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Immigration Policy Primer

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(In Brief)

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IMMIGRATION POLICY PRIMER

1 INTRODUCTION

Every year, more than 250,000 people immigrate to Canada. More 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*¹ (IRPA) and include:

- 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.

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

- eligibility criteria for immigration;
- requirements for entering and remaining in Canada (inadmissibility);²
- integration into Canadian society; and
- ways in which the IRPA should be enforced.

Also, in consultation with 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 Annual Levels Plan).³ The Annual Levels Plan is an important policy document that not only determines how resources of Immigration, Refugees and Citizenship Canada (IRCC)⁴ 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, including the federal legislative framework and which levels of government have jurisdiction over which aspects of immigration policy. It also includes a short overview of the Immigration and Refugee Board of Canada (IRB) and the role of the judiciary in the immigration field.

2 FEDERAL RESPONSIBILITY

Immigration is a shared federal–provincial/territorial jurisdiction under the Canadian Constitution. The federal government is responsible for “reuniting families, determining refugee claims within Canada, defining immigration categories, setting national immigration levels, and establishing admission requirements,” as well as establishing eligibility criteria for settlement programs in provinces other than Quebec.⁵

Within the federal government, implementing 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.

The Minister of Public Safety is responsible for:

- examinations at ports of entry;
- enforcement of IRPA (including 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.⁶

Some aspects of IRPA are designated the dual responsibility of the Ministers of Immigration, Refugees and Citizenship and of Public Safety and Emergency Preparedness.⁷

The Minister of Employment, Workforce Development and Labour 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

IRPA is the main statute in the field of 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. 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, IRPA does not prescribe the details of immigration programs or procedures. Instead, IRPA is an enabling statute, authorizing these details to be established by regulation. This means that the *Immigration and Refugee Protection Regulations* form an important policy instrument. Through IRPA, Parliament has delegated to the Governor in Council the authority to make immigration-related regulations.⁸

A couple of examples help to underscore the importance of the regulations as a policy instrument. Section 78, for instance, lays out the selection grid for federal skilled workers, an economic class of immigration, explaining how points are to be allocated for the applicants' skills and experience.⁹ Section 12.1, which affects temporary residents, lists countries whose citizens must submit biometric information (photograph and fingerprints) with their temporary resident visa application, and it sets out the process for so doing.¹⁰

Regulation-making is a rigorous legal process that requires registration and publication in the *Canada Gazette*.¹¹ The Regulatory Policy of the Government of Canada further stipulates, among other things, that regulatory authorities must consult with Canadians and publish an analysis of the expected impact of each regulatory initiative.¹²

Certain immigration regulations are subject to parliamentary scrutiny. Specifically, all proposed regulations made pursuant to the following aspects of 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).¹³

When it was passed into law, IRPA authorized the Minister of Citizenship and Immigration to issue Ministerial Instructions to immigration officers. The visibility and importance of this tool for managing immigration applications gained greater prominence in 2008, following legislative amendments.¹⁴

Since then, a central purpose of Ministerial Instructions has been to allow the department to realize 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 that exceed the cap. Over time, new provisions have been added to IRPA that allow Ministerial Instructions to be used for

other purposes as well, such as creating new economic class pilot programs. There are now seven provisions in IRPA authorizing the Minister to issue instructions; they are summarized in the appendix to this paper.

Ministerial Instructions are not statutory instruments and are therefore not subject to the same requirements concerning consultation and publishing as regulations. Making administrative changes through Ministerial Instructions is much faster than through legislation or regulations, and thereby provides the Minister and IRCC greater flexibility to realize the Annual Levels Plan.

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 consistent application of the legislative framework, guidelines are developed and distributed in the form of Operational Manuals and Bulletins, and in the form of Chairperson's Guidelines in the case of the IRB.¹⁵ While the manuals are not binding, they have been used by the courts as "a useful indicator of what constitutes a reasonable interpretation of the power' conferred by the applicable section of IRPA."¹⁶

2.3 THE IMMIGRATION AND REFUGEE BOARD OF CANADA

The IRB is an important institution in federal immigration policy. It is an administrative tribunal comprising four divisions, each with a distinct mandate and its own set of rules.¹⁷ Through the IRB, Canada honours its international commitments by deciding who among the claimants who come to Canada needs refugee protection, and also conducts appeals of eligible refugee determinations. The IRB also plays an important role in enforcing immigration law through the 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.

2.4 THE JUDICIARY

Due 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 IRPA may be brought for judicial review, leave to do so must first be obtained.¹⁸ The applicant must convince the court that the application raises a serious issue.¹⁹ Further, where a mechanism exists within IRPA for review of a decision, that mechanism must first be exhausted before attempting judicial review.²⁰

3 PROVINCIAL RESPONSIBILITY

The role of provinces and territories in immigration is not uniform and has changed significantly over time. Now 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 Quebec government is responsible for selecting all economic class immigrants destined to settle in the province.²¹ Also, under the Accord, Quebec selects refugees for resettlement from the pool of IRCC-approved candidates as a fixed percentage of Canada's total and also bears responsibility for settlement programming. For conducting 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 immigrant selection. Under the PNP, provinces/territories develop their own economic class immigration programs, designed to suit their unique regional labour market needs. The federal government retains responsibility for assessing the inadmissibility of each nominated individual.

More than 50 categories and subcategories of immigration now exist under the PNPs.²² The percentage of immigrants selected through these programs has also increased, from 2.7% of permanent residents in 2004 to 18.3% in 2014.²³ Certain elements of the program have been formalized in subsequent agreements as the PNP has grown: in particular, the federal government has instituted minimum language requirements for lower skilled nominees and has taken measures to address program integrity concerns.

Quebec is currently the only province with responsibility for immigrant settlement programs. The Manitoba and British Columbia governments had this responsibility for more than a decade, but those responsibilities ended in 2013 and 2014 respectively after the federal government cancelled the relevant agreements.²⁴ In all provinces other than Quebec, IRCC funds settlement programming through contributions to more than 700 service provider organizations.²⁵

4 CONCLUSION

Realizing Canada's immigration objectives as articulated in IRPA is the combined responsibility of the federal and provincial/territorial governments. In addition, each provincial government pursues its own goals within its sphere of responsibility.

At the federal level, immigration policy in Canada is characterized by framework legislation that establishes the broad parameters, with substantial discretion accorded to the Minister, 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, for instance through receipt of the *Annual Report to Parliament on Immigration*,²⁶ review of tabled regulations, consideration of legislation, and studies at committee on the activities of IRCC, the CBSA and the IRB.

NOTES

1. [Immigration and Refugee Protection Act](#) [IRPA], S.C. 2001, c. 27, s. 3.
2. 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 crime, health grounds, financial reasons, misrepresentation, or having an inadmissible family member.
3. For the detailed 2015 Levels Plan, see Citizenship and Immigration Canada [CIC], [Notice – Supplementary Information to the 2015 Immigration Levels Plan](#). The Levels Plan is included in the *Annual Report to Parliament*, which must be tabled by 1 November annually when parliament is sitting.
4. Formerly known as Citizenship and Immigration Canada, the government department changed names in November 2015 to Immigration, Refugees and Citizenship Canada.
5. CIC, “Section 3: Federal–Provincial/Territorial Partnerships,” [2014 Annual Report to Parliament on Immigration](#).
6. IRPA, s. 4(2); and [Ministerial Responsibilities Under the Immigration and Refugee Protection Act Order](#), SI/2015-52, 1 July 2015, in *Canada Gazette*, Vol. 149, No. 13, 1 July 2015.
7. [Ministerial Responsibilities](#) (1 July 2015).
8. See IRPA, s. 5.
9. [Immigration and Refugee Protection Regulations](#), SOR/2002-227, s. 78.
10. *Ibid.*, s. 12.1.
11. Privy Council Office, [Guide to Making Federal Acts and Regulations: Part 3 – Making Regulations](#).
12. *Ibid.*
13. IRPA, s. 5(2).
14. [Budget Implementation Act, 2008](#), S.C. 2008, c. 28, s. 118.
15. See Immigration, Refugees and Citizenship Canada (IRCC), [Operational bulletins and manuals](#); Immigration and Refugee Board of Canada [IRB], [Chairperson’s Guidelines](#).
16. [Avila v. Canada \(Citizenship and Immigration\)](#), 2009 FC 13, para. 12.
17. More information on the IRB divisions and rules is available at IRB, [Act, Rules and Regulations](#).
18. IRPA, s. 72.
19. IRCC, [ENF 09: Judicial Review](#), p. 8.
20. Lorne Waldman, *Immigration Law and Practice*, 2nd ed., LexisNexis Canada, 2005, p. 11-7.

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21. IRCC, [*Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens*](#).
22. CIC, [*Evaluation of the Provincial Nominee Program*](#), September 2011, p. 15.
23. CIC, [*Facts and figures 2014 – Immigration overview: Permanent residents*](#).
24. The rationale provided for resuming federal responsibility in these provinces was to ensure a consistent level of service across Canada outside Quebec. 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.
25. In 2014, CIC distributed \$572,212,198 in transfers under the settlement program. Receiver General for Canada, “Section 6 – Transfer Payments,” in [*Public Accounts of Canada 2014*](#), Volume III, 2014.
26. Section 94 of IRPA requires the Minister to table a report on immigration in Parliament on or before 1 November each year.

APPENDIX – SUMMARY OF MINISTERIAL INSTRUCTION PROVISIONS IN THE *IMMIGRATION AND REFUGEE PROTECTION ACT*

Section	Statutory Authority	Summary	Publishing Requirements	Example(s)
10.3	<i>Economic Action Plan 2013 Act, No. 2, S.C. 2013, c. 40, s. 290</i>	Ministerial Instructions may establish how the Express Entry system for economic class applications is implemented, including electronic applications, the system for ranking candidates, and, for each round of invitations, the points required and the number of “invitations to apply for permanent residence” to be issued.	All must be published on Immigration, Refugees and Citizenship Canada’s website; certain instructions issued under this authority must be published in the <i>Canada Gazette</i>	<ul style="list-style-type: none"> – Ministerial Instructions respecting invitations to apply for permanent residence under the Express Entry system: #10 – June 12, 2015 – Instructions for managing certain permanent resident applications in the Economic Class (1 December 2014)
13	<i>Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27</i>	Immigration officers are to apply the regulations on sponsorship in accordance with any instructions the Minister may make.	N/A	N/A
14.1	<i>Jobs, Growth and Long-term Prosperity Act, S.C. 2012, c. 19, ss. 702, 710</i>	Ministerial Instructions may be used to establish small-scale, economic-class, permanent resident programs of limited duration.	<i>Canada Gazette</i>	<ul style="list-style-type: none"> – Ministerial Instructions Respecting the Start-up Business Class, 2015 (23 May 2015) – Ministerial Instructions Establishing the Caring for Children Class (29 November 2014)
15(4)	IRPA; amended by the <i>Jobs and Growth Act, 2012, S.C. 2012, c. 31, s. 310</i>	Immigration officers are to examine applications and electronic travel authorizations according to any instructions the Minister may make.	N/A	N/A
24	IRPA	Immigration officers must issue temporary resident permits to inadmissible foreign nationals in accordance with any instructions the Minister may make.	N/A	N/A

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Section	Statutory Authority	Summary	Publishing Requirements	Example(s)
30	IRPA; amended by the <i>Safe Streets and Communities Act</i> , S.C. 2012, c. 1, s. 206; the <i>Economic Action Plan 2013 Act, No. 1</i> , S.C. 2013, c. 33, s. 161; the <i>Economic Action Plan 2013 Act, No. 2</i> , S.C. 2013, c. 40, s. 235; and the <i>Economic Action Plan 2014 Act, No. 2</i> , S.C. 2014, c. 39, s. 307	The Minister of Immigration, Refugees and Citizenship and the Minister of Employment, Workforce Development and Labour may specify public policy considerations in instructions that justify refusing or revoking a work permit, or revoking, suspending or refusing to process a Labour Market Impact Assessment.	<i>Canada Gazette</i>	<ul style="list-style-type: none"> - Ministerial Instructions Respecting Labour Market Opinions (28 December 2013) - Ministerial Instructions Respecting the Revocation of Work Permits (28 December 2013)
87.3(6)	<i>Budget Implementation Act, 2008</i> , S.C. 2008, c. 28, s. 118	The Minister may give instructions with respect to the processing of applications and requests.	<i>Canada Gazette</i>	<ul style="list-style-type: none"> - Ministerial Instructions (Ebola) (31 October 2014) - Ministerial Instructions regarding Federal Skilled Workers (4 May 2013)