PART I

The Fundamentals of Immigration, Refugee, and Citizenship Law

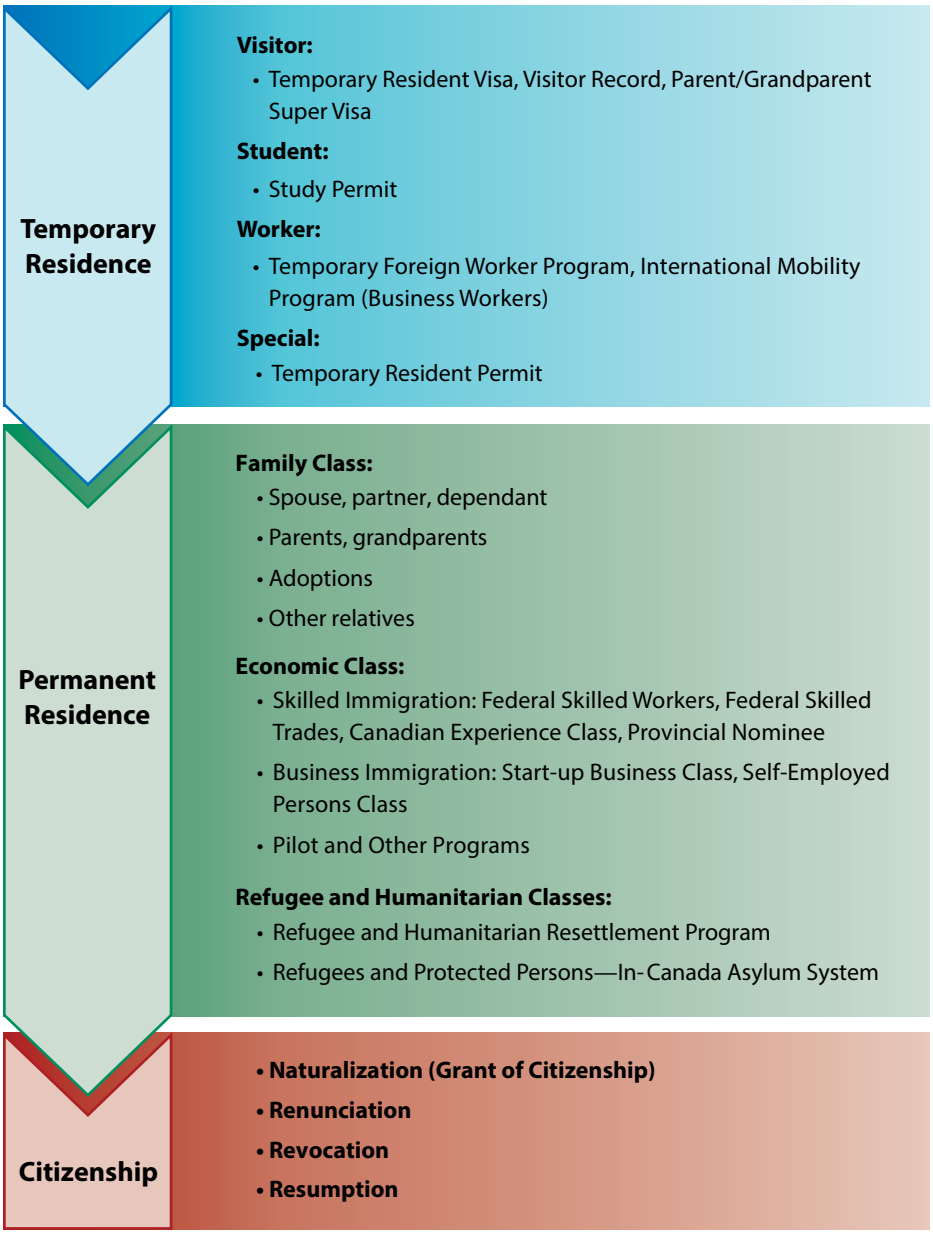
Chapter 1 Introduction

Chapter 2 Administration of Immigration, Refugee, and Citizenship Programs

Chapter 3 Admissibility

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Canada's Immigration and Refugee Programs



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Introduction

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Learning Outcomes

After reading this chapter, you should be able to:

- Use key terms in the practice of immigration and refugee law.
- Examine the history of Canada's immigration law.
- Describe key sources of immigration law.
- Locate key sections of the *Immigration and Refugee Protection Act*, the *Citizenship Act*, and Regulations.
- Search for information in policy instruments.
- Identify authorized representatives in the practice of immigration, refugee, and citizenship matters.
- Review key Supreme Court of Canada decisions relevant to immigration law.

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Introduction

immigrant
a person who wishes to settle (or has settled) permanently in another country

immigration
the movement of non-native people into a country in order to settle there

foreign national
a person from another country who is neither a Canadian citizen nor a permanent resident in Canada

temporary resident
a person who has permission to remain in Canada on a temporary basis (the main categories are students, temporary workers, and visitors)

permanent resident
a person who has been granted permanent resident status in Canada and who has not subsequently lost that status under section 46 of the IRPA; also known as a "landed immigrant" under older legislation

refugee
a person who is forced to flee from persecution (as opposed to an immigrant, who chooses to move)

citizen
a person who has the right to live in a country by virtue of birth or by legally acquiring the right

visa (or permit)
a document that permits the holder to enter Canada for a specific purpose either temporarily or permanently

Canada, with its wealth, diversity, social support, and abundant natural resources, is an attractive destination for people worldwide.

Laws and regulations are in place to guide everyone—those who work in the immigration industry as well as prospective immigrants, employers, and Canadian citizens—with a set of common standards to ensure the system functions well. In practice, however, the system can become overwhelmed by a decision-making process that relies on inefficient processes and complex laws and is overburdened by too many applications.

Working in the immigration industry requires navigating the complex system of multi-layered regulations, case law, policies, and procedures governing the entry and removal of people as temporary and permanent residents, the protection of refugees, and Canadian citizenship.

The immigration industry encompasses a number of different career opportunities, such as legal assistant, law clerk, immigration paralegal, case manager, regulated immigration consultant, lawyer, and workers in public service or related industries such as global mobility specialists or settlement workers. This introduction to the study of immigration, refugee, and citizenship law thus begins with learning some basic terminology, beginning with knowledge of the meaning of "status." In Canada, the term "**immigrant**" is not a legal status. An individual's **immigration** status generally falls into one of these categories: **foreign national** (includes a **temporary resident**), **permanent resident**, **refugee**, and **citizen**.

Only Canadian citizens and registered (status) Indians have the absolute right to enter Canada and remain here, while permanent residents are permitted to enter and remain in Canada only as long as they do not lose that status. All other individuals are foreign nationals under the law as the *Immigration and Refugee Protection Act*[1] at section 2(1) states a foreign national is "a person who is not a Canadian citizen or a permanent resident, and includes a stateless person." All foreign nationals must "seek permission" to enter Canada by applying to Immigration, Refugees and Citizenship Canada (IRCC) in the form of a written application for a **visa** (or **permit**); some may apply orally at a port of entry. Foreign nationals may be admitted into Canada as temporary residents for a specific purpose and limited period as temporary residents (e.g., to visit, study, or work; see Part II, Temporary Immigration Programs).

Some temporary residents may be able to transition from their temporary status to permanent residence status under special immigration programs, while some opt to apply directly to live permanently in Canada. A permanent resident has the right to re-enter and live in Canada indefinitely, provided they comply with certain rules set out in law and do not lose this type of immigration status (see Part III, Permanent Residence). Permanent residence is the first step in becoming a Canadian citizen. Then, as citizens, individuals have an unqualified right to re-enter, leave, and remain in Canada (see Part IV, Citizenship Law).

Under Canadian law, certain foreign nationals who require Canada's protection from persecution may be sponsored through refugee programs that lead to permanent residence, while others who arrive spontaneously must make a claim to be heard

1 SC 2001, c 27 [IRPA].

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by a refugee "judge" at a specialized administrative tribunal—the Immigration and Refugee Board (IRB) (see Part V, Refugee Law, and Part VI, Immigration and Refugee Board).

In order to safeguard the safety and security of Canada, there are also laws and rules regarding entry restrictions to the country and consequences of losing immigration status for violating Canadian laws; these rules are related to enforcement procedures carried out through tribunal proceedings or government officials (see Part VII, Enforcement, and Part VIII, Appeals).

IMMIGRANT OR REFUGEE?

The terms "immigrant" and "refugee" are not found in our immigration statutes, even though these terms are commonly used in everyday language. Immigrants are individuals who choose to settle permanently in Canada, gaining permanent resident or citizenship status, while refugees are people forced to flee their home countries because of persecution and who are seeking protection in Canada.

A Brief History of Canadian Immigration Policy

According to Statistics Canada, in 2021 more than 8.3 million people, or almost one-quarter (23 percent) of the population, were or had ever been a landed immigrant or permanent resident in Canada. This was the largest proportion since Confederation, topping the previous 1921 record of 22.3 percent, and is the highest among G7 countries.[2] However, by the first quarter of 2025 Canada has admitted the smallest number of immigrants (104,256) in four years, reflecting a lower target of permanent resident immigration for 2025.[3]

How Did We Get Here?

Canada's current immigration scheme is founded on the three pillars of economic immigration, family immigration, and refugee/humanitarian considerations. These pillars are meant to balance Canada's economic self-interests with this country's generosity and compassionate willingness to provide a safe haven to those in need from around the world.

Migration to what is now Canada predates the historical record. However, there are several scientific theories about the first migration to North America. One theory is that stone-age hunters followed game from Siberia into Alaska across a land bridge that once spanned what is now the Bering Strait. A second theory proposes that Asian seafarers arrived by boat. However, or whenever exactly they arrived, these first nomads may have been the ancestors of Indigenous Peoples in Canada.

2 Statistics Canada, "Immigrants Make Up the Largest Share of the Population in over 150 Years and Continue to Shape Who We Are as Canadians," *The Daily* (26 October 2022), online: <https://www150.statcan.gc.ca/n1/daily-quotidien/221026/dq221026a-eng.htm>.

3 *Ibid.*

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Prior to Canada's first *Immigration Act*, immigration rules were adapted from those of Great Britain.[4] Historically, the ability of an alien (that is, an individual from a foreign country) to enter Britain was entirely dependent on the will of the king or queen of England or on officials appointed by the monarch. The monarch's power to control immigration was gradually limited by statute law.

European immigration to Canada began in earnest in the early 17th century, with French settlers and fur traders. The 18th century brought a wave of British Loyalists from the newly formed United States of America, and in the 19th century many immigrants came from Britain. In the 20th century, large numbers came from just about every part of the globe, beginning with the first huge wave from continental Europe at the beginning of the century. This 20th-century period of immigration is described as follows in the IRCC publication *Forging Our Legacy: Canadian Citizenship and Immigration, 1900–1977*:

> This huge influx of people represented a watershed in Canadian immigration history. In 1913, over 400,000 newcomers arrived on Canadian soil. But throughout this century immigrants continued to choose Canada as their new country, and a second great wave occurred between 1947 and 1961. Although this wave, like the first, featured newcomers from continental Europe, southern Europe, especially Italy, and central Europe became much more important sources of immigrants. By contrast, immigration from Great Britain declined substantially from the earlier period (1900–1914).[5]

The *Immigration Act* of 1906 was a highly restrictive piece of legislation. It created a head tax for immigrants, barred many people from entering the country, and increased the government's power to deport. Its difference from earlier legislation has been described as follows:

> There had been laws since 1869 prohibiting certain kinds of immigration and since 1889 allowing designated classes of immigrants to be returned from whence they came. The 1906 Act differed in degree, significantly increasing the number of categories of prohibited immigrants and officially sanctioning the deportation of undesirable newcomers.[6]

The 1906 Act was followed by the *Immigration Act* of 1910 that was more exclusionary than the 1906 Act, authorizing Cabinet to exclude "immigrants belonging to any race deemed unsuited to the climate or requirements of Canada."[7] The 1910 Act also strengthened the government's power to deport people such as anarchists on the grounds that they would contribute to the country's political and moral instability.

These two statutes and various related laws, as well as the general approach to immigration in this country, were based, for the most part, on a policy of encouraging British and American immigration to Canada and discouraging the immigration of all other groups. An amendment to the 1906 Act known as the "continuous-journey

4 For a description of the history of immigration law, see D Galloway, *Immigration Law* (Concord, ON: Irwin Law, 1997) ch 1.

5 Citizenship and Immigration Canada, *Forging Our Legacy: Canadian Citizenship and Immigration, 1900–1977* (October 2000) ch 1, online (pdf): <https://publications.gc.ca/collections/collection_2025/ircc/Ci51-93-2000-eng.pdf>.

6 Galloway, *Immigration Law*, *supra* note 4, ch 3.

7 *Ibid*.

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Canadian Immigration and Refugee Law for Legal Professionals, 6e

regulation" sharply curtailed Asian immigration in particular as it required immigrants to Canada to travel by continuous passage from their countries of origin. This requirement was mostly designed to deter Indian and Japanese immigrants, for whom continuous passage to Canada was almost impossible.

In 1911, Prime Minister Sir Wilfrid Laurier signed an order in council prohibiting for one year "the landing in Canada of any immigrant belonging to the Negro race, which is deemed unsuitable to the climate and requirements of Canada."[8]

IN THE NEWS

The Continuous-Journey Rule and Racism: Komagata Maru Steamship



On May 23, 1914, the *Komagata Maru* steamship arrived from Hong Kong in Vancouver carrying 376 passengers who were from India and mostly of Sikh, Muslim, and Hindu origin. The boat was prevented from docking and the passengers barred from entering Canada because they had not made a continuous journey from India, since there was no direct transportation from the subcontinent. They were kept on board for two months. Vancouver's South Asian community mounted a legal challenge to the immigration law, but they ultimately lost. The ship was eventually sent to Calcutta and at least 19 people were killed in an ensuing skirmish with British soldiers, while others were jailed.

On May 18, 2016, the Prime Minister Justin Trudeau issued a full apology in the House of Commons:

> The *Komagata Maru* incident is a stain on Canada's past. But the history of our country is one in which we constantly challenge ourselves, and each other, to extend our personal definitions of who is a Canadian. We have learned, and will continue to learn, from the mistakes of our past. We must make sure to never repeat them.

Sources: Cherise Seucharan, "Moment in Time: July 23, 1914—Komagata Maru Escorted Out of Vancouver Harbour," *Globe and Mail* (23 July 2020); Prime Minister of Canada, "Prime Minister Delivers Formal Komagata Maru Apology in House of Commons" (18 May 2016), online: <https://pm.gc.ca/en/news/news-releases/2016/05/18/prime-minister-delivers-formal-komagata-maru-apology-house-commons>.

Canada, however, needed cheap labour—people who were willing to work hard for low wages under harsh conditions. British and American immigrants, though more desirable from the government's point of view, were not willing to work in that way. Chinese immigrants were, as they had shown in building the Canadian Pacific Railway in the 1880s. Nonetheless, the existing laws severely restricted their entry into the country, and therefore, as *Forging Our Legacy* recounts, "Canadian industrialists … turned increasingly towards central and southern Europe for the semi-skilled and unskilled labourers needed to supply the goods and services required by the new settlers."[9]

Immigration from eastern, southern, and central Europe continued to swell Canada's population until just before the First World War. At this point, the decline

8 Department of Justice Canada, "Canada's Black Justice Strategy" (last modified 2 April 2025), online: <https://www.justice.gc.ca/eng/cj-jp/cbjs-scjn/fact2-fait2.html>.

9 CIC, *Forging Our Legacy*, *supra* note 5.

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of the Canadian economy increased suspicion and dislike of "foreigners" and put the brakes on the boom in immigration, as did the subsequent war. During the war, people in Canada who had originated from countries now at war with the Allies were deemed "enemy aliens" and suffered intolerance and harassment, despite the fact that most of them had settled in Canada and were contributing members of Canadian society.

The government passed the *Wartime Elections Act*, which penalized "enemy aliens" and took hostile action against them—for example, by interning many in camps at the start of the war. This Act has been described as follows:

> The *Wartime Elections Act*, invoked in the 1917 federal election, was perhaps the most extraordinary measure taken against enemy aliens. In addition to giving the federal vote to women in the armed forces and to the wives, sisters, and mothers of soldiers in active service (Canadian women as a whole had not yet won the right to vote in federal elections), the Act withdrew this right from Canadians who had been born in enemy countries and had become naturalized British subjects after 31 March 1902.[10]

These now disenfranchised, naturalized British subjects (Canadian citizenship did not yet exist) were deemed "enemy aliens," though they had fulfilled a three-year residency requirement and were hardly newcomers. The *Naturalization Act*, passed in 1914, increased the residency requirement for such immigrants to five years. British subjects (that is, immigrants to Canada who had been born in Britain) did not have to be "naturalized" in this way, and they obtained the full rights of Canadian nationals after only one year of residency.

After the First World War, the economy suffered, and the fear and dislike of foreigners escalated. One of the defining events of this period of Canadian immigration history was the Winnipeg General Strike of 1919. *Forging Our Legacy* gives the following account of this event's context and significance:

> The spiralling cost of living, widespread unemployment, and disillusionment with "the system" gave rise to a wave of labour unrest that rolled across the country in 1918 and 1919, intensifying fears of an international Bolshevik conspiracy. Nothing did more to inflame anti-foreign sentiment and heighten fears of revolution than the Winnipeg General Strike of May 1919.[11]

The government's legislative reaction to the strike was again to target so-called foreigners:

> Ultimately, the decisive intervention of the federal government brought about an end to the conflict. Persuaded that enemy aliens had instigated the strike, the government succeeded in 1919 in amending the *Immigration Act*, to allow for their easy deportation. It then had ten strike leaders arrested and instituted deportation proceedings against the four who were foreign-born. When a protest parade on 21 June turned ugly, Royal North West Mounted Police charged the crowd, leaving one person dead and many others wounded. "Bloody Saturday," as it came to be called, led to the arrest and deportation of

10 *Ibid*, ch 4.
11 *Ibid*, ch 1.

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> 34 foreigners and effectively broke the Winnipeg General Strike. But it would leave a long-lasting legacy of bitterness and unrest across Canada.[12]

The revised *Immigration Act* was further used to severely limit non-British immigration. Its historical significance has been described as follows:

> The revised *Immigration Act* and Orders in Council issued under its authority signalled a dramatic shift in Canadian immigration policy. Prior to the First World War, immigration officials had chosen immigrants largely on the basis of the contribution that they could make to the Canadian economy, whereas now they attached more importance to a prospective immigrant's cultural and ideological complexion. As a result, newcomers from the white Commonwealth countries, the United States, and to a lesser extent the so-called preferred countries (that is, northwestern Europe) were welcomed, while the celebrated "stalwart peasants" of the Sifton era were not, unless, of course, their labour was in demand.[13]

In 1922, the government of Mackenzie King relaxed the *Immigration Act*'s Regulations and in the years that followed, Mackenzie King repealed most of the legislation preventing European immigration. The *Chinese Immigration Act* of 1923 effectively shut down Chinese immigration by narrowly defining the acceptable categories of Chinese immigrants (diplomats and government representatives, merchants, children born in Canada who had left for educational or other purposes, and students while attending university or college). Between 1923 and 1946, it is estimated that only 15 Chinese immigrants gained entry into Canada.[14]

During the Great Depression of the 1930s, government policy and legislation were again used to close the doors to non-British immigrants and refugees, including Jewish refugees attempting to flee Nazi Germany. Many immigrants were barred from entry to Canada, and tens of thousands who were already in Canada were deported in those years.

When the Second World War erupted, anti-foreigner sentiment prevailed in Canada, and many non-British people were interned, most famously those of Japanese origin. *Forging Our Legacy* describes the Japanese Canadian experience as follows:

> In Canada itself, probably no group of people experienced as much hardship and upheaval as Japanese Canadians. Their ordeal began on 8 December 1941, the day after the Japanese bombed Pearl Harbor. Within hours of that attack, Ottawa ordered that fishing boats operated by Japanese-Canadian fishermen be impounded and that all Japanese aliens be registered with the Royal Canadian Mounted Police. The worst blow was delivered on 25 February 1942. On that day, Mackenzie King announced in the House of Commons that all Japanese Canadians would be forcibly removed from within a hundred-mile swath of the Pacific coast to "safeguard the defences of the Pacific Coast of Canada." Thus, began the process that saw a visible minority uprooted

12 *Ibid.*
13 *Ibid.*
14 Lindsay Van Dyk, "Canadian Immigration Acts and Legislation," Canadian Museum of Immigration at Pier 21 (last visited 9 April 2026), online: <https://pier21.ca/research/immigration-history/canadian-immigration-acts-and-legislation>.

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> from their homes, stripped of their property, and dispersed across Canada. Japanese Canadians, unlike their counterparts in the United States, were kept under detention until the end of the war. After the conclusion of hostilities, about 4,000 of them succumbed to pressure and left Canada for Japan under the federal government's "repatriation" scheme. Of these, more than half were Canadian-born and two-thirds were Canadian citizens.[15]

Besides being racist, Canadian immigration laws into the mid-20th century were also sexist. It has been noted that married women "did not have full authority over their national status. Classified with minors, lunatics and idiots 'under a disability,' they could not become naturalized or control their national status as independent persons, except in very special circumstances."[16]

The *Canadian Citizenship Act*—Canada's first citizenship statute, which came into force in 1947—addressed some of these issues of racism and sexism. Prior to it, Canadian citizenship as we understand it today did not exist; "Canadians" were British subjects. With the passage of this Act, Canadians became citizens of their own country. The new statute also gave married women autonomy with respect to their status: the nationality of a married woman was no longer dependent on that of her husband. The significance of the *Canadian Citizenship Act* was ceremoniously acknowledged by the government, as *Forging Our Legacy* describes:

> With the enactment of this revolutionary piece of legislation, Canada became the first Commonwealth country to create its own class of citizenship separate from that of Great Britain. … In a moving and historic ceremony, staged on the evening of 3 January 1947 in the Supreme Court of Canada chamber, 26 individuals were presented with Canadian citizenship certificates. Among them were Prime Minister William Lyon Mackenzie King, who received certificate 0001, and Yousuf Karsh, the internationally acclaimed Armenian-born photographer.[17]

After the Second World War, the Canadian economy boomed as it had not after the First World War. This boom paved the way for more liberal immigration policies, including policies concerning displaced persons and refugees from Europe. Although these policies were more liberal, non-white immigrants were still explicitly considered undesirable, and fully a third of immigrants in the postwar wave were British.

A new *Immigration Act* was enacted in 1952, the first such Act since 1910. Although it included provisions designed to exclude non-whites, it also provided the government with the discretion—a discretion that it proceeded to exercise—to admit large numbers of refugees and others who would otherwise have been inadmissible.

In the mid-1960s, Canada's immigration policies finally began to change. Instead of basing the selection of immigrants on race and ethnicity, Canada adopted new selection criteria: education and skills. For the first time, significant numbers of non-British, non-European, non-white immigrants were welcomed from Africa, Asia, Latin America, and the Caribbean.

15 CIC, *Forging Our Legacy*, *supra* note 5, ch 4.
16 *Ibid*, ch 5.
17 *Ibid*.

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But the turning point in Canada's legislative history with respect to immigration was probably the *Immigration Act* of 1976:

> The *Immigration Act*, the cornerstone of present-day immigration policy, was enacted in 1976 and came into force in 1978. It broke new ground by spelling out the fundamental principles and objectives of Canadian immigration policy. Included among these are the promotion of Canada's demographic, economic, cultural, and social goals; family reunification; the fulfillment of Canada's international obligations in relation to the United Nations Convention (1951) and its 1967 Protocol relating to refugees, which Canada had signed in 1969; non-discrimination in immigration policy; and cooperation between all levels of government and the voluntary sector in the settlement of immigrants in Canadian society.[18]

In 1977, the *Citizenship Act*[19] replaced the *Canadian Citizenship Act* to address previous racist policies, particularly the different treatment accorded to "aliens" as opposed to those originating from Britain and the British Commonwealth. (For example, previously, British immigrants had qualified for Canadian citizenship without being called before a judge for a hearing or taking the oath of allegiance in a formal ceremony, as others were required to do.) The main thrust of the new Act has been summarized as follows:

> It was to rectify … anomalies and the unequal treatment accorded different groups of people that *An Act Respecting Citizenship* was first introduced in the House of Commons in May 1974. It received Royal Assent on 16 July 1976 and came into force, along with the *Citizenship Regulations*, on 15 February 1977. Henceforth, improved access and equal treatment of all applicants would be the guiding principles in the granting of Canadian citizenship.[20]

The *Citizenship Act* provides equal rights and privileges, and equal obligations and duties, to all Canadians regardless of whether they were born in Canada or were born elsewhere and subsequently acquired Canadian citizenship. The Act also permits dual citizenship, allowing Canadians to enjoy the citizenship benefits of Canada and of another country. Amendments have been made to the Act over the years, and it is still in force today.

Unlike earlier legislation, Canada's current immigration framework is rooted in non-discriminatory values, upholding the protections and commitments found in the *Canadian Charter of Rights and Freedoms*.[21] The IRPA replaced the *Immigration Act of 1976* when it came into effect on June 28, 2002. The IRPA introduced several important provisions: it strengthened national security and public safety measures, while also streamlining processes to make it easier for eligible individuals to enter Canada. The IRPA, in effect for over 20 years, now requires a thorough review to address legislative changes—a process the government committed to in 2023.

18 *Ibid*, ch 6.
19 RSC 1985, c C-29.
20 *Ibid*.
21 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

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INDIGENOUS PEOPLES AND CANADA'S BORDERS

The concepts of indigeneity and immigration/settlement may at first glance seem incongruous. However, the imposition of international borders and national immigration legislation on Indigenous Peoples have relegated many of the Indigenous Peoples in North America to the status of immigrants on their own territories. The IRPA does not recognize long-standing Indigenous rights to cross Canada's borders for reasons such as trade, hunting, governance, family reunification, or cultural and spiritual activities. This affects Indigenous Peoples as they negotiate Canada's international borders, with most of the problems encountered by those attempting to enter and remain in Canada from the United States and Greenland.

Canadian law poses a particular challenge for Indigenous Peoples looking to enter Canada to reside with or visit spouses and children who are living here. For example, in 2018 Dr Mique'l Dangeli expressed her frustration over her difficulties in obtaining permanent status in Canada, despite having a Canadian spouse and a job as a professor at the University of Northern British Columbia. Dr Dangeli is one of the very few fluent speakers of Sm'algyax—a traditional but endangered language of the Tsimshian people. Despite this, her applications under Express Entry were denied three times. Dangeli told *CBC News* that, "in terms of citizenship, I'm Tsimshian. It's not I'm U.S., I'm not Canadian, I'm Tsimshian … I only recognize the border because it's forced upon us" (quoted in Bellrichard).

At present, Indigenous Peoples who are born outside of Canada must either apply for Indian Status under the *Indian Act* or use the regular immigration pathways set out in the IRPA. In 2017, Fred Caron proposed in his *Report on First Nation Border Crossing Issues* that section 19 of the IRPA be amended to permit any person who is a member of a federally recognized US Tribe the right to enter and remain in Canada. This right would be equivalent to the right recognized in section 19(1) of the IRPA of those who are registered in Canada under the *Indian Act* to enter and remain in Canada.

In 2023, Marc Miller, then minister of IRCC, pledged to make it easier for Indigenous Peoples to cross Canada's borders, including through a ministerial directive as well as possible amendments to the IRPA. At the time of writing, these changes have not yet been implemented. Instead, Canada has recently introduced a temporary measure for Indigenous Peoples with family in Canada to work and study here, and to extend an existing stay for up to three years. However, this falls short of the measures needed to ensure that Indigenous Peoples can freely access their homelands and to end the disruptions that international borders have posed to their way of life.

Sources: Harry Bauder & Rebecca Mueller, *Immigration Policy in Times of Indigenous Reconciliation*, Toronto Metropolitan University working paper no. 2021/12 (October 2021); Chantelle Bellrichard, "U.S.-Born Tsimshian Woman Fighting to Stay in Her First Nation's Traditional Territory in Canada," *CBC News* (13 June 2018), online: <https://www.cbc.ca/news/indigenous/u-s-born-tsimshian-woman-fighting-to-stay-in-her-first-nation-s-traditional-territory-in-canada-1.4704477>; Fred Caron, *Report on First Nation Border Crossing Issues*, Crown-Indigenous Relations and Northern Affairs Canada (31 August 2017), online: <https://www.rcaanc-cirnac.gc.ca/eng/1506622719017/1609249944512>; IRCC, "Temporary Public Policy to Exempt Certain Indigenous Persons and Their Family Members from Temporary Residence Requirements" (10 October 2024), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/public-policies/indigenous-temporary-resident.html>; IRCC, "Temporary Measures to Reunite Families of Indigenous People Separated by Canada's Border" (last modified 27 April 2026), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/ibx-measures.html>; Olivia Stefanovich, "Immigration Minister Says He Wants to Make It Easier for Indigenous People to Cross Borders," *CBC News* (29 September 2023), online: <https://www.cbc.ca/news/politics/miller-international-border-crossings-indigenous-1.6979627>.

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Sources of Law

Immigration in Canada is governed by both domestic law and international law. Domestic law governing immigration includes the Constitution, the *Canadian Charter of Rights and Freedoms*, federal and provincial statutes and regulations, and case law. The primary sources of immigration law are the federal IRPA, the *Immigration and Refugee Protection Regulations*,[22] and case law. Federal–provincial–territorial agreements governing immigration to a particular province or territory are also examples of domestic law.

The *Citizenship Act* is the primary federal statute that sets out the procedures for obtaining Canadian citizenship.

International law—law that is, ideally, common to all nation-states—includes multinational treaties and conventions. Section 7 of the IRPA grants the minister of IRCC the power to enter into agreements with other countries or with certain international organizations. These agreements must be approved by the federal Cabinet and must be consistent with the purposes of the IRPA. By signing these agreements, Canada has committed to structuring our domestic law in a manner that is consistent with international principles that have been **codified** in our domestic law—for example, the 1951 United Nations *Convention Relating to the Status of Refugees*[23] and the accompanying 1967 *Protocol Relating to the Status of Refugees*,[24] as well as the *Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption*.[25]

codified
formalized and clarified in writing in the form of binding legislation

International free trade agreements are treaties that contain provisions to allow temporary entry of business persons. The Canada–United States–Mexico Agreement (CUSMA) contains specific provisions to facilitate, on a reciprocal basis, the temporary business entry among Canada, the United States, and Mexico. The Canada–European Union Comprehensive Economic and Trade Agreement is another example of provisions that grant temporary entry to business visitors, professionals, intra-company transferees, and investors.

Canada's immigration policies are established in federal legislation, specifically the IRPA and IRPR. Before examining the details of current immigration law, however, we will take a step back and survey Canada's wider legal landscape, which is composed of Canada's constitutional documents, statutes, and regulations; case law (judge-made law); and government policy related to immigration.

The Constitution

The **Constitution** is the supreme law of the land. It is the basic framework within which all other laws in Canada are created, and it establishes the basic principles to which all other laws must conform. Until 1982, Canada's Constitution and its original and defining source of law was the *British North America Act* (later renamed the *Constitution Act, 1867*),[26] a statute of England. This statute provided the framework for Canada's democracy, but only the United Kingdom had the power to make certain

Constitution
the basic framework within which all other laws are created, establishing the basic principles to which all other laws must conform

22 SOR/2002-227 [IRPR].
23 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).
24 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).
25 29 May 1993, 1870 UNTS 167, 32 ILM 1134 (entered into force 1 May 1995) [Hague Convention].
26 30 & 31 Vict, c 3.

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constitutional amendments. The *Canada Act, 1982*[27] finally changed this; it gave Canada's Parliament the exclusive power to amend the Constitution. A truly Canadian constitution was created with the *Constitution Act, 1982*,[28] which contains the Charter.

Division of Powers: Constitution Act, 1867

federal system of government
a division of law-making powers between the national (federal) and provincial governments according to subject matter

The *Constitution Act, 1867*, as Canada's supreme law, created a **federal system of government**. This division of powers between the two levels of government remains today. The federal government has jurisdiction over matters of national interest—in other words, matters that affect all Canadians from coast to coast to coast. Provincial governments have jurisdiction over local matters within their own provinces. The federal government also has law-making jurisdiction with respect to the territories, although federal legislation has granted the territories many of the same powers that the Constitution grants the provinces.

FEDERAL POWERS

Most federal powers are listed in section 91 of the *Constitution Act, 1867*. The basic rule governing the division of powers is that matters that require a national standard fall within the jurisdiction of the federal government. They are enumerated powers (because there is a number attached) and include the authority to regulate subjects such as "Naturalization and Aliens" (power 25), the "Regulation of Trade and Commerce" (power 2), and the "Criminal Law … including the Procedure in Criminal Matters" (power 27) because they are all issues of national interest and it is important that the same legal standards are applied across the country. Examples of federal powers are shown in Table 1.1.

TABLE 1.1 Examples of the Law-Making Powers of the Federal and Provincial Levels of Government

Federal Government Law-Making Powers by Subject Matter (Section 91) (Includes residual powers for peace, order, and good government)	**Provincial Government Law-Making Powers by Subject Matter (Section 92)** (Generally, all matters of a merely local or private nature in the province)
2. Regulation of Trade and Commerce	6. Public and Reformatory Prisons in and for the Province
5. Postal Service	8. Municipal Institutions in the Province
6. Census and Statistics	12. The Solemnization of Marriage in the Province
7. Militia, Military and Naval Service, and Defence	13. Property and Civil Rights in the Province
14. Currency and Coinage	14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts
25. Naturalization and Aliens	93. Education
27. Criminal Law	

27 (UK), 1982, c 11.
28 Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

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The wording from the preamble to section 91 gives the federal government **residual power** "to make laws for the peace, order, and good government of Canada, in relation to all matters" that do not come under a provincial head of power. This means that any matters not specifically delegated to the provinces are matters over which the federal government has jurisdiction.

residual power
power that is not otherwise delegated elsewhere; the federal government has residual power to legislate in all subject areas that are not specifically assigned to the provinces

PROVINCIAL POWERS

Most provincial powers are listed in section 92 of the *Constitution Act, 1867*, and they generally include authority over all matters of a local or private nature in the province, such as prisons, hospitals, municipalities and local boards and agencies, and property rights. For example, section 92(14) assigns the administration of justice, including provincial civil and criminal courts, to the provincial governments. Examples of provincial powers are shown in Table 1.1.

In Canada, a significant degree of legislative responsibility is delegated to the provinces. This means that there are many more provincial statutes and accompanying regulations than there are federal ones. Table 1.1 shows the areas of legislative responsibility assigned by the Constitution to the federal government and the provincial governments, respectively.

SECTION 95: CONCURRENT POWERS OF LEGISLATION

With respect to agriculture and immigration, the *Constitution Act, 1867* makes a special provision for the federal and provincial governments to share power. With respect to immigration, section 95 states the following:

> In each Province the Legislature may make Laws in relation to … Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to … Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to … Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

Therefore, a province may make laws in relation to the immigration of people into the province, provided those laws are not inconsistent or in conflict with any federal law. Generally, when a conflict occurs between validly enacted federal and provincial legislation it is the federal legislation that prevails. However, the Constitution provides for the sharing of powers over immigration. The IRPA resolves this issue by allowing the federal government and the province to enter into a federal–provincial agreement so that there is a collaborative approach to share the benefits of immigration.

The IRPA includes several provisions related to the provinces and to the sharing of power between federal and provincial levels of government with respect to immigration:

- Section 3(1)(c) refers to the objective "to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada."
- Section 3(1)(j) refers to the objective "to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society."

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- Section 8(1) states that the federal minister of citizenship and immigration "may enter into an agreement with the government of any province for the purposes of this Act. The Minister must publish, once a year, a list of the federal–provincial agreements that are in force."
- Section 10(1) states that the minister "may consult with the governments of the provinces on immigration and refugee protection policies and programs, in order to facilitate cooperation and to take into consideration the effects that the implementation of this Act may have on the provinces."

IMMIGRATION AGREEMENTS

Section 8 of the IRPA allows the minister, with Cabinet, to enter into agreements with the provinces to address their specific immigration needs. Such bilateral agreements support information sharing and the development of immigration programs and policies.

Some federal–provincial agreements are comprehensive and cover a wide range of immigration issues. The agreements currently in place with British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, and Yukon are comprehensive in this way.

Other agreements cover more specific issues—for example, a Provincial Nominee Program (PNP) where each province and territory (except Nunavut and Quebec) has its own unique program to nominate individuals who wish to immigrate to Canada and who are interested in settling in a particular province. More recently, the Atlantic Immigration Program was created to address regional labour market needs through agreements with New Brunswick, Newfoundland and Labrador, Prince Edward Island, and Nova Scotia.

Canada–Québec Accord

Canada and the province of Quebec have had immigration agreements since 1971. The most recent is the 1991 *Canada–Québec Accord relating to Immigration and Temporary Admission of Aliens*,[29] the most significant and comprehensive immigration agreement between Canada and a province. From Quebec's perspective, two objectives are particularly important. Objective 2 states that, among other things, the Accord strives to maintain "the preservation of Québec's demographic importance within Canada and the integration of immigrants to that province in a manner that respects the distinct identity of Québec." Objective 4 states that "Québec has the rights and responsibilities set out in this Accord with respect to the number of immigrants destined to Québec and the selection, reception and integration of those immigrants."

Under the Accord, Quebec has the sole responsibility for establishing immigration levels and for the selection, francization, and integration of permanent residents and refugees from outside Canada who wish to settle in that province. In areas under its responsibility, Quebec develops its own policies and programs and legislates, regulates, and sets its own standards; therefore, immigrants destined for Quebec must first apply to that province. Individuals who are successfully selected by Quebec are

29 5 February 1991 (entered into force 1 April 1991), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/federal-provincial-territorial/quebec/canada-quebec-accord-relating-immigration-temporary-admission-aliens.html>.

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then referred to IRCC, which tests for inadmissibility on the grounds of medical risk or burden, security threat, and criminality—the same legal standards that are applied to all immigrants across the country. (The grounds of inadmissibility are discussed in Chapter 3.)

The federal government remains responsible for setting minimum national standards for the admission of all immigrants and visitors, and for the administrative function of processing applications and physical admission to Canada at ports of entry. Quebec may impose additional selection criteria for immigrants to Quebec and is responsible for integrating immigrants into the community. As most of Quebec's programs and processes involve instructions unique to that province, they will not be discussed in this text.

The Canadian Charter of Rights and Freedoms

The Charter was created to accomplish one of the most important constitutional functions—to express the fundamental values and principles of our society. Canada prides itself on being a free and democratic society that protects the welfare of its members. The Charter reflects that objective and provides a mechanism to balance individual freedoms with the need to protect society's more vulnerable members.

Rights and freedoms protected by the Charter include the following:

- fundamental freedoms, including freedom of expression (s 2(b)) and freedom of religion (s 2(a));
- mobility rights (s 6), such as the rights of Canadian citizens to enter, remain in, and leave Canada;
- legal rights, such as the right to life, liberty, and security of the person (s 7) and the right to an interpreter at a hearing (s 14);
- equality rights (s 15); and
- language rights, such as the right to use any one of the two official languages (English and French) in a court proceeding (s 19) or when obtaining services from the federal government (s 20(1)).

The Charter provides in section 1 that government legislation and actions cannot infringe on these rights and freedoms unless the infringement can be "demonstrably justified in a free and democratic society." Accordingly, the Charter has two important effects:

1. If any law or government policy contravenes the terms of the Charter, that law or policy may be declared unconstitutional and of no force and effect by a court or **administrative tribunal** (unless the law invokes the s 33 "notwithstanding clause").
2. Any action—by an agent or representative of any level of government—that contravenes any right or freedom protected in the Charter can be challenged in the courts by section 24.

administrative tribunal a specialized governmental agency established under legislation to implement legislative policy—for example, the IRB is an administrative tribunal established under the IRPA

We are reminded at section 3(3)(d) of the IRPA that it is to be construed and applied in a manner that "ensures that decisions taken under this Act are consistent with

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the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada."

REASONABLE LIMITS ON RIGHTS AND FREEDOMS

Section 1 of the Charter provides that all of its rights and freedoms are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Each time a court considers whether a law is in violation of the Charter, it must consider whether the law imposes a "reasonable limit" on a Charter right. A law will be struck down only when both of the following conditions exist:

1. the law violates a Charter right or freedom; and
2. the law cannot be justified as a reasonable limit in a free and democratic society (the *Oakes* test).[30]

A selection of Charter cases important to immigration and refugee law can be seen in Appendix 1.1 at the end of this chapter.

statute
law passed by Parliament or a provincial legislature; also called an "act"; often specifically provides for the authority to make regulations or to delegate this power; distinguished from subordinate legislation

Weblink

It is easy to access statutes and regulations online, but it is important to ensure you are using a website that maintains regularly updated versions of the legislation. The Canadian Legal Information Institute (CanLII) website provides access to up-to-date versions of statutes and regulations for the federal, provincial, and territorial governments, as well as extensive case law. Visit CanLII at <www.canlii.org>.

Statutes and Regulations

Statutes

Statutes such as the IRPA are written codes of law that typically deal with a particular subject matter—for example, immigration, criminal law, child protection, or income tax.

Statutes are created by a legislature—either by the federal Parliament in Ottawa, as in the case of the IRPA, or by the provincial or territorial legislatures in each of the provinces and territories. Provided that doing so does not violate constitutional principles (such as those found in the Charter), a legislature can change the rules developed in case law by using clear language in a statute. Courts, for their part, may make decisions about how to interpret and apply legislation, especially when the wording in a statute is vague or ambiguous or may have changed over time. Such statutory interpretation can lead to broad changes in the operation of a law. Many statutes, including the IRPA and the *Citizenship Act*, authorize the creation of regulations that provide the practical details concerning the statute's implementation.

HOW TO CITE A STATUTE

Using the IRPA as an example, the citation for the statute is SC 2001, c 27. The "SC" portion tells a person that this is a Statute of Canada, a federal law. The "2001" represents the year the statute was created and tells that person which sessional volume of statute books contains this particular law. The "c 27" means that the law can be found at "chapter 27" in the book. It probably also means that the IRPA was the 27th law the federal government created that year.

30 So named because it derives from the Supreme Court of Canada's decision in *R v Oakes*, 1986 CanLII 46 (SCC).

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Regulations

Regulations provide support to their statutes, which fill in the details regarding how the law is to be implemented. Regulations are sometimes described as being "created under statutes." They are not made by Parliament but are often drafted by the staff of the Cabinet of the governing party.

The information regulations provide is just as important as the information in the primary legislation (the statute or act). If a statute has regulations made under it, the regulations will be found published in their own volumes, separate from the statute, and will be revised according to the same schedule as the statute itself. However, regulations cannot exist independently, without a parent statute. For a regulation to exist lawfully, it must have a parent statute that contains a provision designating regulation-making authority. If no such provision exists, no regulations may be enacted.

regulations
detailed rules, created pursuant to a statute by the governor in council, that fill in practical details regarding the statute's administration and enforcement

Case Law

Case law is judge-made law. The courts' ability to create law as well as to interpret it is considerable, as the Charter cases described in Appendix 1.1 demonstrate. Case law is part of the **common law**, which has evolved from decisions of English courts going back to the Norman conquest. Some would say that English common law began with King Henry II, who was crowned shortly after the Norman conquest and who created principles of law that were to be "common" to all free men in England. The formation of common law is similar to that of **customary international law**, where customs and practice take on legal significance over time.

Common law principles still apply in Canada with respect to areas of law that are not fully codified by statute, such as contract law and tort law. As underscored by the Charter cases examined in Appendix 1.1, the common law rules of procedural fairness—developed in the common law through judicial review—play an important role in immigration law.

Case law also includes tribunal and judicial decisions that interpret the Constitution, statutes, and regulations. To achieve predictability and consistency, our courts treat similar cases in a similar manner, making decisions in accordance with **precedent**. "Rules" created by judges in legal decisions bind the decision-makers in future decisions that turn on the same or similar facts. The decisions of higher-level courts (provincial courts of appeal or the Supreme Court) must be respected and followed in lower-level courts unless the facts of the new case before the lower court differ substantially. Tribunal decisions, however, are not binding across different tribunals or even within the same tribunal. See the discussion of tribunals and the role of administrative law, below.

case law
interpretations of statutes and regulations created by the judgments of courts and other adjudicators; case law is part of the common law

common law
a body of legal principles and rules that can be traced back to Britain and that are found in court judgments

customary international law
international legal customs and practices that take on the force of law over time

precedent
a court ruling on a point of law that is binding on lower courts

Policy

Policies explain the operation of legislation and regulation. Government **policy** is not law; however, it is an important source of guidance and direction. How the law is applied in practice often evolves in response to government policy, especially where the law leaves room for discretion in administrative decision-making. Policies can be formal or informal, and they can be written or unwritten. They can also have a wide range of objectives, such as promoting fairness and determining the areas to which

policy
non-binding guidelines that are created by agencies to support the administration of statutes and regulations, and that reflect the government and agency's agenda

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the government should give priority. For example, the Policy on Francophone Immigration supports one of the objectives of IRPA (3(1)(b.1)) to enhance "the vitality of Francophone and Acadian communities" by increasing admissions of French-speaking immigrants, specifically in Francophone and Acadian minority communities.[31]

The objectives and operation of government policy must be in compliance with legislation and regulations. Government policy documents are often made available to the public on government websites.

THE ROLE OF ADMINISTRATIVE LAW IN IMMIGRATION, REFUGEE, AND CITIZENSHIP LAW

Administrative law is a branch of public law concerned with the legal rules and institutions (boards, tribunals, and government officers but not courts) used to regulate and control the exercise of state power in its relations with citizens. Most decisions related to immigration, refugee, and citizenship matters are made by government officers or members of the IRB. The decision-making powers (jurisdiction) and criteria used by decision-makers are established by statute—that is, the IRPA and its Regulations, and the *Citizenship Act* and its Regulations. Unlike the court system, the majority of administrative decision-making is initiated when a person submits an application requesting a decision. Decisions are supposed to be made relatively quickly and routinely (compared to the court system) and within the rules set out by the statute—for example, by a visa officer who decides whether a foreign national should be issued a temporary resident visa to visit Canada or by a citizenship officer deciding whether a permanent resident should be granted Canadian citizenship.

Administrative law provides remedies to a person who wishes to challenge a decision made by a government officer. For example, a person may have a right to a hearing before an administrative tribunal where there are more procedural guarantees because the nature of the decision is more serious, such as when an applicant is denied a specific right or faces a significant consequence (for example, facing deportation or, in the case of a refugee claimant, persecution).

Administrative tribunals usually require more procedural fairness than routine decisions by government officers. While less formal than courts, tribunals allow individuals to present evidence and respond, though a full trial-like hearing isn't always guaranteed. The IRB, as a quasi-judicial tribunal established by statute, follows key justice principles in its procedures. The level of fairness required at an IRB hearing is determined by the IRPA's wording.

Administrative decisions may be judicially reviewed by a court. On judicial review, the court considers whether the tribunal acted within its jurisdiction (that is, according to the statute and regulations), whether it exercised its discretion in an appropriate manner, and whether its procedures were fair. This is different from an appeal, where a court reconsiders the legal merits of the decision and may overturn a decision if

31 IRCC, "Policy on Francophone Immigration" (last modified 27 November 2025), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/francophone-immigration-strategy-2024.html>.

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it finds that the decision was "wrong"—that is to say, based on an erroneous interpretation or application of the law.

Decisions of administrative tribunals may be reviewed by a court only if such a review is expressly permitted by the statute that creates and governs the tribunal, and appeals to a court are generally limited. The rationale for limiting appeals of tribunal decisions is that an appeal essentially involves replacing a tribunal's decision with a court's decision. This undermines one of the advantages of tribunals—expertise in a particular subject area. It is a principle of administrative law that courts should defer to administrative decisions made by government officials and tribunals, because these administrative decision-makers possess expertise in their particular regulatory regimes, such as immigration, refugee, and citizenship law.

The Immigration and Refugee Protection Act: Overview

The IRPA and IRPR are referred to on a regular basis throughout this text, so a brief review of their structure and content will be helpful.

The IRPA provides a legal framework for the operation of our immigration and refugee systems, setting out general rules and principles, the rights and obligations of permanent and temporary residents and protected persons, and key enforcement provisions. The Act also creates the IRB, an administrative tribunal, and sets out the Tribunal's mandate, powers, and structure.

The IRPA is divided into five parts, which are further subdivided into divisions, sections, and subsections. A table of contents for the IRPA appears in the box below.

IRPA TABLE OF CONTENTS

Part 1: Immigration to Canada

Division 0.01: Biometric Information

Division 0.1: Invitation to Make an Application

Division 1: Requirements and Selection

Division 2: Examination

Division 3: Entering and Remaining in Canada

Division 4: Inadmissibility

Division 5: Loss of Status and Removal

Division 6: Detention and Release

Division 7: Right of Appeal

Division 8: Judicial Review

Division 9: Certificates and Protection of Information

Division 10: General Provisions

Part 2: Refugee Protection

Division 1: Refugee Protection, Convention Refugees, and Persons in Need of Protection

Division 2: Convention Refugees and Persons in Need of Protection

Division 3: Pre-removal Risk Assessment

Part 3: Enforcement

Part 4: Immigration and Refugee Board

Part 4.1: Electronic Administration

Part 5: Transitional Provisions, Consequential and Related Amendments, Coordinating Amendments, Repeals and Coming into Force

Schedule

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IRPA Objectives

The primary objectives of the IRPA are to facilitate economic immigration and family reunification, and to fulfill Canada's obligations toward refugee protection. The IRPA sets out separate objectives for the provisions regarding immigrants and the provisions regarding refugees. The objectives offer important guidance to immigration officers, the IRB, and the courts with respect to how the statute should be applied and interpreted.

With respect to immigration, the objectives of the IRPA, set out in section 3(1), can be summarized as follows:

> (a) to maximize the social, cultural and economic benefits of immigration;
>
> (b) to enrich and strengthen the social and cultural fabric of Canadian society while respecting the federal, bilingual and multicultural character of Canada;
>
> (b.1) to support and assist the development of minority official languages communities in Canada;
>
> (c) to support the development of a strong and prosperous Canadian economy in which the benefits of immigration are shared across all regions of Canada;
>
> (d) to see that families are reunited in Canada;
>
> (e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;
>
> (f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;
>
> (f.1) to maintain, through the establishment of fair and efficient procedures, the integrity of the Canadian immigration system;
>
> (g) 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;
>
> (h) to protect the health and safety of Canadians and maintain the security of Canadian society;
>
> (i) 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; and
>
> (j) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

With respect to refugees, the objectives of the IRPA, set out in section 3(2), can be summarized as follows:

> (a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;
>
> (b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;

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(c) to grant, as a fundamental express of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;

(d) to offer a safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as persons at risk of torture or cruel and unusual treatment or punishment;

(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;

(f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;

(g) to protect the health and safety of Canadians and maintain the security of Canadian society; and

(h) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.

The IRPA also contains a provision (s 3(3)) that directs all decision-makers to interpret and apply the legislation in a manner that

(a) furthers the domestic and international interests of Canada;

(b) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;

(c) facilitates cooperation between the government of Canada, provincial governments, foreign states, international organizations, and non-governmental organizations;

(d) ensures that decisions made under the IRPA are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination and the equality of English and French as the official languages of Canada;

(e) supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada; and

(f) complies with international human rights instruments to which Canada is signatory.

Immigration Regulations

The IRPR supports the IRPA by setting out the practical details needed for its implementation and operation.

Regulations under the IRPA are made by Cabinet and must be published in the *Canada Gazette* along with a regulatory impact analysis statement. The IRPA grants broad regulatory power to Cabinet through the governor in council to make rules and regulations in the form of orders in council. This enables the government to respond quickly to adapt the IRPA's broad provisions to changing circumstances. Generally

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speaking, the Regulations can easily be amended by an order in council. For example, the regulations that stipulate the processing fees for the different types of applications for permanent and temporary resident visas can be increased or reduced, or the various categories within the economic classes of immigrants that set out specific criteria within each class can be changed, added to, or repealed.

In some cases, the minister of IRCC is required to table proposed regulations before each House of Parliament (the House of Commons and the Senate) so that these proposals can be referred to the appropriate committee of that House. This is required when the proposed regulations relate to provisions in the following areas:

- examinations;
- rights and obligations of permanent and temporary residents;
- status documents;
- loss of status, and removal, detention, and release;
- examination of eligibility to refer a refugee claim;
- the principle of *non-refoulement* (the principle of international law according to which refugees or asylum seekers should not be forced to return to a country in which they are liable to be subjected to persecution); and
- transportation companies (s 5(2)).

The proposed regulation need only be tabled once; it does not have to be presented to each House of Parliament again, even if it has been altered (s 5(3)). As a result, amendments can be made without further examination by Parliament.

Numerous regulations under the IRPA cover a variety of subject areas. The IRPR comprises 21 parts that are further subdivided into divisions, sections and subsections, and schedules. The Regulations change relatively frequently and therefore require immigration professionals to monitor information sources, such as the IRCC website (<https://www.canada.ca/en/services/immigration-citizenship.html>), on a regular basis. An abridged table of contents for the IRPR appears in the box below.

IRPR TABLE OF CONTENTS

Part 1: Interpretation and Application	Part 14: Detention and Release
Part 2: General Requirements	Part 15: Prescribed Conditions
Part 3: Inadmissibility	Part 16: Seizure
Part 4: Procedures	Part 17: Transportation
Part 5: Permanent Residents	Part 18: Loans
Part 6: Economic Classes	Part 19: Fees
Part 7: Family Classes	Part 19.1: Information Sharing Between Countries
Part 8: Refugee Classes	Part 20: Transitional Provisions
Part 9: Temporary Residents	Part 21: Repeals and Coming into Force
Part 10: Visitors	Schedule 1
Part 11: Workers	Schedule 1.01
Part 12: Students	Schedule 1.1: Country
Part 13: Removal	Schedule 2: Violations

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Interpretation Tools

Ministerial Instructions

The IRPA gives the minister of IRCC the authority to issue binding ministerial instructions (MIs) to staff that direct immigration policy without the need for parliamentary review or legislative amendment. The MIs have been used for such purposes as processing applications and requests—their categorization, priority, and even their numbers (s 87.3(3)). MIs must be published on the department's website, and some MIs must also be posted in the *Canada Gazette*, for example as required by the IRPA (s 10.3(4)) for all MIs related to Express Entry. However, unlike regulations, these instructions do not need approval by Parliament.

STAY UP-TO-DATE

Because MIs are typically issued for limited periods of time and are amended, updated, or expired on a frequent basis, it is critical to keep abreast of the changes by checking the IRCC website for updated MIs or to subscribe to IRCC's "Newsroom" (<https://www.canada.ca/en/immigration-refugees-citizenship/news.html>).

MIs can be found on the IRCC website at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/ministerial-instructions.html>.

Policy Instruments

As noted above, policy fills in the gaps in a statute or its regulations and is intended to promote consistency, fairness, and transparency. Most policy develops and evolves over time on an informal basis, as certain procedures that work well become accepted. Policy may also be formalized through a variety of instruments that codify informal policy or create new policy. Operational manuals and program delivery updates play a critical role in establishing policy and are meant to provide guidance to officers for processing and deciding applications. IRCC uses a variety of policy instruments, as described below:

1. *Public policy.* Used to address issues that are temporary in nature or that are limited to a specific region.
2. *Program delivery instructions/program manuals.* Provide guidance and direction on the activities of officers; available on the IRCC website in the "Publications and Manuals" section.
3. *Operational bulletins.* Issued to deliver urgent instructions to officers or provisional instructions to staff to be used on a one-time or temporary basis. For example, special measures for program delivery were created in 2020 to respond to the disruption of services because of the COVID-19 pandemic. The minister may issue several bulletins each month, so it is advisable to check the website regularly to see whether the processing of a given application will be affected (<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html>).

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Keep in mind that although these policy instruments are important, they are merely policy and do not have the force of law. Therefore, if a manual's provision is inconsistent with the provisions of the IRPA or its Regulations, it will not be valid.

4. *Orders in council (OIC).* A legislative tool used in emergency situations that are not subject to parliamentary review but are made on the recommendation of the minister and take legal effect only when signed by the governor general. They are rarely used in the immigration context; however, one example of when emergency OICs were used was with the onset of COVID-19 to primarily govern temporary travel prohibitions and the quarantining and isolation of persons entering Canada to curb the spread of the virus.
5. *Other.* Examples of other rules that govern the practice of immigration and refugee law include the following:
   - *Federal Courts Citizenship, Immigration and Refugee Protection Rules*;[32]
   - *Ministerial Responsibilities Under the Immigration and Refugee Protection Act*;[33] and
   - rules of procedure before the IRB (see Chapter 13 for the list).

The Citizenship Act

The *Citizenship Act* provides the legislative framework for the right of Canadian citizenship, loss of citizenship, and how citizenship can be revoked or resumed. The *Citizenship Act* is divided into eight parts, as shown in the table of contents reproduced in the box below.

CITIZENSHIP ACT TABLE OF CONTENTS

Sections 1 and 2: These sections set out the short title and definitions.
Part I: The Right to Citizenship
Part II: Loss of Citizenship
Part III: Resumption of Citizenship
Part IV: Evidence of Citizenship
Part V: Procedure
Part V.1: Judicial Review
Part VI: Administration
Part VI.1: Electronic Administration and Enforcement
Part VII: Offences
Part VIII: Status of Persons in Canada
Schedule: Oath or Affirmation of Citizenship

Citizenship Regulations

The *Citizenship Regulations*[34] set out the details for processing citizenship applications and provide specific criteria and details for processing or granting citizenship, renouncing citizenship, revocation of citizenship, and resumption of citizenship. They also

32 SOR/93-22
33 SI/2015-52
34 SOR/93-246.

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provide information about the citizenship test, the oath of citizenship, procedures for citizenship ceremonies, and fees for becoming a citizen.

Authorized Practitioners

Who may act as a representative or provide advice on immigration, refugee, and citizenship matters? Lawyers? Consultants? Paralegals, law clerks, social workers, travel agents? Under section 91(2) of the IRPA, only the following people are authorized representatives:

- a lawyer who is a member in good standing of a law society of a province or a notary who is a member in good standing of the Chambre des notaires du Québec;
- any other member in good standing of a law society of a province or the Chambre des notaires du Québec, including a paralegal;[35] or
- a Regulated Canadian Immigration Consultant who is member in good standing of the College of Immigration and Citizenship Consultants.

It is an offence for anyone other than these specified individuals to charge a fee for immigration, refugee, or citizenship advice or representation at any stage of an application or proceeding. (For more information about authorized representatives, see Chapter 17.)

35 For licensed paralegals in Ontario, the regulator (Law Society of Ontario) sets out in By-Law 4 the scope of practice, which does not include immigration, refugee, or citizenship applications.

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KEY TERMS

administrative tribunal, **17**
case law, **19**
citizen, **4**
codified, **13**
common law, **19**
Constitution, **13**
customary international law, **19**
federal system of government, **14**
foreign national, **4**
immigrant, **4**
immigration, **4**
permanent resident, **4**
policy, **19**
precedent, **19**
refugee, **4**
regulations, **19**
residual power, **15**
statute, **18**
temporary resident, **4**
visa (or permit), **4**

REVIEW QUESTIONS

1. List and provide one historical highlight from each of Canada's immigration statutes.
2. List and provide one historical highlight from each of Canada's citizenship statutes.
3. Why does the federal government have responsibility for naturalization and aliens?
4. Give an example of how the federal government and the provincial governments share powers related to immigration.
5. Are permanent residents, temporary residents, and refugees protected by section 7 of the Charter? If yes, why? If no, why not?
6. Which Supreme Court decision, discussed in Appendix 1.1, holds that the concept of fundamental justice includes the following notion: procedural fairness requires that, where a serious issue of credibility is involved, credibility must be determined on the basis of an oral hearing?
7. Find and briefly summarize the following sections of the IRPA:
   - Section 2
   - Sections 8 and 10
   - Section 11
   - Section 19
8. Locate key sections of the *Immigration and Refugee Protection* regulations for the following:
   - Where do you find the definition of a family member?
   - Where do you find the definition of a dependent child?
   - Where do you find the definition of a member or the family class?
   - Where do you find the relationships that are described as excluded as members of the family class?
   - Where do you find the application fees for … ?
     a. processing an application for an Electronic Travel Authorization?
     b. processing an application for a permanent resident visa?
     c. processing an application for a single or multiple entry temporary resident visa, including the maximum total?
     d. processing an application for the acquisition of permanent resident status and exceptions?
9. Who needs a visa to visit Canada?
10. What is administrative law?

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APPENDIX 1.1 SELECTED CHARTER CASES

The reasons provided by the Supreme Court of Canada in the following five cases exemplify the Charter's power to shape the law in Canada.

Singh v Minister of Employment and Immigration: Principles of Fundamental Justice

Singh[36] is an important case for two reasons: (1) it clarifies who is protected under the Charter, and (2) it sets out the procedural requirements for fairness. In *Singh*, the Supreme Court considered whether section 7 of the Charter applied to the adjudication of refugee claims under the *Immigration Act* of 1976, and if so, whether those procedures denied the section 7 requirement of fundamental justice.

The wording of section 7 is as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The *Singh* case actually involved claims by six appellants, each of whom made separate and unrelated claims to "Convention refugee" status. (*Convention refugees* are people who are outside their home country or the country where they normally live, and who are unwilling to return to these countries because of a well-founded fear of persecution based on race, religion, political opinion, nationality, or membership in a particular social group—for example, women or people of a particular sexual orientation.)

Under the former refugee determination scheme, a refugee claimant was examined under oath by a senior immigration officer, and a transcript was made of the examination under oath and sent to the Refugee Status Advisory Committee (RSAC) for a paper review and recommendation to the minister. The minister, acting on the advice of the RSAC, determined in each case that the claimants were not Convention refugees. Each of the six appellants then applied to the Immigration Appeal Board (IAB), a quasi-judicial tribunal, for a redetermination of their claims. The IAB refused their applications on the basis that the Board did not believe there were "reasonable grounds to believe that a claim could, upon the hearing of the application, be established." On the basis of this refusal, it was decided that no hearing into their claims would be held.

Although none of the appellants was a Canadian citizen, the Supreme Court found that they were entitled to the protection of section 7, which applies to "every human being who is physically present in Canada and by virtue of such presence amenable to Canadian law."[37] Thus, the Court extended section 7 protection to any person in Canada, regardless of whether that person has any legal right to be here.

The Court found that denying a refugee claimant's right, under section 55 of the then *Immigration Act* of 1976, not to "be removed from Canada to a country where his life or freedom would be threatened" amounted to a deprivation of security of the person within the meaning of section 7.

36 *Singh v Minister of Employment and Immigration*, 1985 CanLII 65 (SCC).
37 *Ibid* at para 35.

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The Court also found that, at a minimum, the concept of fundamental justice in section 7 includes the notion of procedural fairness. The procedural scheme for refugee determinations under the former *Immigration Act* was not in accordance with fundamental justice, according to the Court, because the hearings were based only on written submissions. The Court held that "where a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an oral hearing."[38] Only an oral hearing is adequate in such circumstances to fairly assess a refugee claimant's credibility.

The Court further held that failure to provide an oral hearing was not reasonable or justifiable and therefore could not be saved under section 1. As a result of the *Singh* decision, the former refugee determination system was replaced under the current IRB, which holds quasi-judicial oral hearings for refugee claimants who are in Canada.

Andrews v Law Society of British Columbia: Equality Rights

In the 1989 case of *Andrews v Law Society of British Columbia*,[39] the Supreme Court first ruled on the equality provisions set out in section 15 of the Charter. The Court held that this Charter right was violated by the Law Society of British Columbia's requirement that lawyers be Canadian citizens. The wording of section 15(1) is as follows:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Court held that the grounds of discrimination listed in section 15 were not exhaustive, and that analogous grounds, such as "citizenship," were also covered by the Charter. The respondent, Andrews, was a British subject and permanent resident in Canada. He met all the requirements for admission to the British Columbia Bar except that of Canadian citizenship. When he was refused admission, he successfully challenged the citizenship requirement on the grounds that it violated his right to equality.

As the first section 15 case, *Andrews* laid the foundation for analyzing Charter challenges involving equality. The Supreme Court held that section 15 provides every individual a guarantee of equality before and under the law, as well as the equal protection and equal benefit of the law without discrimination. The Court expanded the scope of the right to equality by rejecting the equality test—known as the "similarly situated should be similarly treated" test—that the lower court had used in the *Andrews* case for interpreting section 15. In the context of citizenship, this test resulted in unequal treatment, provided that all non-citizens were treated the same and all citizens were treated the same.

The Supreme Court held instead that discrimination is a distinction that is based on grounds relating to the personal characteristics of the individual or group and that it has the effect of imposing disadvantages not imposed on others. Distinctions based

38 *Ibid* at para 59.
39 1989 CanLII 2 (SCC).

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on personal characteristics that are attributed to an individual solely on the basis of their association with a group "will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed." This guarantee is not a general guarantee of equality; its focus is on the application of the law. The effect of the impugned distinction or classification on the complainant must also be considered.

The Court, while noting that there may be legitimate reasons for requiring citizenship, concluded in *Andrews* that barring an entire class of persons from certain forms of employment solely on the grounds of a lack of citizenship status and without consideration of their educational and professional qualifications or their other attributes or merits infringes section 15 equality rights.

Note that although *Andrews* held that section 15 of the Charter prohibited discrimination against permanent residents, discrimination in some circumstances will be tolerated, either because it is justifiable under section 1 of the Charter or because the Charter itself makes a distinction between citizens and non-citizens—for example, only citizens may vote in elections, and the IRPA legitimately discriminates against non-citizens with respect to the right to live in Canada permanently and not be deported.

Canada (Minister of Employment and Immigration) v Chiarelli: Non-Citizens Do Not Have an Unqualified Right to Enter or Remain in the Country

Section 7 was raised again in *Chiarelli*[40] to challenge the former *Immigration Act* of 1976. This time, however, it was raised unsuccessfully. In *Chiarelli*, the Court ruled that non-citizens (except refugees) do not have the same unqualified right to enter and remain in Canada as Canadian citizens do. Sections 27(1)(d)(ii) and 32(2) of the *Immigration Act* of 1976 required that deportation be ordered for persons convicted of an offence carrying a maximum punishment of five years or more, without regard to the circumstances of the offence or the offender. Chiarelli, a permanent resident, immigrated with his family as an adolescent, and a decade later was declared inadmissible on the grounds of criminality and ordered deported.

Chiarelli's criminal record classified him in such a way that he was barred from admission to Canada, and the minister was authorized to issue a certificate dismissing Chiarelli's appeal. In other words, Chiarelli was not accorded the usual right to appeal, in which the deportation order would be considered in light of all the circumstances of the case. Chiarelli argued that these provisions were contrary to the section 7 principles of fundamental justice. In response, the Supreme Court held the following:

> [I]n determining the scope of the principles of fundamental justice as they apply to this case, the Court must look to the principles and policies underlying immigration law. The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the country.[41]

40 *Canada (Minister of Employment and Immigration) v Chiarelli*, 1992 CanLII 87 (SCC).
41 *Ibid* at 733.

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The Court noted the Charter distinction between citizens and non-citizens: only citizens are accorded the right "to enter, remain in and leave Canada" under section 6(1). The Court further held that

> there has never been a universally available right of appeal from a deportation order on "all the circumstances of the case." Such an appeal has historically been a purely discretionary matter. Although it has been added as a statutory ground of appeal, the executive has always retained the power to prevent an appeal from being allowed on that ground in cases involving serious security interests.[42]

But, more to the point, with regard to the section 7 requirement of fundamental justice, the Court held that

> Parliament has the right to adopt an immigration policy and to enact legislation prescribing the conditions under which non-citizens will be permitted to enter and remain in Canada. It has done so in the *Immigration Act*. … [N]o person other than a citizen, permanent resident, Convention refugee or Indian registered under the *Indian Act* has a right to come to or remain in Canada. … One of the conditions Parliament has imposed on a permanent resident's right to remain in Canada is that he or she not be convicted of an offence for which a term of imprisonment of five years or more may be imposed. This condition represents a legitimate, non-arbitrary choice by Parliament of a situation in which it is not in the public interest to allow a non-citizen to remain in the country. … [T]he personal circumstances of individuals who breach this condition may vary widely. The offences … also vary in gravity, as may the factual circumstances surrounding the commission of a particular offence. However there is one element common to all persons who fall within the class of permanent residents described in s. 27(1)(d)(ii). They have all deliberately violated an essential condition under which they were permitted to remain in Canada. In such a situation, there is no breach of fundamental justice in giving practical effect to the termination of their right to remain in Canada. In the case of a permanent resident, deportation is the only way in which to accomplish this. There is nothing inherently unjust about a mandatory order. … It is not necessary, in order to comply with fundamental justice, to look beyond this fact to other aggravating or mitigating circumstances.[43]

What this means, in a nutshell, is that while section 7 of the Charter does provide minimum procedural protections, it generally does not shield non-citizens from deportation.

Baker v Canada (Minister of Citizenship and Immigration): Best Interests of the Child

The Supreme Court clarified several important concepts in administrative law and set new standards for the review of administrative discretion and the content of the duty

42 *Ibid* at 741.
43 *Ibid* at 733-34.

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of procedural fairness[44] in *Baker v Canada (Minister of Citizenship and Immigration)*.[45] A Jamaican national, Ms Mavis Baker, entered Canada in August 1981 on a visitor's visa. After her visa expired she remained in Canada, working illegally as a live-in domestic for 11 years. During this time she had four Canadian-born children; however, after the birth of her fourth child, she was diagnosed with a mental illness and could no longer support herself and her children. Two of her children were placed in the care of their natural father, and the other two were placed in foster care. Ms Baker also had four children residing in Jamaica. Ms Baker was ordered deported in December 1992 for overstaying her visitor's visa and working illegally in Canada. By the time of the appeal, however, Ms Baker's condition had improved, and she was again caring for the two children who had been in foster care.

In an effort to avert immediate deportation, she sought an exemption from the requirement to apply for permanent residence outside Canada and applied in writing to remain in Canada on humanitarian and compassionate grounds pursuant to the *Immigration Act* of 1976, which was in force at the time. She argued that as the primary source of financial and emotional support for her children, she should be allowed to remain in Canada. Her application was denied on April 18, 1994 by an immigration official who determined that there were insufficient humanitarian and compassionate grounds to warrant an exception but did not provide reasons for the decision in his letter to Ms Baker. As a result of the application refusal, Ms Baker was ordered to leave Canada by June 17, 1994 and her children had to decide whether to stay in Canada or leave to go to Jamaica with their mother. Ms Baker requested reasons for the denial and eventually received a copy of the official's notes (see Case Study, Chapter 9).

In her appeal to the Supreme Court, she argued that she was denied procedural rights, including an oral hearing with the decision-maker and that reasons for the decision be free from bias. Furthermore, she argued that the decision was incorrect in law and that the minister ought to have considered the best interests of her Canadian children under her application to stay in Canada by inferring implicit incorporation of the *Convention on the Rights of the Child* (CRC) into domestic law by reference to the stated objectives of the *Immigration Act* (Canada was a signatory to the CRC since 1991).

The Court decided that the CRC was not directly binding on domestic laws of Canada because Parliament had not specifically incorporated it into Canadian immigration law. The Court believed, however, that the principles in the CRC indicate that "emphasis on the rights, interests, and needs of children and special attention to childhood are important values that should be considered in reasonably interpreting the 'humanitarian' and 'compassionate' considerations that guide the exercise of the [minister's] discretion."[46] Thus, the Supreme Court determined there was a need to consider the interests of Ms Baker's Canadian-born children. The Court also noted that those affected by a decision must be afforded the opportunity to present their case fully and fairly and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context.

44 *Ibid* at 843.
45 1999 CanLII 699 (SCC).
46 *Ibid* at para 73.

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The Court set out five criteria (although not an exhaustive list) as relevant to determining the content of the duty of fairness in a given set of circumstances:

1. the nature of the decision and process followed making it (at para 23);
2. the nature of the statutory scheme and the terms of the statute pursuant to which the administrative body or agency operates (at para 24);
3. the importance of the decision to the individual or individuals affected (at para 25);
4. the legitimate expectations of the person challenging the decision (at para 26); and
5. respect for the choices by the agency itself and its institutional constraints (at para 27).

Against these factors, the Court held that Ms Baker's participatory rights had not been violated, given that an oral hearing is not a general requirement for applications for permanent residence based on humanitarian and compassionate grounds and that a more relaxed standard can be applied. The Court, however, found that where there is a statutory right of appeal, such as in this case, and where the decision has important significance for the individual, some form of reasons should be required and that the officer's notes in this case satisfied this requirement under the duty of fairness.

The Court also found that in this case, the officer's notes did "not disclose the existence of an open mind or a weighing of the particular circumstances of the case free from stereotypes"[47] and thus demonstrated a reasonable apprehension of bias. Justice L'Heureux-Dubé explained that although the standards for reasonable apprehension of bias may vary depending on the context, because immigration decisions necessarily relate to people of diverse backgrounds, they must reflect a recognition of diversity, an understanding of others, and an openness to difference. She held that the notes, and the manner in which they were written, did not reflect that. The Court decided that the officer's notes showed that his decision was inconsistent with the values underlying the grant of discretion in section 114(2) of the Act and thus failed the "reasonableness" standard of review.

The *Baker* case led to important changes in Canadian immigration law. For example, there is now explicit inclusion of the "best interests of the child" international principle in the IRPA at section 25 (for applications on the grounds of humanitarian and compassionate considerations) and section 28 (for permanent residence obligations considerations).

Suresh v Canada (Minister of Citizenship and Immigration): Deportation of a Convention Refugee

In *Suresh*,[48] the Court addressed the issue of deportation. This case involved an additional element: the person was a Convention refugee who faced a risk of torture if deported. In this case, the person's inadmissibility was based on his membership in a terrorist organization.

47 *Ibid* at para 48.

48 *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1.

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Suresh came to Canada from Sri Lanka in 1990, was recognized as a Convention refugee, and applied for landed immigrant status (now called permanent resident status). He was ordered deported on security grounds, based on the opinion of the Canadian Security Intelligence Service that he was a member and fundraiser for the Liberation Tigers of Tamil Eelam (the Tamil Tigers), an organization engaged in terrorist activity in Sri Lanka whose members were subject to torture in that country.

Section 53 of the *Immigration Act* of 1976 permitted persons who had been engaged in terrorism or who belonged to terrorist organizations, and who also posed a threat to the security of Canada, to be deported "to a country where the person's life or freedom would be threatened." The question was raised as to whether such deportation violated the procedural protection found under section 7 of the Charter.

The Court held that while section 53 did not infringe the Charter, deportation to face torture is generally unconstitutional, and some of the procedures followed in Suresh's case did not meet the required constitutional standards. Therefore, according to the Court, he was entitled to a new deportation hearing:

> [T]he procedural protections required by s. 7 in this case do not extend to the level of requiring the Minister to conduct a full oral hearing or a complete judicial process. However, they require more than the procedure required by the Act under s. 53(1)(b)—that is, none—and they require more than Suresh received.[49]

As to the larger question of whether to deport a refugee when doing so may subject them to torture, the Court held that it was a matter of balancing interests:

> Canadian jurisprudence does not suggest that Canada may never deport a person to face treatment elsewhere that would be unconstitutional if imposed by Canada directly, on Canadian soil. To repeat, the appropriate approach is essentially one of balancing. The outcome will depend not only on considerations inherent in the general context but also on considerations related to the circumstances and condition of the particular person whom the government seeks to expel. On the one hand stands the state's genuine interest in combatting terrorism, preventing Canada from becoming a safe haven for terrorists, and protecting public security. On the other hand stands Canada's constitutional commitment to liberty and fair process. This said, Canadian jurisprudence suggests that this balance will usually come down against expelling a person to face torture elsewhere.[50]

So, although it would generally be a violation of the Charter to deport a refugee where there are grounds to believe that they face a substantial risk of torture, the Court left open the possibility that, in exceptional cases, such deportation might be justified.

49 *Ibid* at para 121.
50 *Ibid* at para 58.

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