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# Introduction to Canadian Permanent Residence

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## I. Introduction

The term “permanent resident” is relatively new in Canadian immigration law; it was first widely used in the *Immigration and Refugee Protection Act*<sup>1</sup> in 2002. However, despite the new name, the concept of a permanent resident is older than Canadian citizenship and Confederation itself.

The concept of a permanent resident originates in an older term, which is “landed immigrant.”<sup>2</sup> This term is likely based mainly on a maritime concept, where a person is permitted to disembark from a vessel onto land and legally enter a nation. According to the *Immigration Act, 1910*,<sup>3</sup> a landed immigrant was a person who had “lawful admission into Canada.”<sup>4</sup> A landed immigrant was someone entering Canada with the intention to be domiciled in Canada and was distinguished from non-immigrant classes such as:

1. Canadian citizens,
2. diplomatic representatives,
3. domestic and foreign military personnel,
4. tourists and travellers passing through Canada,
5. students, and
6. designated professionals and commercial travellers.<sup>5</sup>

Like permanent residents today, landed immigrants had similar rights as Canadian citizens, except the right to vote. For instance, they held:

1. the right to enter the labour market without a permit, and
2. the right to live in Canada indefinitely.

Furthermore, landed immigrant status was based on a mutual commitment to Canadian society. The state could revoke their status if they failed to meet certain obligations to Canadian society. Notably, the *Immigration Act, 1910* provided the authority to deport rejected and other persons in certain situations.<sup>6</sup> The mechanism of deportation for rejected immigrants continues today. Certain people could not become landed immigrants for health or moral reasons that, at the time, placed them in the

1 SC 2001, c 27 [IRPA].

2 According to Statistics Canada, approximately 29,300 people were “landed immigrants” in Canada in 1852; see Statistics Canada, Social and Aboriginal Statistics—Client Services, “150 Years of Immigration in Canada,” *The Daily*, Catalogue No 11-630-X (last modified 17 May 2018), online: <<https://www150.statcan.gc.ca/n1/pub/11-630-x/11-630-x2016006-eng.htm>>.

3 *Immigration Act, 1910*, SC 1910, c 27.

4 *Ibid.*, s 2(p).

5 *Ibid.*, s 2(g).

6 *Ibid.*, s 2(r).

“prohibited classes.”<sup>7</sup> The prohibited classes included people who were considered to be unfit for society, which included those with disabilities, dangerous diseases, and criminal convictions “involving moral turpitude,” as well as prostitutes and procurers, beggars and others relying on charity, and those contravening the regulations.<sup>8</sup> While the sweeping discriminatory restrictions against people with disabilities have been removed, Canada maintains the concept of “admissibility” of immigrants. Prospective immigrants may be inadmissible on grounds such as criminal convictions and for health reasons such as dangerous conditions and conditions causing excessive demand on the Canadian health system.<sup>9</sup>

The *Immigration Act, 1976*<sup>10</sup> defined a “permanent resident” as a person who “(a) has been granted landing, (b) has not become a Canadian citizen, and (c) has not ceased to be a [Canadian] permanent resident.”<sup>11</sup> Notably, the Act established a permanent resident’s statutory right to enter and remain in Canada.<sup>12</sup> Even today, long after adopting the term “permanent resident” to replace “landed immigrant” in Canadian immigration law, the two terms are sometimes used interchangeably, although there is technically a distinction. In the lead-up to the IRPA’s enactment, there was considerable debate about their application and the future of the term “landed immigrant.” Some members of the Standing Committee on Citizenship and Immigration preferred using “landed immigrant” for its juxtaposition to “foreign national,” whereas others preferred the modern, post-1976 “permanent resident” terminology. The “landed immigrant” proponents emphasized that “landed” stood the test of time, eliminating the need to update to “permanent.” In contrast, the “permanent resident” advocates highlighted the new status’s distinction with new rights to enter and remain in Canada and the right to an oral residency appeal.<sup>13</sup> In other words, all permanent residents who faced a loss of status determination could now receive a full oral residency hearing before the Immigration and Refugee Board (IRB) of Canada. The status of “permanent resident” could only be lost after all appeal rights had been exhausted.<sup>14</sup>

Although “landed immigrant” is technically obsolete, it still reverberates in Canadian immigration law today. Permanent residents still go through the “landing” process to fully confirm their status as a permanent resident, albeit a virtual one if they

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7 *Ibid.*, s 3.

8 *Ibid.*

9 See e.g. IRPA, ss 36 (serious criminality), 38 (medical inadmissibility).

10 SC 1976-77, c 52.

11 *Ibid.*, s 2(1).

12 *Ibid.*, s 4.

13 House of Commons, Standing Committee on Citizenship and Immigration, Meeting 11, 37-1 (26 April 2001), online: <<https://www.ourcommons.ca/DocumentViewer/en/37-1/CIMM/meeting-11/evidence>>.

14 *Ibid.*

are already in Canada at the time of the process.<sup>15</sup> While this process can now be done virtually, it was not that long ago that those in Canada with an approved application for permanent residence had to travel to leave Canada and “land” as a permanent resident by re-entering Canada at a port of entry (that is, a land border, a seaport, or an airport). Many immigrants would go to a nearby Canadian border crossing, enter the United States, then turn around and return to Canada in order to complete the process known by the catchy phrase of “flagpoling.” Interestingly enough, other countries still frequently refer to permanent residents of Canada as “landed immigrants.” For example, in the United States, the infamous Executive Order 13780, which was issued in March 2017, restricted immigration from countries with a Muslim majority but made an exemption for citizens of Muslim majority countries who had “landed immigrant status” in Canada.<sup>16</sup> This likely reflects the fact that the US Department of State still refers to permanent residents as “landed immigrants.”<sup>17</sup>

Permanent residence is also not unique to Canadian law. The coveted “green card” signifies that the holder is a permanent resident of the United States.<sup>18</sup> The green card functions much like a permanent resident card does in Canada as it signifies that the bearer has certain legal rights to enter, work, and study in the United States without a permit or visa. Nonetheless, a person could be removed from the United States if they fail to meet certain obligations to its society, including good conduct. In Hong Kong, permanent resident status functions much more like citizenship. Since Hong Kong is a Special Administrative Region of the People’s Republic of China, a permanent resident of Hong Kong is a Chinese citizen or foreign national with the right to live and work in Hong Kong. In contrast, those who lack Hong Kong permanent residence, including those who are Chinese citizens, cannot work or live in Hong Kong.<sup>19</sup>

15 Immigration, Refugees and Citizenship Canada, “Confirming Your Permanent Residence Online” (last modified 23 March 2024), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/pr-confirmation-portal.html>>.

16 United States of America, Executive Order 13780 of March 6, 2017, *Protecting the Nation from Foreign Terrorist Entry into the United States*, 82 FR 13209, s 3(c)(viii).

17 See under the tab “Passports & Other Travel Documents” at US Department of State—Bureau of Consular Affairs, “US Visa: Reciprocity and Civil Documents by Country: Canada” (last visited 2 January 2024), online: <<https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Canada.html>>.

18 Department of Homeland Security, “Get a Green Card” (last modified 29 September 2022), online: <<https://www.dhs.gov/get-green-card>>.

19 The Government of the Hong Kong Special Administrative Region of the People’s Republic of China—Immigration Department, “Eligibility for the Right of Abode in the HKSAR” (last modified 31 January 2021), online: <<https://www.immd.gov.hk/eng/services/roa/eligible.html>>.

## II. Becoming a Permanent Resident

There are four different immigration classes through which a person can become a permanent resident of Canada:

1. economic immigration class,
2. family reunification class,
3. refugees and protected persons, and
4. humanitarian and compassionate class.<sup>20</sup>

Today, the bulk of permanent residents in Canada immigrate via the economic class. In 2022, 58.4 percent of newcomers were economic class immigrants (as opposed to 62 percent in 2021), 22.3 percent were family class immigrants (as opposed to 20 percent in 2021), and the remaining were refugees or “humanitarian and other.”<sup>21</sup> The origin of Canada’s economic immigration is primarily driven by the demand of certain nationals to study in Canada and labour market needs that attract workers to Canada on work permits before many qualify to immigrate based on the above criteria. At the same, our goal for protected persons and refugees comes from our commitment to the 1951 Refugee Convention,<sup>22</sup> which emerged from the aftermath of the Second World War.

Outside of Quebec, most economic immigrants are admitted through the federal Express Entry system, an application management system for three different economic immigration programs:

1. Canadian Experience Class,
2. Federal Skilled Worker, and
3. Federal Skilled Trades.

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20 Immigration, Refugees and Citizenship Canada, News Release, “Stabilizing Canada’s Immigration Targets to Support Sustainable Growth” (last modified 1 November 2023), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/11/stabilizing-canadas-immigration-targets-to-support-sustainable-growth.html>>.

21 Immigration, Refugees and Citizenship Canada, *2022 Annual Report to Parliament on Immigration* by Sean Fraser (Minister of Immigration, Refugees and Citizenship), IRCC 3331-09-2022 (Ottawa: IRCC, last modified 5 February 2024), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2022.html>>; Immigration, Refugees and Citizenship Canada, *2023 Annual Report to Parliament on Immigration* by Marc Miller (Minister of Immigration, Refugees and Citizenship), IRCC 3545-10-2023 (Ottawa: IRCC, 24 November 2023), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2023.html>>.

22 United Nations, *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954), online (pdf): <[https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.23\\_convention%20refugees.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.23_convention%20refugees.pdf)> [Refugee Convention].

In addition, those selected as provincial nominees pursuant to provincial express-entry-based streams can be invited to apply for permanent residence application through Express Entry. A points-based invitation system called the Comprehensive Ranking System (CRS), in which applicants are scored out of a maximum of 1,200 points, manages the application intake. The system awards points based on the applicant's:

1. age;
2. education;
3. work experience;
4. language ability; and
5. bonus/additional points:
  - a. Canadian education,
  - b. Canadian work experience,
  - c. proficiency in both official languages,
  - d. family in Canada,
  - e. provincial nomination, and
  - f. a qualified job offer.<sup>23</sup>

Previously, Express Entry draws could only be general draws with no program specified or they could target inviting applicants to a specific program, such as the Canadian Experience Class. In July 2023, the Express Entry intake system was modified by Immigration, Refugees and Citizenship Canada (IRCC) to add an additional application intake layer to permit category-based Express Entry draws based on the 2023 categories of French-language proficiency; healthcare occupations; science, technology, engineering, and math (STEM) occupations; trade occupations; transport occupations; and agriculture and agri-food occupations.<sup>24</sup> While no-program-specified draws continue in Express Entry, category-based draws are changing the landscape of Express Entry to respond to perceived labour-market deficiencies and the objective of attracting francophone immigrants to communities across Canada. The Express Entry category allocates points as described above to advance the following goals of the IRPA:

1. to permit Canada to pursue the maximum social, cultural, and economic benefits of immigration (s 3(1)(a));

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23 Immigration, Refugees and Citizenship Canada, “Comprehensive Ranking System (CRS) Criteria—Express Entry” (last modified 4 January 2024), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/criteria-comprehensive-ranking-system/grid.html>>.

24 Immigration, Refugees and Citizenship Canada, “Express Entry Rounds of Invitations: Category-Based Selection” (last modified 8 February 2024), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile/rounds-invitations/category-based-selection.html>>.

2. to enrich and strengthen Canadian society's social and cultural fabric while respecting the federal, bilingual, and multicultural character of Canada (s 3(1)(b));
3. to support and assist the development of minority official language communities in Canada (s 3(1)(b.1));
4. to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada (s 3(1)(c)); and
5. to see that families are reunited in Canada (s 3(1)(d)).<sup>25</sup>

The next significant economic immigration stream is the “provincial nominee class,” which exists in every English-speaking province in the country. In every province except Quebec, the provincial nominee class has two streams: one is a direct path to applying for permanent residence post-nomination and the other is through Express Entry post-nomination. The provincial nomination qualifies for 600 points toward the CRS in Express Entry, which effectively guarantees that any person with a provincial nomination certificate will receive an invitation to apply because most Express Entry draws are below 600. For Quebec-based economic immigrants, upon applying for and receiving a “Certificat de sélection du Québec” (Quebec Selection Certificate), the applicant can submit their federal permanent residence application to IRCC via the Quebec Selected Skilled Worker category.

In terms of family reunification, family class immigration in Canada is largely limited to four groups:

1. spouses/common law partners/conjugal partners,
2. children (adopted and biological),
3. parents/grandparents, and
4. other family members (this is a limited, exceptional category).

The main requirements for the family class stream are:

1. the relationship must be genuine, and
2. a Canadian citizen or permanent resident who is eligible to sponsor must sponsor the applicant.

Most people who become permanent residents in Canada through the family class are either spouses/common law partners or children. For the last few years, the parents/grandparents' program has functioned as a random selection lottery to manage application intake, given the popularity of the program and notwithstanding

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<sup>25</sup> IRPA, ss 3(1)(a)-(d).

the requisite income requirements for the sponsor.<sup>26</sup> Michael Battista and Adrienne Smith have discussed family immigration applications in detail in their book *Family Class Sponsorship in Canadian Immigration Law*.<sup>27</sup>

Canadian immigration does not establish processing quotas based on country of origin, unlike our nearest neighbour to the south. This phenomenon is largely a reflection of the objectives of the IRPA to promote multiculturalism.

Enacting the IRPA created a new legal obligation for the government to provide permanent residents with a status document: the permanent resident card (PR card).<sup>28</sup> As will be discussed later, most people will receive a PR card that is valid for five years, but some will receive a PR card that is only valid for only one year. The PR card comes with a rebuttable presumption that its holder is a Canadian permanent resident if it is valid and not expired. The PR card replaced the old paper-based proof of landing given to landed immigrants under the prior Act, namely the Record of Landing (IMM 1000) form. Unlike the IMM 1000, which was a creature of policy and not of regulation, PR cards came into being through regulatory enactment.<sup>29</sup> PR cards were introduced as secure documents that would reduce the incidence of fraud related to the paper Record of Landing.<sup>30</sup> When challenged by the opposition as to how the “magic cards” would protect borders, Elinor Caplan, minister of citizenship and immigration at the time, stated:

The new card is tamper resistant and fraud resistant. It is state of the art. I think it is an important addition to increasing the security that all Canadians will feel about those who enter our border showing proper documentation.<sup>31</sup>

Looking back, most would likely accept that the introduction of the PR card has been a positive feature of modern Canadian immigration law. The plastic card format facilitates permanent residents’ international travel, providing them with a tangible marker of their status. It is a document that is coveted by many around the world who seek to embark on immigrating to Canada, as Chapter 4 further explores.

26 Immigration, Refugees and Citizenship Canada, “Sponsor Your Parents and Grandparents: After You Apply” (last modified 2 February 2024), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/sponsor-parents-grandparents/after-apply-next-steps.html>>.

27 Michael Battista & Adrienne Smith, *Family Class Sponsorship in Canadian Immigration Law* (Toronto: Emond, 2022).

28 IRPA, s 31(1).

29 *Immigration and Refugee Protection Regulations*, SOR/2002-227, segment VI—Permanent Resident Card, part 5, div 1 in (14 June 2002), C Gaz II Extra, vol 136, no 9 at 206, online (pdf): <<https://publications.gc.ca/gazette/archives/p2/2002/2002-06-14-x/pdf/g2-136x9.pdf>>.

30 *Ibid* at 207.

31 *House of Commons Debates*, 37-1, No 94 (15 October 2001) at 1430 (Hon Elinor Caplan).



Nonetheless, delays in processing PR cards, including renewals, and Permanent Resident Travel Documents for permanent residents outside Canada continue to be of concern to immigration practitioners and applicants alike.

### III. Maintenance of Permanent Residence

Maintaining permanent residence status will be addressed in Part 1 of this book, meaning that we will address ways of retaining this important status and avoiding its loss. This will be followed in Part 2 by citizenship, which will be covered starting with its history in Chapter 12.

Chapter 2 on residency obligations discusses the fine balance of the mutual obligation between permanent residents and Canadian society, with Canadian society providing permanent residents with certain statutory rights with the expectation that permanent residents will fulfill their corresponding residency obligations.

Unlike foreign nationals, permanent residents have the uninhibited right to enter and remain in Canada. Permanent residents can work for any employer without a work permit and study at any educational institution without a study permit while paying tuition at domestic Canadian rates. However, in exchange for these rights, the permanent resident must:

1. maintain ties to Canada (namely, by respecting the IRPA s 28 permanent resident residency obligation), and
2. maintain good behaviour.

The permanent resident will maintain their status if they meet these obligations. If they fail to do so, they can lose their permanent resident status and, in the worst-case scenario, they may be removed from Canada, which will revert them to mere foreign national status.

Chapter 8 details the process of “cancelling” or the loss of an individual’s permanent resident status. However, permanent residents have greater due process rights in protecting their status than foreign nationals. IRCC can only revoke a person’s permanent resident status after a rigorous administrative process that includes a hearing before the IRB of Canada. The Immigration Division hears first-instance matters of criminal or other forms of inadmissibility, whereas the Immigration Appeal Division hears removal order appeals and cases of failure to meet the permanent resident residency obligation. If permanent resident status is lost, the hope of becoming a Canadian citizen grows slim.

