada (IRCC)⁶ are allocated but also reveals the government's vision for the role of immigration in Canadian society.

This publication provides an overview of the key instruments in immigration policy-making in Canada. It describes the federal legislative framework and the way different levels of government have jurisdiction over different aspects of immigration. It also includes an overview of the Immigration and Refugee Board of Canada (IRB) and the role of the judiciary in immigration.

2 FEDERAL RESPONSIBILITY

Under the *Constitution Act, 1867*, immigration is an area of shared federal–provincial jurisdiction.⁷ As for the territories, which are not part of the division of powers provided for under this Act, powers over immigration similar to those of the provinces have been devolved to them through legislation.⁸

Given this shared jurisdiction over immigration, the various levels of government must work together to ensure the entire immigration system runs smoothly. As a result, the federal government and all the provinces and territories,⁹ apart from Nunavut,¹⁰ have signed immigration agreements.

In provinces other than Quebec, the federal government is responsible

for establishing admission requirements, setting national immigration levels, defining immigration categories, determining refugee claims within Canada, reuniting families and establishing eligibility criteria for settlement programs.¹¹

Within the federal government, implementing the IRPA is the responsibility of the Minister of Immigration, Refugees and Citizenship and the Minister of Public Safety and Emergency Preparedness. By default, the Minister of Immigration, Refugees and Citizenship is responsible for administering the IRPA where no other administrator is identified.¹²

The Minister of Public Safety and Emergency Preparedness is responsible for the following:

- examinations at ports of entry;
- enforcement of the IRPA (in particular, arrest, detention and removal);
- policy development respecting enforcement and inadmissibility on serious grounds;
- determining exceptions to inadmissibility on security grounds;
- security certificates; and
- vacation of refugee protection.¹³

Some aspects of the IRPA are designated the dual responsibility of the Minister of Immigration, Refugees and Citizenship and the Minister of Public Safety and Emergency Preparedness.¹⁴

The Department of Employment and Social Development and the Minister of Justice also have limited roles, the former in relation to assessing the labour market impact of immigration and the latter in relation to special advocates who protect the interests of non-citizens subject to a security certificate.

2.1 LEGISLATIVE FRAMEWORK

The IRPA is the main statute governing immigration policy, setting out the broad strokes of who should be admitted to Canada for what purposes, the recourse available to those unauthorized to stay and how unsuccessful applicants are to be removed. The IRPA establishes three broad categories of permanent residents: family class, economic class and those admitted on a humanitarian basis. It also establishes the requirements for visitors and provides for work and study permits for temporary stays.

As framework legislation, the IRPA does not prescribe the details of immigration programs or procedures. Instead, the IRPA is an enabling statute, authorizing these details to be established by regulation. This means that the *Immigration and Refugee Protection Regulations* (the regulations) are an important policy instrument. Through the IRPA, Parliament has delegated to the Governor in Council the authority to make immigration-related regulations.¹⁵

One of the recent major amendments to the IRPA is an update to the Express Entry program delivery instructions¹⁶ as set out in Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures (assented to on 23 June 2022).¹⁷ Specifically, section 11.2 of the IRPA was amended to allow the selection of permanent resident applications “based on key attributes that support economic priorities, such as specific work experience or knowledge

of French.”¹⁸ This new category-based selection is in addition to the general invitation rounds and the rounds specific to the Express Entry program.¹⁹

A few examples help underscore the importance of the regulations as a policy instrument. Sections 78 to 83 of the regulations lay out the selection grid for federal skilled workers, an economic class of immigration. These sections explain how points are allocated for the applicants’ education, language skills, experience, age, arranged employment or adaptability.²⁰ Section 12.1 of the regulations lists claims, applications and requests that require the submission of biometric information (photograph and digital fingerprints), while section 12.3 sets out the procedure for collecting this information.²¹

Regulation-making is a rigorous legal process that requires regulations to be registered and published in the *Canada Gazette*.²² The *Cabinet Directive on Regulation* further stipulates, among other things, that regulatory authorities must consult with Canadians and publish an analysis of the expected impact of each regulatory initiative.²³

Certain immigration regulations are subject to parliamentary scrutiny. Specifically, all proposed regulations made pursuant to the following aspects of the IRPA must be tabled in the Senate and the House of Commons and referred by each house to the appropriate committee of that house:

- examination (section 17);
- rights and obligations of permanent residents (section 32);
- loss of status and removal (section 53);
- detention and release (section 61);
- security certificate and protection of information (section 87.2);
- examination of eligibility to refer a claim for refugee protection (section 102);
- pre-removal risk assessment (section 116);
- transportation companies (section 150); and
- sharing of information (section 150.1).²⁴

When it was passed into law, the IRPA authorized the Minister of Immigration, Refugees and Citizenship to issue Ministerial Instructions to immigration officers. The visibility and importance of this tool for managing immigration applications increased in 2008, following legislative amendments.²⁵

Ministerial Instructions are not statutory instruments and are therefore not subject to the same consultation and publication requirements as regulations. Making administrative changes through Ministerial Instructions is much faster than through legislation or regulations, thus giving the Minister and IRCC greater flexibility to implement multi-year Immigration Levels Plans.

A central purpose of Ministerial Instructions has been to allow the department to implement processing efficiencies. To that end, Ministerial Instructions have been used to establish caps for certain immigration categories, to pause and resume processing and to return applications once the cap is reached. Over time, new provisions have been added to the IRPA that allow Ministerial Instructions to be used for other purposes as well, such as creating new economic-class pilot programs.

A number of pilot programs have been introduced in recent years through Ministerial Instructions.²⁶ These programs include the following:

- The Atlantic Immigration Pilot, introduced in March 2017, allows eligible skilled immigrants and international graduate students with a job offer from a designated employer in New Brunswick, Nova Scotia, Prince Edward Island or Newfoundland and Labrador and an endorsement from the province to apply for permanent residence.²⁷ The program became permanent on 1 January 2022 under the Atlantic Immigration Program.²⁸
- The Economic Mobility Pathways Pilot, introduced in April 2018, is an initiative for helping skilled refugees and other displaced people immigrate to Canada under existing economic immigration programs. The pilot has two streams: a regional stream and a federal stream. Launched in June 2023, the federal stream has two components, one with and the other without a job offer, for which only 150 applicants per year are accepted.²⁹
- The Rural and Northern Immigration Pilot, introduced in September 2019, aims to facilitate permanent immigration of foreign skilled workers in 11 participating communities.³⁰ In August 2022, the pilot was renewed for two years and enhanced by expanding the geographic boundaries of seven participating communities.³¹
- The Home Child Care Provider Pilot and the Home Support Worker Pilot allow qualified care providers and their family members to become permanent residents of Canada. Launched in 2019, the pilots are divided into two categories: Direct to Permanent Resident and Gaining Experience. Under the Gaining Experience category, people who meet the requirements can receive an occupation-restricted open work permit, giving them 12 months to gain the work experience needed to be eligible for permanent residence.³²

- Since 2020, the Agri-Food Immigration Pilot offers the possibility of obtaining permanent residence to non-seasonal agriculture workers with experience under the Temporary Foreign Worker Program and a job offer in eligible agri-food occupations and industries. Originally designed for a three-year period, the pilot project has been extended until 14 May 2025 following ministerial reviews in April 2023.³³

2.2 OPERATIONAL GUIDELINES

Canada's immigration policy is implemented through hundreds of thousands of decisions taken primarily by IRCC immigration officers (in Canada and abroad), officers of the Canada Border Services Agency (CBSA) and members of the IRB. To try to ensure the consistent application of the legislative framework, guidelines are developed and distributed in the form of operational instructions, bulletins and manuals, and, in the case of the IRB, in the form of Chairperson's guidelines.³⁴ While these guidelines are not binding, the courts have used them as "[a useful indicator of what constitutes a reasonable interpretation of the power] conferred by the applicable section of the IRPA."³⁵

2.3 THE IMMIGRATION AND REFUGEE BOARD OF CANADA

The IRB is an important institution in Canada's immigration policy. It is an administrative tribunal comprising four divisions, each with a distinct mandate and its own set of rules.³⁶ Through the IRB, Canada honours its international commitments. The IRB hears claims for refugee protection made in Canada through one division, and conducts appeals of eligible refugee determinations through another, the Refugee Appeal Division.³⁷ The IRB also plays an important role in enforcing the IRPA through its Immigration Division, which conducts hearings on inadmissibility as well as detention reviews. The Immigration Appeal Division considers appeals for family class sponsorships, removal orders, permanent residency obligations and the Minister's appeal of a decision from the Immigration Division.³⁸

2.4 THE JUDICIARY

Owing to the discretion accorded to immigration officers in deciding immigration applications, the courts have played an important role in shaping how immigration policy is implemented. While many decisions taken under the IRPA may be brought for judicial review, leave to do so must first be obtained from the Federal Court.³⁹ The applicant must persuade the court that the application raises a serious issue of broad significance.⁴⁰ Further, where mechanisms exist within the IRPA for review, those mechanisms must first be exhausted before an application for judicial review may be made.⁴¹

3 PROVINCIAL RESPONSIBILITY

The role of provinces and territories in immigration is not uniform and has changed significantly over time. Today, most provinces and territories see immigration as integral to their economic goals and are, therefore, more proactive in their responsibilities.

By virtue of the 1991 *Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens* (the Accord), the Quebec government is responsible for selecting all economic-class immigrants who wish to settle in the province.⁴² Also, under the Accord, Quebec selects a fixed percentage of IRCC-approved refugees for resettlement in the province. For fulfilling these responsibilities, IRCC gives the Quebec government a lump sum transfer as determined by the funding formula set out in the Accord.

Other provinces have also taken on greater responsibility for selecting economic-class immigrants, though none has the breadth of responsibility that Quebec does. This shift has occurred through a series of bilateral agreements, starting with Manitoba in 1996. Though the federal–provincial/territorial agreements differ, common to each is an agreement for a provincial nominee program (PNP) authorizing economic-class immigrant nomination.⁴³ Under the PNPs, provinces and territories develop their own economic-class immigration programs to suit their unique labour market needs. However, the federal government still retains responsibility for assessing the admissibility of each nominated individual. The federal government also ensures that PNPs comply with the IRPA and immigration policy.⁴⁴

There are now approximately 60 to 80 admission streams in the various PNPs across all provinces. These programs target specific groups, such as students, businesspeople and skilled and semi-skilled workers.⁴⁵ The percentage of economic immigrants who come to Canada under PNPs rose from 1% in 2000 to 35% in 2019, becoming the largest selection program that year for economic immigrants.⁴⁶ Some elements of the programs have been formalized in subsequent agreements as PNPs have evolved. For example, the federal government has instituted minimum language requirements for lower-skilled nominees and taken measures to address program integrity concerns.

Quebec is currently the only province with responsibility for immigrant settlement programs in its territory. The Manitoba and British Columbia governments had this responsibility for more than a decade, but they lost it in 2013 and 2014 respectively, after the federal government cancelled the associated agreements.⁴⁷ In every province but Quebec, IRCC funds settlement programming through contributions to more than 550 service provider organizations⁴⁸ in five separate areas:

- needs assessment and referrals;
- information and orientation;

- language training;
- employment-related services; and
- community connections.⁴⁹

IRCC also funds support services, including childcare, transportation, translation and interpretation, disability support and crisis counselling.⁵⁰

4 CONCLUSION

Fulfilling Canada’s immigration objectives as articulated in the IRPA is the combined responsibility of the federal and provincial and territorial governments. In addition, each level of government establishes its own goals within its sphere of responsibility.

At the federal level, Canada’s immigration policy is characterized by framework legislation that establishes the broad parameters, with substantial discretion accorded to the Minister of Immigration, Refugees and Citizenship, who advises the Governor in Council on regulations and issues Ministerial Instructions. Further discretion is accorded to immigration officers, border officers and IRB members, who decide on applications. In this context, parliamentary oversight provides an important avenue of accountability. Parliament receives the *Annual Report to Parliament on Immigration* and reviews tabled regulations and legislation, while the committees study the activities of IRCC, the CBSA and the IRB.⁵¹

NOTES

1. Canada took in only 185,000 new permanent residents in 2020 due to the multiple challenges brought on by the COVID-19 pandemic. For more information, see Immigration, Refugees and Citizenship Canada (IRCC), [2021 Annual Report to Parliament on Immigration](#).
2. IRCC, [2022 Annual Report to Parliament on Immigration](#).
3. [Immigration and Refugee Protection Act](#) (IRPA), S.C. 2001, c. 27, s. 3.
4. The IRPA (ss. 34–43) establishes the following reasons for inadmissibility to Canada: security reasons (e.g., espionage, violence or terrorism), human or international rights violations, serious criminality, criminality, organized criminality, health grounds, financial reasons, misrepresentation or having an inadmissible family member.
5. Before 2017, immigration levels were set on an annual basis. For more information on the 2024 to 2026 Immigration Levels Plan, see Government of Canada, [Notice – Supplementary Information for the 2024-2026 Immigration Levels Plan](#), 1 November 2023. The immigration plan is included in the *Annual Report to Parliament*.
6. Formerly known as “Citizenship and Immigration Canada,” the government department changed names in November 2015 to “Immigration, Refugees and Citizenship Canada.”
7. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.), s. 95.
8. See [Northwest Territories Act](#), S.C. 2014, c. 2, s. 2, para. 18(1)(p); and [Yukon Act](#), S.C. 2002, c. 7, para. 18(1)(p). There is no equivalent provision in the *Nunavut Act*.
9. IRCC, [2022 Annual Report to Parliament on Immigration](#), p. 38.

10. Government of Canada, [Nunavut – Federal–Provincial/Territorial Agreements](#).
11. IRCC, [2018 Annual Report to Parliament on Immigration](#), p. 34.
12. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 4(1).
13. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 4(2); and [Ministerial Responsibilities Under the Immigration and Refugee Protection Act Order](#), SI/2015-52, 11 June 2015, in *Canada Gazette*, Part II, 1 July 2015, p. 2232.
14. Ibid.
15. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 5.
16. Most immigrants in the economic immigration category come to Canada through Express Entry, an application management system for the Federal Skilled Workers Program, the Federal Skilled Trades Program, the Canadian Experience Class and a portion of the Provincial Nominee Program. For more information, see Government of Canada, [Express Entry Reports and Publications](#).
17. For more information, see [Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures](#), 44th Parliament, 1st Session (S.C. 2022, c. 10).
18. IRCC, [Canada announces first-ever category-based selection invitations for newcomers with work experience in transport](#), News release, 18 September 2023.
19. The first invitations were sent in September 2023 for the transport sector. For more information, see *ibid.*
20. [Immigration and Refugee Protection Regulations](#), SOR/2002-227, ss. 78 to 83.
21. *Ibid.*, ss. 12.1 and 12.3.
22. [Statutory Instruments Act](#), R.S.C. 1985, c. S-22, s. 6.
23. Treasury Board of Canada Secretariat, [Cabinet Directive on Regulation](#).
24. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 5(2).
25. [Budget Implementation Act, 2008](#), S.C. 2008, c. 28, s. 118.
26. For a detailed list, see Government of Canada, [Ministerial Instructions](#).
27. Government of Canada, [Ministerial Instructions 23 \(MI23\): Atlantic Immigration Pilot](#).
28. IRCC, [Permanent Atlantic Immigration Program to attract workers and drive economic growth](#), News release, 17 December 2021.
29. IRCC, [Economic Mobility Pathways Pilot](#), Backgrounder; and IRCC, [Canada opens new economic immigration streams for skilled refugees and other displaced people](#), News release, 12 June 2023.
30. Government of Canada, [Rural and Northern Immigration Pilot: about the pilot](#).
31. IRCC, [Expanding the benefits of immigration in rural and northern communities](#), News release, 26 August 2022.
32. Government of Canada, [Home Child Care Provider Pilot and Home Support Worker Pilot: Changes for the 2023 application process](#).
33. Government of Canada, [Ministerial Instructions 35 \(MI35\): Agri-Food Immigration Pilot](#).
34. Government of Canada, [Operational instructions and guidelines](#); and Immigration and Refugee Board of Canada (IRB), [Chairperson's guidelines](#).
35. See, for example, [Avila v. Canada \(Citizenship and Immigration\)](#), 2009 FC 13 (CanLII), para. 12.
36. More information on the IRB divisions and rules is available at IRB, see IRB, [Act, rules and regulations](#).
37. In 2021–2022, the Refugee Protection Division finalized just more than 48,000 claims and the Refugee Appeal Division finalized just more than 11,000 appeals. For more information, see IRB, [“Operating Context,” Departmental Results Report 2021–2022](#).
38. IRB, [About the Board](#).
39. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 72.

40. IRCC, [ENF 09: Judicial Review](#), 30 January 2006, pp. 8 and 10; and Government of Canada, [Apply to the Federal Court of Canada for judicial review](#).
41. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 72; and Lorne Waldman, *Immigration Law and Practice*, 2nd ed., 2005, pp. 7–11.
42. Government of Canada, [Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens](#), 5 February 1991.
43. Apart from Nunavut, for which there are no agreements or accords in place. See Government of Canada, [Nunavut – Federal–Provincial/Territorial Agreements](#).
44. IRCC, “[1.2. Brief Program Profile](#),” *Evaluation of the Provincial Nominee Program*, November 2017.
45. Garnett Picot, Feng Hou and Eden Crossman, “[The Provincial Nominee Program: Its expansion in Canada](#),” *Economic and Social Reports*, Statistics Canada, 26 July 2023.
46. Ibid.
47. The rationale provided for resuming federal responsibility was to ensure a consistent level of service across Canada outside Quebec. See Government of Canada, [Government of Canada to Strengthen Responsibility for “Integration of Newcomers Integration Services Are About Nation Building”](#), [says Kenney](#), News release, 12 April 2012.
48. In August 2021, IRCC announced an investment of \$100 million over three years. This investment is to improve service delivery, facilitate newcomers’ access to settlement services and help the sector recover from the negative effects of the COVID-19 pandemic. See Government of Canada, “[Details on transfer payment programs](#),” *Departmental Results Report 2022*.
49. Government of Canada, [Learn about funding processes for settlement services](#); IRCC, [Evaluation of the Settlement Program](#), November 2017; and Government of Canada, “Details on Transfer Payment Programs of \$5 Million or More,” *2018 Departmental Results Report*.
50. Government of Canada, “Details on Transfer Payment Programs of \$5 Million or More,” *2018 Departmental Results Report*.
51. According to s. 94 of the IRPA, the *Annual Report to Parliament* must be tabled on or before 1 November of each year or within the 30 days on which Parliament is sitting after that date.