



IN BRIEF

IMMIGRATION POLICY PRIMER

Publication No. 2020-05-E
9 December 2019

Laurence Brosseau, Legal and Social Affairs Division
Parliamentary Information and Research Service

This publication was prepared as part of the Library of Parliament’s research publications program, which includes a set of publications, introduced in March 2020, addressing the COVID-19 pandemic. Please note that, because of the pandemic, all Library of Parliament publications will be released as time and resources permit.

Papers in the Library of Parliament’s *In Brief* series are short briefings on current issues. At times, they may serve as overviews, referring readers to more substantive sources published on the same topic. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

© Library of Parliament, Ottawa, Canada, 2020

Immigration Policy Primer
(In Brief)

Publication No. 2020-05-E

Ce document est également publié en français.

CONTENTS

1	INTRODUCTION	1
2	FEDERAL RESPONSIBILITY	2
2.1	Legislative Framework	3
2.2	Operational Guidelines	5
2.3	The Immigration and Refugee Board of Canada	5
2.4	The Judiciary	6
3	PROVINCIAL RESPONSIBILITY	6
4	CONCLUSION	7

IMMIGRATION POLICY PRIMER*

1 INTRODUCTION

Every year, more than 250,000 permanent residents immigrate to Canada. In 2018, more than 321,000 people were admitted.¹ 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.²

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;³
- 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).⁴ 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)⁵ 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.⁶ 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.⁷

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,⁸ apart from Nunavut,⁹ 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.¹⁰

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.¹¹

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.¹²

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.¹³

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.¹⁴

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.¹⁵ Section 12.1 of the regulations lists claims, applications and requests that require the submission of biometric information (photograph and fingerprints), while section 12.3 sets out the procedure for collecting this information.¹⁶

Regulation-making is a rigorous legal process that requires regulations to be registered and published in the *Canada Gazette*.¹⁷ 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.¹⁸

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).¹⁹

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.²⁰

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 that exceed the cap. 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.²¹ These programs include the following:

- The Global Skills Strategy, introduced in 2017. The purpose of this strategy is to give priority to certain work permit applications for highly skilled workers. Originally created as a pilot project, the global talent stream of the strategy became permanent in March 2019.²²
- The Atlantic Immigration Pilot, introduced in March 2017. Through the program, 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, can apply for permanent residence.²³

In March 2019, IRCC announced a two-year extension of the program.²⁴

- The Rural and Northern Immigration Pilot, introduced in September 2019. The program facilitates immigration to one of the 11 participating communities.²⁵
- The Agri-Food Immigration Pilot, scheduled to be introduced in March 2020. The project will provide permanent residence for non-seasonal agri-food workers with qualifying experience in the Temporary Foreign Worker Program and a job offer in eligible agri-food occupations and industries.²⁶

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 form of Chairperson's guidelines in the case of the IRB.²⁷ 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."²⁸

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.²⁹ 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 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.

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.³⁰ The applicant must convince the court that the application raises a serious issue.³¹ Further, where a mechanism exists within the IRPA for review of a decision, that mechanism must first be exhausted before attempting judicial review.³²

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.³³ 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.³⁴ 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.³⁵

There are currently more than 60 streams in the various PNPs targeting groups such as students, businesspeople and skilled workers.³⁶ The percentage of immigrants selected through these programs has increased, from 9.1% of permanent residents in 2008 to 17.4% in 2017.³⁷ 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.³⁸ In every province but Quebec, IRCC funds settlement programming through contributions to more than 500 service provider organizations, in five separate areas:³⁹

- needs assessment and referrals;
- information and orientation;
- language training;
- employment-related services; and
- community connections.⁴⁰

IRCC also funds support services, including childcare, transportation, translation and interpretation, disability support and crisis counselling.⁴¹

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.⁴²

NOTES

- * This paper is a revised version of Sandra Elgersma, [Immigration Policy Primer](#), Publication no. 2015-42-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 16 November 2015.
1. Immigration, Refugees and Citizenship Canada [IRCC], [2019 Annual Report to Parliament on Immigration](#).
 2. [Immigration and Refugee Protection Act](#) [IRPA], S.C. 2001, c. 27, s. 3.
 3. 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.
 4. Before 2017, immigration levels were set on an annual basis. For more information on the 2019 to 2021 Immigration Levels Plan, see Government of Canada, [Notice – Supplementary Information 2019–2021 Immigration Levels Plan](#), Ottawa, 31 October 2018. The immigration plan is included in the *Annual Report to Parliament*, which must be tabled on or before 1 November of each year or within the next 30 days on which Parliament is sitting after that date, according to s. 94 of the IRPA.
 5. Formerly known as “Citizenship and Immigration Canada,” the government department changed names in November 2015 to “Immigration, Refugees and Citizenship Canada.”
 6. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.), s. 95.
 7. 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*.
 8. IRCC, [2018 Annual Report to Parliament on Immigration](#), 2018, p. 34.
 9. Government of Canada, [Nunavut – Federal-Provincial/Territorial Agreements](#).
 10. IRCC (2018), p. 34.
 11. IRPA, s. 4(1).
 12. IRPA, 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, Vol. 149, No. 13, 1 July 2015, p. 2232.
 13. Ibid.
 14. IRPA, s. 5.
 15. [Immigration and Refugee Protection Regulations](#), SOR/2002-227, ss. 78 to 83.
 16. Ibid., ss. 12.1 and 12.3.
 17. [Statutory Instruments Act](#), R.S.C. 1985, c. S-22, s. 6.
 18. Treasury Board of Canada Secretariat, [Cabinet Directive on Regulation](#).
 19. IRPA, s. 5(2).
 20. [Budget Implementation Act, 2008](#), S.C. 2008, c. 28, s. 118.
 21. For a detailed list, see Government of Canada, [Ministerial Instructions](#).
 22. IRCC, [Second Anniversary of the Global Skills Strategy](#), Statement, Ottawa, 12 June 2019.
 23. Government of Canada, [Ministerial Instructions 23 \(MI23\): Atlantic Immigration Pilot](#).
 24. Government of Canada, [Atlantic Immigration Pilot](#).
 25. Government of Canada, [Rural and Northern Immigration Pilot: about the pilot](#).
 26. Government of Canada, [Ministerial Instructions 35 \(MI35\): Agri-Food Immigration Pilot](#).
 27. Government of Canada, [Operational instructions and guidelines](#); and Immigration and Refugee Board of Canada [IRB], [Chairperson’s guidelines](#).
 28. See, for example, [Avila v. Canada \(Citizenship and Immigration\)](#), 2009 FC 13 (CanLII), para. 12.
 29. More information on the IRB divisions and rules is available at IRB, see IRB, [Act, rules and regulations](#).

30. IRPA, s. 72.
31. IRCC, [ENF 09: Judicial Review](#), p. 8.
32. Lorne Waldman, *Immigration Law and Practice*, 2nd ed., LexisNexis Canada, 2005, pp. 7–11.
33. Government of Canada, [Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens](#).
34. Apart from Nunavut, for which there are no agreements or accords in place. See Government of Canada, *Nunavut – Federal Provincial/Territorial Agreements*.
35. IRCC, [“1.2. Brief Program Profile,” Evaluation of the Provincial Nominee Program](#), November 2017.
36. Ibid.
37. IRCC, [Facts and Figures 2017: Immigration Overview – Permanent Residents](#).
38. 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, Ottawa, 12 April 2012.
39. For the 2017–2018 fiscal year, the transfer payments allocated by IRCC as part of the settlement programs amounted to \$714,482,559. See Government of Canada, [“Details on Transfer Payment Programs of \\$5 Million or More,” 2018 Departmental Results Report](#).
40. Government of Canada, [Funding](#); 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*.
41. Government of Canada, “Details on Transfer Payment Programs of \$5 Million or More,” *2018 Departmental Results Report*.
42. 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 next 30 days on which Parliament is sitting after that date.