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Port-of-Entry Best Practices

As a general rule, only citizens of countries that are exempt from the requirement to obtain a temporary resident visa (TRV) may apply at a Canadian port-of-entry ("POE") such as an airport or land border. Applying at the POE allows these individuals to receive instant adjudication and to gain admission to Canada quickly and efficiently. However, there are risks associated with this process due to the wide discretionary powers of POE officers, which creates uncertainty and can be daunting for the applicant/employee.

Below, we outline some best practices for POE applications, which can assist in making the POE application process more seamless for the applicant/employee.

- **Best Practice Tip #1 –** ***Preparing the Applicant***

Applying at the POE can be daunting, especially considering the uncertainty and the wide discretionary powers of officers as mentioned above. However, with the correct information and documentation, the applicant/employee can quite effectively maneuver this process.

Preparing the applicant/employee properly can facilitate smoother entry into Canada. In order to achieve the most efficient result, the applicant/employee should be advised of the following:

- ***Procedure and what to expect*** – The applicant/employee should be briefly advised on the general procedure at the POE, including primary and secondary inspection procedures.

- ***Required and supporting documents*** – Most importantly, when applying for a work permit at the POE, the applicant/employee should be provided with all the essential documents in order to minimize the risk of refusal. These documents should provide clear evidence that the individual meets all the requirements of their relevant category. In addition, the applicant/employee should be given time to review their application package to confirm the information is correct and accurate, and that they are familiar with the contents so that they are prepared to answer any questions that an immigration officer may pose.

- ***Electronic Travel Authorization (eTA)*** – As mentioned above, generally only citizens of countries that are exempt from the requirement to obtain a temporary resident visa (TRV) may apply at the port-of-entry. In this regard, if the applicant is from a visa-exempt country, it is critical to advise the applicant/employee that they must apply for an eTA or confirm that their current eTA is still valid. Different rules apply to U.S. citizens who are exempt from both the TRV and eTA requirements.

- ***Misrepresentation*** **–** The applicant/employee should be advised on the importance of telling the truth. An applicant/employee will be found inadmissible to Canada if they directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of the *Immigration and Refugee Protection Act*. The Act imposes significant fines and may make an individual inadmissible to Canada for 5 years.

- ***Customs regulations*** **–** Often an applicant/employee will seek to bring along their belongings at the same time that they wish to apply and obtain their work permit. Although this topic is usually out of scope, it would be best to make the applicant/employee aware of the relevant customs regulations. If this topic is out of scope for the lawyer, and the applicant/employee insists on moving all of their belongings when applying at the POE, then it may be more appropriate to refer the applicant/employee to a lawyer who deals with customs matters and can provide more fulsome advice. Nevertheless, it would be prudent of any immigration lawyer to recommend an applicant/employee to first process their work permit application, as mixing matters relating to customs with the work permit process may cause unnecessary complications.

- **Best Practice Tip #2 –** ***Managing Risk at the POE***

Not all ports-of-entry are the same. The outcome of an application may vary significantly depending where which POE location the applicant/employee decides to apply. Generally, it is advisable that small or remote POE locations be avoided as they typically do not deal with certain types of applications and officers at these ports-of-entry may not be familiar with specific category requirements and may decide to turn away the applicant/employee simply because the POE officer may not feel comfortable in processing the application. Instead, larger or well-known ports-of entry should be recommended.

Under a pilot program launched last summer, the Canada Border Services Agency (CBSA) has begun to restrict "flagpoling" to Tuesday, Wednesday and Thursday each week at the Rainbow, Queenston-Lewiston, and Peace bridges. It has since expanded to the Lacolle and St-Armand ports-of-entry in Quebec. These unofficial policies may ultimately be adopted across other ports-of-entry across Canada.

Counsel should conduct their due diligence and to call the POE which the applicant/employee intends to apply in order to confirm whether their application can be processed, and if so, whether there are any specific days or times in which the processing of these POE applications occur.

- **Best Practice Tip #3 –** ***Anticipating Inadmissibility at the POE***

In order to properly anticipate any inadmissibility issues (criminal or medical) that may arise, representation should be certain that proper screening processes are in place to easily identify any potential issues regarding inadmissibility. The lawyer should attempt to determine this information as early as possible, either by way of speaking directly with the applicant/employee and/or through a completed questionnaire. In any case, the lawyer should be satisfied that the applicant/employee understands the questions and understands the importance of telling the truth as this refers to the

issue of misrepresentation. Please note that inadmissibility issues will also apply to any accompanying dependents of the applicant/employee (i.e. spouse and/or children). Addressing issues of inadmissibility at the beginning of the process can assist both cousel and the applicant/employee in determining possible avenues of addressing the inadmissibility (i.e. TRP) rather than it being discovered when the applicant/employee is applying at the POE.

As a result of the recent amendments to the Canadian Criminal Code now, more severe immigration-related consequences for permanent residents and foreign nationals convicted of any impaired driving offences now apply. As of December 18, 2018, impaired driving is now considered serious criminality, rather than criminality.

- ***Impaired Driving and Bill C-46***

Prior to December 18, 2018, individuals convicted of an impaired driving offence, which was considered criminality could be eligible for deemed rehabilitation. However now, individuals convicted of impaired driving will no longer be eligible for deemed rehabilitation and must now obtain a Temporary Resident Permit (TRP) in order to overcome the inadmissibility. This will result in serious issues for those individuals seeking admission to Canada at the POE due to the lengthy processing times of a TRP.

As a result of this amendment, obtaining TRPs for impaired driving offences at the POE will be extremely difficult to obtain as impaired driving is now considered serious criminality. However, it is important to note that any applicant/employee who committed an impaired driving offence prior to December 18, 2018, will still be treated as criminality and are still eligible for deemed rehabilitation at the POE. As such, all applicants/employees with impaired driving offences post-amendment date, should plan to apply for a TRP well in advance of their intended date of travel, and also be aware that applications such as these are not guaranteed due to the high level of scrutiny being applied.

- ***Cannabis at the POE***

Due to the recent legalization of cannabis in Canada, cousel need to take extra precaution when advising applicants/employees of the recent legalization and its implications in cross-border activity. Although cannabis has been legalized in Canada, it is important to note the new legislation prohibits the importation or exportation of cannabis across the border. As such, lawyers should advise the applicant/employee that carrying or possessing cannabis (or any cannabis byproducts) while entering or exiting Canada remains illegal and can result in serious penalties.

Conseil canadien pour les réfugiés
Canadian Council for Refugees

Anti-refugee provisions in Bill C-97 (Budget bill)

Submission to the Standing Committee on Citizenship and Immigration

May 2019

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1. Introduction

This submission is made as a contribution to the Committee's study into the Subject Matter of Clauses 301 to 310 (Part 4, Division 16) of Bill C-97, the omnibus budget bill. The clauses in question would amend the Immigration and Refugee Protection Act in ways that would affect the rights of refugee claimants seeking Canada's protection.

The Canadian Council for Refugees is a national non-profit umbrella organization committed to the rights and protection of refugees and other vulnerable migrants in Canada and around the world and to the settlement of refugees and immigrants in Canada. We have approximately 200 members across Canada: our members are organizations involved in the settlement, sponsorship and protection of refugees and immigrants. The Council serves the networking, information-exchange and advocacy needs of its membership.

2. Changes to the refugee system do not belong in a budget bill

The Canadian Council for Refugees calls on the Committee to reject the proposed amendments in their entirety.

The changes in question are complex and have the potential to cost human lives. They have no direct relevance to the budget.

As explained below, the proposed changes would place many people at increased risk of being sent back to face persecution, in violation of the Canadian Charter of Rights and Freedoms and of Canada's international human rights obligations.

The inclusion of such changes in the budget bill is undemocratic and profoundly disrespectful to the lives of affected non-citizens. The short time available to this Committee and to Parliament as a whole to study the provisions means that they will not properly consider them, despite their profound impact on the fundamental rights of vulnerable people.

The Liberal Party's own electoral platform condemned omnibus bills as undemocratic, noting that they prevent Parliament from properly reviewing and debating proposals.[1] It is very disappointing to see the government disregarding their commitment and resorting to this practice.

If the government believes that the proposed changes merit consideration, they should be re-introduced instead in a separate bill.

3. Denying access to Canada's refugee determination system may lead to return to torture, persecution and death

Among the key changes proposed, the bill would make a person ineligible to make a refugee claim in Canada and thus to be heard by the Immigration and Refugee Board (IRB) if they have previously made a refugee claim in another country with whom Canada has an information-sharing agreement (notably in the US).

[1] www.liberal.ca/realchange/prorogation-and-omnibus-bills/

This means that numerous refugee claimants, who may need Canada's protection because they face persecution, torture or death in their country of origin, will be denied access to Canada's refugee determination system. They will have access only to a Pre-Removal Risk Assessment (PRRA), a process that provides much less fairness than a hearing at the Immigration and Refugee Board.

Canada has much to be proud of in our refugee determination system, including the fact that we rely on an expert, independent quasi-judicial tribunal: the Immigration and Refugee Board. The IRB has earned a reputation around the world as a model for refugee determination. Many other countries turn to Canada's IRB to improve their own refugee determination systems. The proposed change would undermine the role of the IRB and send numerous people to an inferior system (the PRRA).

Because of its focus on refugee determination, the IRB has been able to innovate and develop significant expertise that is essential for high quality refugee determination, including use of the Chairperson's Guidelines (e.g. Gender, Sexual orientation and gender identity and expression, children). The IRB has highly developed programs of training, research and documentation using methods that respect risks inherent to the refugee reality. People who made a claim in the US often come to Canada precisely because the US does not provide the same protections, especially for people whose claim is based on gender or sexual orientation. Depriving these claimants of a hearing before the IRB means, among other things, that we will be failing people who flee persecution based on their gender or sexual orientation.

Until now, the Canadian government has generally responded in a principled and rights-based way to the recent (and likely temporary) increase in the number of refugee claimants arriving in Canada. With this proposal, Canada would be shamefully joining too many other countries who respond to increased numbers of refugees not by matching capacity to needs, but by closing the door on people fleeing rights abuses.

4. It does not make sense to deny access to the refugee system because the person made a refugee claim in another country

The proposed new ground of ineligibility is apparently based on the premise that a person is not in need of, or not deserving of protection if they previously made a claim in another country. This is wrong in law and in fact.

There is no legal obligation, under the Refugee Convention or other international legal instruments, to seek refugee protection in the first country of asylum that a person reaches. Canada's legal obligation is not to return a person to face persecution, torture or death – that obligation is not in any way affected by whether or not a person made a refugee claim in another country.

People may have compelling reasons for making a refugee claim in Canada after previously having made a claim in the US or another country.

- The person may come to Canada to join a family member who is already here. The US-Canada Safe Third Country Agreement in fact includes an exemption for persons who have a family member in Canada, because the two governments agree that it is appropriate for people to pursue their claim in the country where they have family, rather than in the first country they reached. Under the proposed change, some people will present themselves at a land Port of Entry and be found eligible to enter Canada under the Safe Third Country Agreement, but then be denied access to the refugee determination system on the basis that

they made a claim in the US. The result will inevitably be families who are reunited in Canada but forced into separate legal processes (which is also inefficient).

- The person may have been advised that their claim has little chance of success in the US, for example because their claim is based on gender-related persecution or they are fleeing criminal gangs.[2]

- The person's claim may have been rejected, even though they have a well-founded fear of persecution: many people have been recognized as refugees in Canada after their claim was refused in the US. The rejection rate is particularly high for people in immigration detention – many detainees are unable to find a lawyer to represent them, or anyone to assist them with their claim, and even basic communication with the outside world is very difficult while in detention.

- The person may have made the claim in the other country as part of a family group – as a spouse or a child – without themselves having ever had the opportunity to present the reasons they have today for asking for Canada's protection. Women often have distinct experiences of violence and separate fears of persecution which are never examined in the context of a claim made together with their husband.

- The person may always have intended to come to Canada, but in their journey through the US they may have had no choice but to make a refugee claim in order to avoid deportation back to persecution in their country.

5. The Pre-Removal Risk Assessment is not an adequate alternative

Ineligible claimants will have access only to a Pre-Removal Risk Assessment (PRRA), a process that provides much less fairness than a hearing at the IRB. There is no right to a hearing (sometimes an "interview" is offered, but not in the vast majority of cases). PRRA decision-makers are more junior civil servants than those at the IRB and they are not part of a quasi-judicial tribunal. They don't have the same access to training, legal services and Chairperson's guidelines. Claimants in the PRRA process have no right to an appeal at the Refugee Appeal Division in case of a negative decision. Their only recourse is to apply for judicial review at the Federal Court: the Court can choose to deny leave and, in any case, there is no stay of removal while the Court considers the application. Consequently, claimants can be removed from Canada while awaiting the outcome of their judicial review application. The acceptance rate at the PRRA is significantly lower than at the IRB.

Shortcomings in the PRRA system will almost certainly lead to people who need protection being denied it and facing removal from Canada to persecution, torture or even death, in violation of their Charter rights and Canada's international obligations.

6. Unaccompanied minors and other vulnerable persons will be unsupported

The Immigration and Refugee Protection Act provides for the Immigration and Refugee Board to appoint a Designated Representative to protect the interests of minors and other persons who are unable to understand the proceedings, such as people with serious mental health problems. Only the IRB can appoint a designated

[2] For more information on these and other situations where refugees may not be protected in the US, see CCR, "Why the US is not safe for refugees: challenging the Safe Third Country Agreement", July 2018, ccrweb.ca/en/why-US-not-safe-challenging-STCA.

representative: therefore vulnerable people whose claim is found ineligible as a result of these proposed changes, and who are therefore not referred to the IRB, will be deprived of a designated representative.

This means that unaccompanied minors and people with mental health problems will be required to navigate the PRRA process – their only chance to win protection in Canada – without a representative appointed to assist them in understanding the procedures. The lack of a designated representative will seriously affect the ability of minors (especially unaccompanied minors) and people with mental health problems to fully present their case in a PRRA.

Canada already falls short in its treatment of unaccompanied minors seeking protection as refugees (there is no consistent national strategy for ensuring their care and protection). The proposed changes will create additional gaps and failures in the protection of extremely vulnerable minors.

7. Ineligible claimants are more likely to be detained and those in detention face extra challenges applying for a PRRA

Ineligible claimants who are only entitled to a PRRA are more likely to be detained than claimants who are referred to the IRB for a refugee hearing. This is because the PRRA process is viewed as being quicker and more likely to lead to a negative result.

This is to a large extent a self-fulfilling prophecy, since PRRA applications are decided more quickly when the person is in detention, and people in detention are often unable to properly prepare their PRRA application: it may be difficult or even impossible for them to find a lawyer to represent them and they cannot collect evidence to support their claim.

8. Ineligible claimants do not have access to rights and necessary services

Ineligible claimants have significantly fewer rights than eligible claimants and face daily challenges in accessing services to which in theory they are entitled.

Some ineligible claimants do not receive a Refugee Protection Claimant Document (RPCD): this document is essential because it provides a government-issued photo ID that is necessary for countless daily interactions, such as opening a bank account or undergoing an immigration medical exam. Even people who have been accepted as Protected Persons through the PRRA may continue to face the same daily challenges if they were not issued a RPCD, because they still lack a photo ID.

While eligible claimants have a fee exemption for work permits, ineligible claimants must pay a fee. Depending on the province, they may be denied access to social assistance or only get access after delays and appeals.

The recent dramatic cuts at Legal Aid Ontario will have devastating effects on ineligible claimants. It has been announced that there will no longer be legal aid coverage for PRRAs. Legal representation is necessary to effectively present a PRRA application.

9. Ineligible claimants from moratorium countries will be in long-term limbo

The changes will result in long-term limbo in Canada for claimants from countries to which Canada has suspended removal, due to a situation of generalized risk. A PRRA is not available to a person who is not facing deportation from Canada, which means that PRRAs are not offered to people from a country or region subject to a Temporary Suspension of Removals or an Administrative Deferral of Removals.[3] People from these countries whose claims are ineligible will therefore find themselves in limbo: they are not at imminent risk of deportation, but they also have no access to protected status.

Condemning these people to limbo is particularly perverse because the same reasons leading to the suspension of removals (generalized risk) often mean that nationals tend to have very high acceptance rates when heard by the Immigration and Refugee Board (and their claims are often expedited). But because of the proposed new ineligibility provisions, countless people will find themselves in long-term limbo, rather than being quickly accepted as refugees and able to get on with their lives.

People in this situation can apply for humanitarian and compassionate (H&C) consideration, but the grounds for refugee protection cannot be considered in that process. They would likely need to wait years before they could satisfy "establishment" grounds for a positive H&C. In the meantime, they would have no opportunity to reunite with immediate family members and no opportunity to get on with their lives.

There is no evidence that the government considered the fate of people in this situation before tabling the bill: an indication that the provisions have not been well thought out.

10. The proposed changes are likely to lead to legal challenges

The changes engage rights under the Canadian Charter of Rights and Freedoms: the Supreme Court's 1985 Singh decision confirmed that a refugee claimant is entitled under section 7 of the Charter to life, liberty and security of the person, and found that the refugee determination process therefore needs to respect principles of fundamental justice, including the right to an oral hearing.

If these changes are adopted, it is likely that there will be Charter challenges.

11. Transferring claims to the PRRA process is inefficient

The PRRA is managed by Immigration, Refugees and Citizenship Canada (IRCC). IRCC does not currently have the capacity to decide on the thousands of additional PRRA applications that would be transferred to them under this proposal. There will therefore be long delays while additional decision-makers are hired and trained.

The IRB has for some time been preparing for increased numbers of decision-makers, should additional funding be voted – it is not clear that there have been such plans at IRCC. The result is likely to be that

[3] Temporary Suspension of Removals currently apply to Afghanistan, the Democratic Republic of Congo, and Iraq. Administrative Deferral of Removals apply to certain regions in Somalia (Middle Shabelle, Afgoye, and Mogadishu), the Gaza Strip, Syria, Mali, the Central African Republic, South Sudan, Libya, Yemen, Burundi, Venezuela and Haiti.

claimants will wait longer for a decision and there will be overall decreased efficiency in the refugee determination process.

Since 2012, the Immigration and Refugee Protection Act provides for the PRRA to be transferred to the IRB, but successive governments have failed to implement this measure. Rather than duplicating decision-making structures at the IRB and PRRA, the government should increase efficiency by transferring the PRRA to the IRB.

12. Extending the bar on PRRA and H&C is unfair

The bill would also extend the bar on applications for Pre-Removal Risk Assessment and humanitarian and compassionate consideration for refugee claimants who apply to the Federal Court for judicial review, following an IRB decision.

The law currently makes refugee claimants wait 12 months from the final decision on their refugee claim before they can bring new evidence of risk forward in a Pre-Removal Risk Assessment (PRRA). This is already problematic because during the year there may be dramatic new developments in a person's case (e.g. a family member was arrested in the country of origin), but the person has no opportunity to bring it forward.

The proposed amendment would start the 12 month clock from the final decision on an application for leave and judicial review at the Federal Court.

This makes no logical sense since it is impossible to raise new evidence before the Federal Court. Therefore, claimants will face a period far longer than 12 months during which important new evidence of risk to their life and liberty may come forward, without any avenue to present it before they are removed from Canada.

The same applies to the bar on making a humanitarian and compassionate (H&C) application. This application is crucial for many people whose compelling circumstances cannot be raised in any other process. An H&C application does not suspend removal from Canada, so the only effect of barring access is that it prevents people from even bringing forward compelling humanitarian factors.

This new provision is nothing but a means of punishing people for using the legal recourse provided in Canadian law.

13. The refugee determination process should be made fairer and more efficient

In lieu of these changes, there is a principled and straightforward alternative solution easily available to the government: expand the capacity of the IRB to hear claims. This can be done by (a) increasing the resources at the IRB (the budget already includes significant funding increases), (b) introducing innovations in processing at the IRB in order to maximize efficiency (the IRB has already dramatically increased its finalization rate, by fast-tracking clear cases and introducing other measures), and (c) changing the law to eliminate unhelpful rules (notably unrealistic timelines and different processes for some claimants based on country of origin).

The CCR has proposed a model for refugee determination in Canada, which we believe would better meet the needs of both fairness and efficiency: ccrweb.ca/en/ccr-proposed-model-refugee-determination.

14. Conclusion

If adopted, the proposed changes to the refugee system contained in Bill C-97 (Clauses 301 to 310 (Part 4, Division 16)) would risk people's lives, violate the fundamental rights of vulnerable people, leave unaccompanied minors unprotected, generate legal challenges and create completely unnecessary inefficiencies in the refugee determination system.

The consequences of the changes do not appear to have been well-thought through. An omnibus bill does not provide a proper opportunity for Parliament to give the proposals the attention they deserve – and that is owed to the thousands of human beings whose lives will be dramatically and dangerously affected, should the provisions be adopted.

The CCR therefore urges the Committee to reject these proposed amendments to the Immigration and Refugee Protection Act.

Exceptions to the Agreement

Exceptions to the Agreement consider the importance of family unity, the best interests of children and the public interest.

There are four types of exceptions:

- Family member exceptions
- Unaccompanied minors exception
- Document holder exceptions
- Public interest exceptions

Even if they qualify for one of these exceptions, refugee claimants must still meet all other eligibility criteria of Canada's immigration legislation. For example, if a person seeking refugee protection has been found inadmissible in Canada on the grounds of security, for violating human or international rights, or for serious criminality, that person will not be eligible to make a refugee claim.

Family member exceptions

Refugee claimants may qualify under this category of exceptions if they have a family member who:

- is a Canadian citizen
- is a permanent resident of Canada
- is a protected person under Canadian immigration legislation
- has made a claim for refugee status in Canada that has been accepted by the Immigration and Refugee Board of Canada (IRB)
- has had his or her removal order stayed on humanitarian and compassionate grounds
- holds a valid Canadian work permit
- holds a valid Canadian study permit, or
- is over 18 years old and has a claim for refugee protection that has been referred to the IRBfor determination. (This claim must not have been withdrawn by the family member, declared abandoned or rejected by the IRB or found ineligible for referral to the IRB.)

Unaccompanied minors exception

Refugee claimants may qualify under this category of exceptions if they are minors (under the age of 18) who:

- are not accompanied by their mother, father or legal guardian

- have neither a spouse nor a common-law partner, and
- do not have a mother, a father or a legal guardian in Canada or the United States.

Document holder exceptions

Refugee claimants may qualify under this category of exceptions if they:

- hold a valid Canadian visa (other than a transit visa)
- hold a valid work permit
- hold a valid study permit
- hold a travel document (for permanent residents or refugees) or other valid admission document issued by Canada, or
- are not required (exempt) to get a temporary resident visa to enter Canada but require a U.S.–issued visa to enter the U.S.

Public interest exceptions

Refugee claimants may qualify under this category of exceptions if:

- they have been charged with or convicted of an offence that could subject them to the death penalty in the U.S. or in a third country. However, a refugee claimant is ineligible if he or she has been found inadmissible in Canada on the grounds of security, for violating human or international rights, or for serious criminality, or if the Minister finds the person to be a danger to the public.

THE CANADIAN BAR ASSOCIATION

Asylum Seekers

More than 26,000 people crossed the Canada-U.S. border irregularly to file refugee claims in a 15-month period in 2017-18, straining an already overburdened Canadian refugee determination system. This resource aims to provide brief, high-level guidance for lawyers and settlement agencies, or asylum seekers themselves entering from the U.S., in need of preliminary guidance on Canadian refugee law and procedure. It also provides more general information about the Canadian immigration and refugee determination procedures regardless of the country of origin, and about other options for legally entering the country. To find a Canadian immigration lawyer, use the CBA Find-A-Lawyer tool.

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Canada-US Safe Third Country Agreement

The Safe Third Country Agreement (STCA) between Canada and the U.S., signed in 2002 and in effect since 2004, requires refugee claimants arriving at official land border ports of entry to request refugee protection in the country of first arrival, unless they qualify for an exception to the Agreement.

To date, the U.S. is the only country that is designated as a safe third country by Canada under the *Immigration and Refugee Protection Act*.

STCA EXCEPTIONS

4 exceptions allowing claim to be processed in the third country:

- Family member exceptions
- Unaccompanied minor exceptions
- Document holder exceptions
- Public interest exceptions

FAMILY MEMBER EXCEPTION

Family member must be a:

- Canadian citizen
- Permanent resident of Canada
- Protected person under Canadian immigration legislation
- Person who has made a claim for refugee status that has been accepted by the Immigration and Refugee Board (IRB)
- Person who had removal order stayed on humanitarian and compassionate grounds
- Person who holds a valid work permit
- Person who holds a valid study permit, or
- Person who is over 18 years old and has a claim for refugee protection that has been referred to the IRB for determination

FAMILY MEMBER INCLUDES:

- Spouse
- Legal guardian
- Child
- Parent
- Sibling
- Grandparent
- Grandchild
- Uncle and/or aunt
- Nephew and/or niece
- Common-law partner
- Same-sex spouse

UNACCOMPANIED MINOR EXCEPTION

Eligible where the minor child:

- is under 18 years of age and is not accompanied by a mother, father or legal guardian, has neither a spouse nor a common-law partner; and
- does not have a mother or father or a legal guardian in Canada or the U.S.A.

DOCUMENT HOLDER EXCEPTION

Valid documents include:

- Canadian permanent resident visa
- Canadian temporary resident visa
- Canadian work permit
- Canadian study permit
- Travel documents issued to permanent residents by the Canadian government
- Refugee travel papers issued by IRCC's Passport Program

PUBLIC INTEREST EXCEPTION

Canada or the U.S.A. may decide to adjudicate any claim where to do so would be in the public interest.

- Currently, the only designated public interest exception applies to claimants who have been charged with or convicted of an offence that is punishable by the death penalty (in the U.S. or any other country).

ENTERING CANADA VIA THE STCA

Need to prove the family relationship:

- Have the relative come to the border
- Provide as much documentation as possible (with certified translations to EN or FR)
- DNA test
- Prepare for the interview

Recourse available if entry refused:

- Request for reconsideration
- Judicial Review

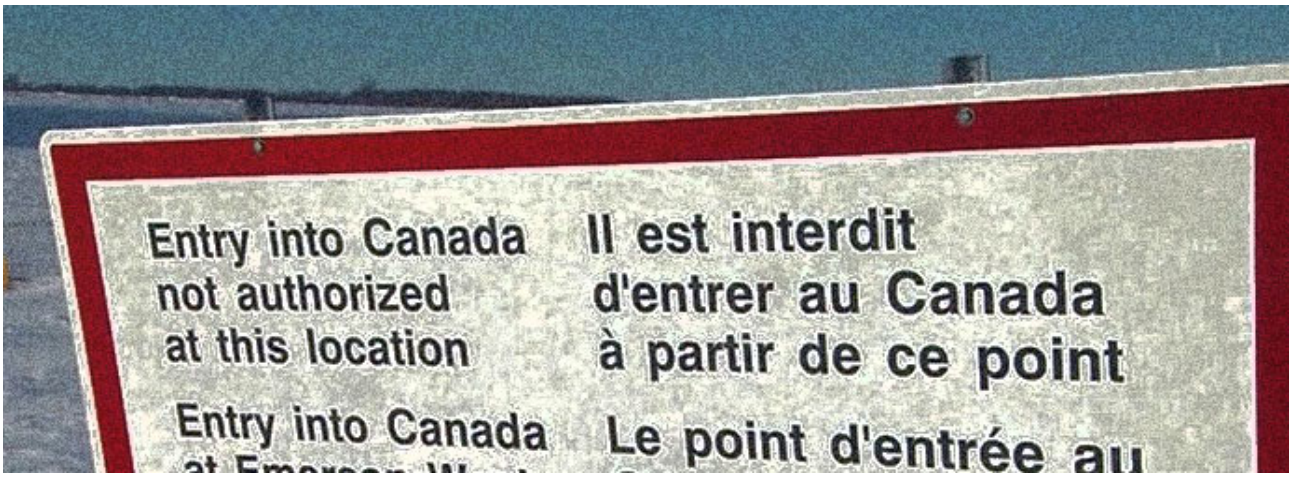
NOTES

- A person can only make one refugee claim in Canada. If a person goes to a Port of Entry and is sent back to the U.S. because of the STCA, and then crosses the border into Canada irregularly, that person cannot make a refugee claim.
- If a refugee claimant crosses the border into Canada irregularly (i.e. not at an official port of entry), then they are able make a refugee claim in Canada because the STCA only applies at official ports. As is the

case for all claimants who are not U.S. citizens or permanent residents, an unsuccessful refugee claim in Canada will lead to removal to the country of citizenship, not to the United States.

THE CANADIAN BAR ASSOCIATION

Inland protection claims



The procedures followed in processing in-Canada or "inland" claims for refugee protection will depend on whether the claimant entered irregularly or with valid travel documents.

- Includes irregular entries and entries with valid travel documents (eg a study permit holder who now wishes to claim refugee status)
- Detention possible in cases of irregular entry (particularly where identity is in question)
- Refugee claim is made at IRCC office within Canada
- Legal Aid funding available in some provinces

IRREGULAR ENTRY TO CANADA

- Entering Canada irregularly may lead to interception by the RCMP or local law enforcement
- Those intercepted are brought to a CBSA office, where an officer conducts an examination

- Health check, security screening, and determination of eligibility to claim refugee status conducted immediately
- Screenings include biographic and biometric checks (eg: photograph, fingerprinting)

THE CANADIAN BAR ASSOCIATION

Refugee determination

Every eligible refugee claimant is to entitled to a fair process and has a right to appeal.

Every eligible claimant is entitled to a hearing before an independent tribunal:

- Immigration and Refugee Board of Canada (IRB)

Very short timelines:

- Must file within 15 days of arrival for port of entry claims
- Hearing within 60 days of filing (although currently significant delays)

Non-adversarial process:

- In most cases
- Minister of Immigration, Refugees and Citizenship Canada (IRCC) will sometimes intervene

Past criminality not an automatic bar to seeking asylum:

- Depends on equivalency of offence and sentence in Canada

IRB DECISION MAKING

To succeed, each refugee claimant must prove that the definition of 'refugee' is met as per s. 96 or s. 97 of *Immigration and Refugee Protection Act.*

- *Section 96:* well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion
- *Section 97:* removal to country of origin would subject person to a danger of torture, risk to life, or risk of cruel and unusual treatment or punishment

Credibility is key – the story must be believed by the IRB decision-maker.

PROCESSING

During processing, refugees have access to services

- Ability to work, study, access healthcare and social assistance

Accepted refugees eligible for permanent residence

- Process currently takes more than 2 years
- Canadian citizenship can follow after permanent residence obtained - requires accumulation of 3 years of residence in Canada and payment of taxes in Canada

REMOVAL AND APPEAL

Appeal available if refused at first-instance

- Unless STCA Claimant or Designated Foreign National

Pre-Removal Risk Assessment and Humanitarian & Compassionate applications

- available after 1 year in most cases

Administrative Deferral of Removals (ADRs)

- Somalia (Middle Shabelle, Afgoye, and Mogadishu), the Gaza Strip, Syria, Mali, the Central African Republic, South Sudan, Libya, Yemen, Burundi

Temporary Suspension of Removals (TSRs)

- Afghanistan, DRC, Iraq

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Other options

Some potential asylum seekers may have other options for entering the country including, making a temporary status application, or humanitarian and compassionate application; accessing the federal economic immigration program, Quebec immigrant investor program or provincial nominee programs; or family sponsorship.

TEMPORARY STATUS APPLICATION

- Study or work permit can be stepping stone to economic immigration
- Immigration history/status in US and other countries will be examined (must prove intent to enter Canada only temporarily)

ECONOMIC IMMIGRATION PROGRAM

- Points-based (language, education, work experience, age, financial means)

FAMILY SPONSORSHIP

- Spouses, children, parents, grandparents of Canadians/permanent residents

HUMANITARIAN & COMPASSIONATE (H&C) APPLICATION

- Where the applicant's circumstances, taken as a whole, are sufficiently sympathetic to warrant an exemption from the requirement to apply for permanent residence in the regular manner.

PROVINCIAL PROGRAMS

PROVINCIAL NOMINEE PROGRAMS (PNPS)

- Every Canadian province (except the province of Quebec) operates their own PNP with specific eligibility criteria (e.g. language ability, level of education, work experience)
- A provincial nomination awards 600 Comprehensive Ranking System (CRS) points under the Express Entry point-based management system. It therefore virtually guarantees that a candidate will receive an "Invitation to Apply" for Canadian Permanent Residence

QUEBEC IMMIGRANT INVESTOR PROGRAM (QIIP)

- Quebec is currently the only province in Canada that offers a passive immigrant investor (loan) program.
- Basic eligibility criteria : possess net assets (obtained legally) of CAD $2,000,000, have a minimum of two (2) years of management experience, have an intention to settle in Quebec and to sign an agreement to invest CAD $1,200,000 with a financial intermediary authorized to participate in the QIIP.
- A successful applicant will receive a Quebec Selection Certificate with which he / she can apply to become a Canadian Permanent Resident.

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Resources

GOVERNMENT

Immigration, Refugees and Citizenship Canada (IRCC)

- Irregular border crossings and asylum (available in English, French, Creole, Spanish)
- Claiming protection from inside Canada
- Background on the STCA

Immigration and Refugee Board of Canada (IRB)

- Introduction to the refugee claim process
- Appeals to the Refugee Appeal Division (RAD)

Legal Aid Services for Refugee Claimants

NON-GOVERNMENT

Canadian Council for Refugees (CCR)

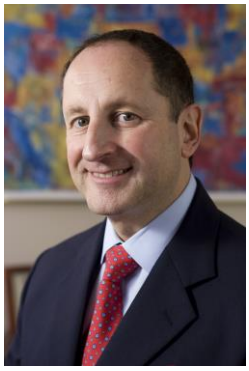
- Information for refugee claimants entering from USA (English, French and Spanish)
- Refugees entering from US and Safe Third Country: FAQ

Canadian Association of Refugee Lawyers (CARL)

Canadian Cross-Border Legal Coalition (CCBLC)

- EN, FR, Arabic, Farsi

Canadian Bar Association Find-A-Lawyer



Sergio R. Karas, B.A., J.D. is a Canadian Barrister and Solicitor and a Certified Specialist in Canadian Citizenship and Immigration Law by the Law Society of Ontario. Mr. Karas represents individuals and multinational corporations to achieve their immigration objectives and implement successful relocation strategies.

Mr. Karas is an honors graduate in Political Science from York University and obtained his Law degree from Osgoode Hall Law School. He speaks fluent English, French and Spanish and has a working knowledge of Italian, Portuguese and German. He is Past Chair of the Ontario Bar Association (OBA) Citizenship and Immigration Section, Past Chair of the International Bar Association (IBA) Immigration and Nationality Committee, and Past Chair of the American Bar Association (ABA) Canada Committee, Section of International Law. He has been invited on numerous occasions to address other lawyers and human resources managers at major international professional gatherings. He is listed in *Who is Who in Corporate Immigration Law* and *Best Lawyers* as a leading immigration legal practitioner. He is also the recipient of Martindale Hubbell *Client Champion Platinum Award* for several consecutive years in a row.

Mr. Karas contributes to the press providing current information about Canada's immigration law and policies. His articles are published in national and international journals. He is a regular guest on local, national and international radio and television programs. Mr. Karas is the Editor of the *Global Business Immigration Handbook* published by Thomson Reuters and contributing writer on immigration issues to *Canadian HR Reporter* and *Canadian Employment Law Today*.

Mr. Karas has been instrumental in effecting changes to Canadian immigration visa policies through his involvement in US-Canada relations and border security issues. He also served as a member of the Board of Directors of JIAS (Jewish Immigrant Aid Services) in Toronto for ten years.

Mr. Karas' law firm, Karas Immigration Law Professional Corporation, headquartered in Toronto, Canada, is dedicated to the successful settlement of qualified immigrants including professionals, self-employed, entrepreneurs, and investors, and to assisting corporations to implement successful migration strategies for managerial, executive and technical personnel.

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IMMIGRATION LAW

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Profile

David is the National Managing Partner of the firm. He has been practising immigration law for over 25 years, and is certified by the Law Society of Upper Canada as a Specialist in Immigration Law. According to the "International Who's Who of Corporate Immigration Lawyers," the official research partner of the International Bar Association, David Garson is rated as one of the top 10 highly regarded individuals in immigration law in Canada. In addition to this honour, David is recognized and featured as one of only 10 Canadian Lawyers in a new publication called "Thought Leaders – Corporate Immigration 2019". David was also called to the Massachusetts State Bar in 2016.

David advises clients on immigration issues related to conducting business across international borders. His client roster includes senior executives and individuals, as well as institutions and large multinational organizations. He acts for major IT companies involved in semiconductor design innovation, Enterprise Content Management, software development and IT finance solutions.

David has practised in the field of immigration law since 1988 and is a past Chair of the Canadian Bar Association – Ontario, Immigration and Citizenship Section. He is currently a member of the American Immigration Lawyers Association, a past Chair of the Canada Chapter of the American Immigration Lawyers Association and a past Chair of the Continuing Legal Education Committee of the Young Lawyers Division – Canadian Bar Association. He is a past Co-Programme Coordinator for the immigration section of the Canadian Bar Association – Ontario.

Admissions and affiliations

- Called to the Ontario Bar (1990)
- Law Society of Upper Canada
- Canadian Bar Association
- Certified Specialist, Law Society of Upper Canada (Since 2000)
- Also called to the Massachusetts State Bar

Education

LL.B., University of Windsor, 1988

Publications and speaking engagements

- Guest Speaker American Immigration Lawyers Association – Orlando Florida Conference "Annual Global Immigration Forum" – All About Canada, June 17, 2019

- Guest Speaker American Bar Association – Mexico City Conference "The Future of Labour Mobility in the Americas after NAFTA negotiations, November 7, 2018

- Guest Panelist Canada/US Border Annual Immigration Conference, Ellicottville, New York, 2017 discussing "New trends and developments in border practice"

- Guest Speaker: A Global Perspective - The Future of Immigration Law Practice, June 2017
- Guest Speaker: American Immigration Lawyers Association, Global Immigration Forum, June 2016
- Moderator: American Immigration Lawyers Association, Business Visa – Global Perspective Seminar, February 2016
- Guest Speaker: Canada/U.S. Border Annual Immigration Conference, Buffalo, New York, 2014
- Program Chair and Moderator: OAB Professional Development, "Understanding the New International Mobility Program and other LMIA-Exempt Categories"
- Moderator: "Immigration policies as a reflection of economic and labor needs in global markets", American Immigration Lawyers Association, Global Immigration Forum, Boston, June 2014
- Speaker: "Global Transfers, Skilled Workers, Highly Skilled, Employer Compliance", 6th Biennial IBA Global Conference, London, November 2013
- Speaker: "Temporary Foreign Worker Processing (Temporary Resident Visas, Work Permits, Student Visas)", Immigration Law Summit, Toronto, November 2013
- Speaker: "Hot Topics – Changing Visa Regimes in Canada, United Kingdom, Mexico, Australia and Others", American Immigration Lawyers Association Global Immigration Forum, San Francisco, June 2013
- "Ask the Experts Canada Immigration", The Ontario Bar Association Immigration Section, 2012
- 20th Annual Immigration Law Summit, The Law Society of Upper Canada, November 2012
- Co-editor: "A Practical Guide to Provincial Nominee Programs in Canadian Immigration Law", Carswell Publishing, 2011
- Speaker/Author: "Canada Immigration", International Bar Association Conference, London, 2011
- Speaker/Author: "Canada Immigration", International Bar Association Conference, Vancouver, 2011
- "Ask the Experts Canada Immigration", The Ontario Bar Association Immigration Section, 2010
- Interviewed and quoted in the various media outlets on numerous occasions concerning immigration-related matters

DESLOGES LAW GROUP | Lawyers Professional Corporation

Chantal Desloges is certified by the Law Society of Upper Canada as a Specialist in both Citizenship/Immigration law and Refugee law. Her practice encompasses primarily family sponsorships, humanitarian applications, refugee cases, citizenship applications, inadmissibility, plus appeals and Judicial Reviews of refused cases, while her law partner focuses primarily on economic immigration.

She was called to the Bar in 1999. She now leads her own law firm, numbering 14 people, in downtown Toronto.

Chantal taught Immigration Law at Osgoode Hall Law School in 2000/2001. She served as lecturer and curriculum coordinator in the Seneca College Immigration Practitioner Certificate Programme from 1999 - 2010. She taught and developed curriculum at Herzing College from 2013-2018. She now teaches for LPEN, an immigration law CPD provider www.lpen.ca as well as IMEDA. She delivers seminars on a regular basis for professional associations, settlement organizations and community groups.

In 2012, Chantal was awarded the Queen's Diamond Jubilee Medal, followed by the Canadian Bar Association Young Lawyers' Pro Bono award. In 2013, Chantal was appointed by the Minister of Justice to serve on the Federal Court Rules Committee, and was reappointed for a further term in 2016. From 2014-2018, Chantal served on the Executive of the Canadian Bar Association, Immigration Section.

In November, 2016, Chantal and her good friend Cathryn Sawicki published a law book called Canadian Immigration and Refugee Law: A Practitioner's Handbook. The book is now in its 2nd edition and can be ordered here: https://emond.ca/CIRL2

Chantal has been called upon more than 20 times by Parliamentary and Senate Committees to appear as an expert witness on immigration and refugee issues.

Chantal is the current Chair of the Board of Homes First Foundation, an organization dedicated to providing supportive housing in Toronto for severely marginalized individuals with the fewest housing options.

Chantal is a regular immigration commentator on CTV Power Play, and is frequently interviewed by both national and local television stations such as CBC, CTV National News, W5, Canada AM, Global News and CP24. She has also been quoted in national and local newspapers such as the Toronto Star, Toronto Sun, Globe and Mail, National Post and the Ottawa Citizen.

Twitter: @Twimmigration

11th Annual Northern Border Conference

Hot topics on both sides of the border

Moderator: Daniel Joyce - Fiegel, Carr & Joyce (Buffalo)

Panel Speakers: Naseem Malik - Stringer LLP (Toronto); Nan Berezowski - Berezowski Business Immigration Law (Toronto); David Wilks - Miller Mayer LLP (Ithaca)

1. Highlights/updates from CBP Pearson tour in May (see Devin O'Neil email)
    - TN readjudications
    - Clear and convincing/"satisfaction of the officer" standard
    - Excess documents (one copy for first-time L-1 applicants?)
    - Confidential documents
    - Risk of denial and charge of misrepresentation for over-creative cases
    - Also – US "employer" letter for TNs

2. Brief update on:

    - Nov. 21 changes in the EB-5 program (see attachment)
    - Update on H-1B pre-registration for 2020
    - Trends in H-1B adjudications (latest denial/RFE stats) (see attachment)
    - New IRS rule for expatriations: Relief Procedures for Certain Former Citizens https://www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens

3. We are beginning to see a trend toward developing a "North American" strategy for overseas clients who face substantial uncertainty in a straight US immigration strategy for a variety reasons including, retrogression headaches (EB-1), OPT running out, not picked in H-1B lottery, TPS ending and overall angst regarding BAHA. Here are some basic scenarios:

    - Client from India has worked in OPT status and is running out of STEM eligibility in summer of 2020; was not picked in the last H-1B lottery, and has one more chance in 2020. What basic options are there if the person wants to seek a backup plan for employment in Canada?
        - Brief summary of Canada's Global Talent Stream and time frame. https://www.canada.ca/en/employment-social-development/services/foreign-workers/global-talent/requirements.html