

Sharry Aiken, Catherine Dauvergne, Colin Grey, Gerald Heckman, Jamie Liew & Constance Macintosh, *Immigration and Refugee Law: Cases, Materials, and Commentary*, 3rd ed. (Toronto: Emond Publishing, 2020).

[Updates as of October 12, 2023]

Chapter 1: Introduction

| | |
|-------------------------|--|
| New resource | Immigration, Refugees and Citizenship Canada, <i>2022 Annual Report to Parliament on Immigration</i> |
| Relevant Section | Chapter 1, section I (Introduction: The Contemporary Context of Canadian Immigration Law), pp. 2-3. |
| Link or text | < https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2022.html > |
| Discussion | The most recent IRCC <i>Annual Report</i> provides updated statistics to those in the casebook. The <i>Annual Report's</i> highlights indicate that in 2021, there were 405,999 new permanent residents. There were also 1,467,333 travel documents issued to visitors, students, and temporary workers, including 445,776 study permit holders and 415,817 work permit holders under the Temporary Foreign Worker Program and the International Mobility Program. Among new permanent residents, economic class admissions accounted for 252,971 individuals, or 62%; family-class admissions for 81,423 individuals, or 20%; refugees for 60,228 individuals, or 15%; and humanitarian and compassionate admissions for 11,377 individuals, or 3%. |

| | |
|-------------------------|---|
| New resource | Statistics Canada, <i>Immigration and Ethnocultural Diversity Statistics</i> |
| Relevant Section | Chapter 1, section I (Introduction: The Contemporary Context of Canadian Immigration Law), pp. 2-3. |

| | |
|---------------------|--|
| Link or text | < https://www.statcan.gc.ca/en/subjects-start/immigration_and_ethnocultural_diversity > |
| Discussion | This page provides a high-level snapshot of immigration-related statistics. It indicates that in 2021, 23% of the Canadian population were immigrants, a total of 8,361,505 people. From 2016 to 2021, the number of immigrants coming to Canada was 1,328,240. Second-generation Canadians amount to 17.6% of the total population. |

| | |
|-------------------------|--|
| New resources | <p>“CIMM – Question Period Note - Use of AI in Decision-Making at IRCC – November 29, 2022” (last modified 28 March 2023)</p> <p>Randolph Hahn, “The role of AI in the immigration space”, CILA (22 June 2023)</p> <p>Lucia Nalbandian, “Increasing the accountability of automated decision-making systems: An assessment of the automated decision-making system introduced in Canada's temporary resident visa immigration stream”, <i>Journal of Responsible Technology</i>, Volume 10 (2022)</p> <p>Petra Molnar, “Migration Management Experiments and Reflections from the Ground Up”, EDRi; and the Refugee Law Lab (November 2020)</p> <p><i>Welcome Home Immigration Podcast, Episode 11</i>: “How Artificial Intelligence is Influencing the Canadian Immigration Application Process”, Mario Bellissimo in conversation with Chantal Desloges and Cathryn Sawicki (22 August 2023)</p> |
| Relevant Section | Chapter 1, Section IV (Key Actors and Institutions), addition of a new topic after H (Supreme Court of Canada): “Artificial Intelligence in Immigration decision making” |
| Link or text | <p>CIMM: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-nov-29-2022/question-period-note-use-ai-decision-making-ircc.html></p> <p>Hahn: <https://cila.co/the-role-of-ai-in-the-immigration-space/></p> <p>Nalbandian: <https://www.sciencedirect.com/science/article/pii/S2666659621000160?via%3Dihub></p> |

| | |
|-------------------|---|
| | <p>Molnar: <https://edri.org/wp-content/uploads/2020/11/Technological-Testing-Grounds.pdf></p> <p>Welcome Home Immigration Podcast: <https://emond.ca/Podcasts/Welcome-Home--An-Immigration-Law-Podcast-(1)/August-2023/Episode-11---How-Artificial-Intelligence-is-Influe></p> |
| Discussion | <p>Artificial intelligence (AI) now has a significant role in Canada’s immigration system. It is important to understand the parameters of current uses as well as the ethical, procedural and human rights related concerns of current and prospective uses. A discussion about the use of AI in immigration decision making could be introduced in chapter 1, or could be addressed later, in relation to processing and decision making for specific immigration programs.</p> |

Chapter 2: Theoretical Perspectives on Migration

| | |
|-------------------------|---|
| New resource | E. Tendayi Achiume, “Racial Borders” (2022) 110:3 <i>Georgetown LJ</i> 445 |
| Relevant Section | Chapter 2, Section VI (Gender and Race), pp. 95-103. |
| Link or text | < https://www.law.georgetown.edu/georgetown-law-journal/in-print/volume-110/volume-110-issue-3-may-2022/racial-borders/ > |
| Discussion | <p>Achiume argues that contemporary national borders are inherently racial and that race itself may serve as part of the infrastructure of border control. Perhaps most useful to a course in immigration law, she provides a historical overview of the racial nature of migration control (455-464) and detailed exposition of the way that the control of migration and asylum is racially differentiated (464-480).</p> |

Chapter 3: Administrative Review

| | |
|-------------------------|---|
| New resource | <i>Canada (Citizenship and Immigration) v. Mason</i> , 2023 SCC 21 |
| Relevant Section | Chapter 3, section IV.D.3 (Substantive Review of Questions of Statutory Interpretation), pp. 238-239 [<i>Mason</i> is also relevant to Inadmissibility (Chapter 6, below).] |
| Link or text | < https://canlii.ca/t/k0c85 > |
| Discussion | <p><i>Mason</i> is a case from the immigration context in which Supreme Court majority affirms the framework from <i>Vavilov</i> for selecting the standard of review and strongly restates Court’s commitment, also from <i>Vavilov</i>, to the principle of responsive justification.</p> <p>The case concerned the interpretation of s. 34(1)(e) of the <i>Immigration and Refugee Protection Act</i>. At issue was whether that provision could be grounds for inadmissibility of two permanent residents charged with violent offences with no nexus to national security when those charges had been stayed or subject to a conditional discharge.</p> <p>The Immigration Appeal Division held that s. 34(1)(e) could cover such circumstances. The Federal Court quashed that decision (2019 FC 1251). The Federal Court of Appeal reversed.</p> <p>The Court was unanimous in finding that the IAD’s interpretation of s. 34(1)(e) was unreasonable. Jamal J, writing for the majority at the Supreme Court, faulted the IAD for failing to engage with two arguments about statutory context and the consequences of its interpretation raised by Mr. Mason. The majority also held that the IAD unreasonably failed to consider that its interpretation would lead to violations of Canada’s obligation of <i>non-refoulement</i> under Article 33 of the <i>1951 Convention relating to the Status of Refugees</i>, even though that argument had not been raised before it. This was a rare case where there was only one reasonable interpretation, namely that s. 34(1)(e) requires a nexus to national security or the security of Canada.</p> <p>An interesting argument for correctness review in the case, filed by the intervener Canadian Association of Refugee Lawyers (CARL), can be found here. CARL argued that the requirement of a certified question to pursue an appeal to the Federal Court of Appeal implies a legislative intent to have such questions dealt with on a correctness basis. The Supreme Court majority did not accept CARL’s argument. Jamal J found no basis for recognizing the proposed</p> |

| | |
|-------------------------|---|
| | exception to reasonableness review. A concurring opinion by Côté J, on the other hand, found that a new category of correctness review was warranted for legal questions certified pursuant to s. 74(d) of the IRPA . |
| New resource | <i>Canadian Council for Refugees v. Canada (Citizenship and Immigration)</i> , 2023 SCC 17 |
| Relevant Section | Chapter 3, section IV, subsection D.3 (Substantive Review of Questions of Statutory Interpretation), pp. 233-39 [CCR v Canada is also relevant to Constitutional and International Parameters (Chapter 4, below) and Refugee Protection in Canada (chapter 10, below).] |
| Link or text | < https://canlii.ca/t/jxp04 > |
| Discussion | Among other holdings in this complex and important decision, Kasirer J., for a unanimous court, rejected a challenge that section 159.3 of the <i>Immigration and Refugee Protection Regulations</i> – which designates the United States as a safe third country – is <i>ultra vires</i> given the criteria for designation in the <i>Immigration and Refugee Protection Act</i> . At para. 54, Kasirer J. reaffirmed that “[r]egulations benefit from a presumption of validity” from <i>Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)</i> , 2013 SCC 64 at para. 25. This suggests that Vavilovian reasonableness review does not apply to the review of regulations, contrary to the Federal Court of Appeal decision in Portnov v. Canada (Attorney General) , 2021 FCA 171. |

Chapter 4: Constitutional and International Parameters

| | |
|-------------------------|--|
| New resource | <i>Canadian Council for Refugees v. Canada (Citizenship and Immigration)</i> , 2023 SCC 17 |
| Relevant Section | Chapter 4, section II.B.2 (Section 7: Life, Liberty, and Security of the Person), pp. 253-295 [CCR v Canada is also relevant to Administrative Review (Chapter 3, above) and Refugee Protection in Canada (Chapter 10, below).] |
| Link or text | < https://canlii.ca/t/jxp04 > |

| | |
|-------------------|--|
| Discussion | <p>This is a lengthy ruling by the Supreme Court of Canada on the constitutionality of section 159.3 of the <i>Immigration and Refugee Protection Regulations</i> and paragraph 101(1)(e) of the <i>Immigration and Refugee Protection Act</i>.</p> <p>Section 159.3 designates the United States as a safe country, in accordance with the <i>Safe Third Country Agreement</i>. Section 101(1)(e) makes most claimants entering Canada from the United States ineligible to claim refugee protection. The combined effect of the two provisions is that most claimants coming to Canada from the United States would be returned to that country. It was alleged returnees would face detention and possible <i>refoulement</i> as a result.</p> <p>Writing for the full Court, Kasirer J. touches on many of the issues raised by the cases and discussion in this subsection of the casebook on the application of section 7 of the <i>Canadian Charter of Rights and Freedoms</i> to the <i>Immigration and Refugee Protection Act</i> and its <i>Regulations</i>. We summarize the most important points below. (The next update summarizes the decision’s import for section 15 challenges.)</p> <p>The most broadly significant part of the decision comes in paragraphs 56 to 79, where Kasirer J. discusses how to apply section 7 to a complex legislative scheme like the <i>IRPA</i> and its <i>Regulations</i>. Kasirer J. focuses on the impact of provisions that might act as “safety valves” to the constitutional analysis (paras. 64-66). Such safety valves may either “prevent” or “cure” constitutional defects (paras. 67-68). An example of a preventative provision is s. 159.6 of the <i>Regulations</i>, which bars application of ineligibility under the Safe Third Country Agreement to persons who might face the death penalty in the United States. Examples of curative provisions include deferrals of removal (<i>IRPA</i>, s. 48(2)), temporary resident permits (<i>IRPA</i>, s. 24), and humanitarian and compassionate exemptions (<i>IRPA</i>, ss. 25-25.1). <i>Charter</i> challenges need not directly challenge preventative or curative provisions, but such provisions must be considered as part of the entire legislative scheme in the constitutional analysis (para. 69).</p> <p>Importantly, while Kasirer J. states that preventative provisions might rule out the engagement of section 7 rights, “curative provisions will rarely, if ever, preclude the engagement of s. 7” (para. 71). Curative provisions will instead generally be relevant when considering conformity with the principles of fundamental justice (para. 76). With these statements, Kasirer J. seems to resile from statements in <i>B010 v. Canada (Citizenship and Immigration)</i>, 2015 SCC 58 and <i>Febles v. Canada (Citizenship and Immigration)</i>, 2014 SCC 68 that cast doubt on whether section 7 might be engaged during hearings before the Refugee Protection Division. Instead, he suggests that, as in extradition law, section 7 may “permeate” the entire refugee protection process (para. 73). Later he states that, even if a legislative scheme is overall constitutionally acceptable, it will be open to individual claimants to challenge determinations of ineligibility to claim refugee protection on the basis that the decision, and the possible return to the United States or elsewhere, would “shock the conscience” of Canadians (paras. 121-22, 169). These statements of principle seem to</p> |
|-------------------|--|

have the potential to challenge conclusions reached by the lower courts disclaiming the applicability of section 7 not only with respect to certain refugee decisions, but also with respect to non-refugee decisions, such as *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262 (pp. 291-295 of the Casebook).

The remaining parts of Kasirer J.’s section 7 analysis are specific to the issues before the Court in this case.

Paragraphs 83 to 108 analyze whether section 7 is engaged by s. 101(1)(e) of the IRPA and the designation of the United States under s. 159.3 of the *Regulations*. The right to liberty is engaged by the risk of detention in the United States (para. 89). The right to security of the person is engaged by conditions of detention faced by some returnees (para. 90). Kasirer J. expressed reservations about the Federal Court judge’s finding that the risk of *refoulement* from the United States also engaged the right to security of the person, yet proceeded on the assumption that it did (paras. 97-108).

Paragraphs 118 to 164 analyze whether there was a violation of the principles of fundamental justice, specifically overbreadth and gross disproportionality. Kasirer J. relies on *Canada (Attorney General) v. Bedford*, [2013 SCC 72](#) for the idea that these are principles of instrumental rationality, whose application depends on the characterization of the purpose of the challenged legislation. He finds that the purpose of s. 159.3 of the *Regulations* is “to share responsibility for fairly considering refugee claims with the United States, in accordance with the principle of *non-refoulement*” (para. 139). In light of this purpose, Kasirer J. finds that for s. 159.3 of the *Regulations* to be overbroad, the rules for and conditions of detention in American system would have to be “fundamentally unfair” (para. 142). He finds that they are not (paras. 143-44). Similarly, the detention system in the United States does not meet the “high threshold” for a finding of gross disproportionality (para. 147). Finally, Kasirer J. found that the curative provisions in the *Immigration and Refugee Protection Act* provide sufficient safety valves to avoid violating the principles of fundamental justice based on the risk of *refoulement* from the United States (para. 163).

| | |
|-------------------------|---|
| New resource | <i>Canadian Council for Refugees v. Canada (Citizenship and Immigration)</i> , 2023 SCC 17 |
| Relevant Section | Chapter 4, section II.B.3 (Section 15: Equality Before the Law), pp. 295-304 [CCR v Canada is also relevant to Administrative Review (Chapter 3, above) and Refugee Protection in Canada (Chapter 10, below).] |

| | |
|---------------------|--|
| Link or text | < https://canlii.ca/t/jxp04 > |
| Discussion | <p>As noted above, this ruling by the Supreme Court of Canada addresses the constitutionality of section 159.3 of the <i>Immigration and Refugee Protection Regulations</i> and paragraph 101(1)(e) of the <i>Immigration and Refugee Protection Act</i>. These provisions implement the <i>Safe Third Country Agreement</i> between Canada and the United States.</p> <p>This update deals with his brief comments on section 15 of the <i>Charter</i>, the constitutional guarantee of equality rights.</p> <p>The appellants argued at Federal Court that section 159.3 of the <i>Regulations</i> indirectly discriminated against refugee protection claimants alleging gender-based persecution. This indirect discrimination arose because of the principles applied by US officials to gender-based claims. Having found an unjustified violation of section 7, however, the Federal Court did not decide the section 15 issue. Nor did the Federal Court of Appeal analyze this issue in reversing the Federal Court’s decision.</p> <p>Kasirer J. declined to make the factual findings necessary to resolve the section 15 challenge and remitted the matter to Federal Court. Kasirer J. said very little about this issue, other than a reference to the “novel legal arguments” the section 15 challenge would raise, “such as those relating to causation and equality rights in the international context” (para. 179).</p> |

Chapter 5: Entry and Border Control

| | |
|-------------------------|--|
| New resource | <i>Canada v. Boloh 1(a)</i> , 2023 FCA 120 |
| Relevant Section | Chapter 5, Section II.A (Right of Entry for Citizens) and Section II.B (The Passport), pp. 329-341 |
| Link or text | < https://canlii.ca/t/jxg3p > |

| | |
|-------------------|--|
| Discussion | <p><i>Boloh I(a)</i> addresses the interpretation of section 6(1) of the <i>Canadian Charter of Rights and Freedoms</i>.</p> <p>Canadian citizens detained in Northeastern Syria successfully argued before the Federal Court that under section 6(1) of the <i>Charter</i>, the Canadian government had a positive duty to take steps to rescue them and return them to Canada. The Federal Court of Appeal reversed. Stratas J.A., writing for the Court, stated:</p> <p style="padding-left: 40px;">[44] Can the Government of Canada voluntarily try, through diplomacy or other means, to help a citizen in distress abroad? Of course it can. But, as a matter of constitutional law, does it have to? Of course not. Subsection 6(1) of the <i>Charter</i>, the right to enter, remain in and leave Canada, is not a golden ticket for Canadian citizens abroad to force their government to take steps—even risky, dangerous steps—so they can escape the consequences of their actions.</p> <p>The case also contains extensive discussions of <i>United States of America v. Cotroni</i>, [1989] 1 S.C.R. 1469 and <i>Divito v. Canada (Public Safety and Emergency Preparedness)</i>, 2013 SCC 47, discussed in Section II.A of the casebook, and <i>Kamel v. Canada (Attorney General)</i>, 2008 FC 338 and <i>Abdelrazik v. Canada (Minister of Foreign Affairs)</i>, 2009 FC 580, discussed in Section II.B. An application for leave to appeal is pending before the Supreme Court of Canada: <i>Boloh I(a), et al. v. His Majesty the King, et al.</i></p> |
|-------------------|--|

Chapter 6: Inadmissibility

| | |
|-------------------------|--|
| New resource | <i>Mason v. Canada (Citizenship and Immigration)</i> , 2023 SCC 21 |
| Relevant Section | Chapter 6 section III, 2 (Danger to the security of Canada), p. 426 [insert after consideration of <i>Re Zundel</i>] |
| Link or text | < https://canlii.ca/t/k0c85 > |
| Discussion | <i>Mason</i> concerns the interpretation of s. 34(1)(e) of the <i>Immigration and Refugee Protection Act</i> . At issue was whether that provision could be grounds for inadmissibility of two permanent residents charged for violent offences with no nexus to national security and in the absence of conviction (ie when the charges are dropped, stayed or otherwise discharged). |

| | |
|-------------------------|---|
| | The IAD held s. 34(1)(e) could cover such circumstances. The Federal Court quashed that decision [2019 FC 1251]. The Federal Court of Appeal reversed, endorsing an expansive view of the scope of s. 34 (1)(e) [<i>Canada (Citizenship and Immigration) v. Mason</i> , 2021 FCA 156]. The Factums on Appeal , submitted in relation to the appeal before the Supreme Court offer valuable supplementary reading. The Supreme Court confirmed that inadmissibility under s. 34(1)(e) of the IRPA requires a nexus between the relevant act of violence and with national security or the security of Canada [2023 SCC 21]. |
| New resource | <i>Canada (Public Safety and Emergency Preparedness) v. Gaytan</i> , 2021 FCA 163 |
| Relevant Section | Chapter 6, Section III.D (Defences to Inadmissibility), pp. 487-492 [replace FC decision with FCA decision] |
| Link or text | < https://canlii.ca/t/jhf4b > |
| Discussion | The Federal Court of Appeal upheld the Federal Court’s finding that the ID and IAD are entitled to consider the defence of duress in inadmissibility proceedings. |
| New resource | Government of Canada, “Excessive demand on health services and on social services” (May 19, 2023) |
| Relevant Section | Chapter 6, Section III.E (Health Grounds), p. 500 |
| Link or text | < https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/refusals-inadmissibility/excessive-demand-on-health-social-services.html > |
| Discussion | The reforms, first introduced via the <i>Temporary Public Policy regarding Excessive Demand on Health and Social Services</i> , were implemented on a permanent basis in 2022. In addition to the reforms noted on p. 500 (seventh line |

| | |
|--|---|
| | from bottom of page), IRCC has eliminated the 10-year time period from excessive demand calculations. The five-year time period is now universally applied. |
|--|---|

Chapter 7: The Removal Process

| | |
|-------------------------|--|
| New resource | <i>Chairperson Guideline 2: Detention</i> (April 2021) |
| Relevant Section | Chapter 7, Section VIII (Detention and Detention Review), p. 589, footnote 113, and p. 610 [Notes after <i>Brown v Canada</i>]. |
| Link or text | < https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir02.aspx > |
| Discussion | <p>Guideline 2 was amended in 2021 to account for the Federal Court of Appeal’s decision in <i>Brown v. Canada (Citizenship and Immigration)</i>, 2020 FCA 130 [see below] as well as feedback received through national consultations. The IRB’s website has a helpful summary of the key revisions, confirming that Guideline 2 was amended in the following ways:</p> <ul style="list-style-type: none"> • To clarify that there must be a nexus to an immigration purpose for detention to continue. • To reinforce the Division’s obligation to consider sections 7, 9 and 12 of the <i>Charter</i> in exercising its discretion concerning whether or not detention is warranted. • To confirm that consideration of conditions of detention is an extension of the <i>Charter</i> jurisdiction of the Immigration Division (ID). • To reinforce that the Minister has the legal burden to establish that detention is lawfully justified and that this burden remains with the Minister throughout the detainee’s period of detention. • To reinforce that the Division must decide afresh whether continued detention is warranted at each detention review. • To recognize that there is no obligation on the person concerned to lead fresh evidence between detention reviews for the ID to reach a different result. |

| | |
|--|---|
| | <ul style="list-style-type: none"> • To clarify that the Minister must disclose all relevant information in advance of the hearing and in a timely manner. • To clarify that the potential for self-harm should not be a basis for a finding that the person concerned constitutes a danger to the public. • To adjust the <i>Guideline</i>'s section on minors to reflect the codification of best interest of the child considerations in the <i>Immigration and Refugee Protection Regulations</i>. • To outline considerations to be taken into account when determining whether a person concerned is unable to appreciate the nature of the proceedings. • To clarify that a detention review should generally be concluded on the same day that it begins. <p>[See “Publication of the revised Chairperson’s Guideline 2: Detention”, online: <i>Immigration and Refugee Board of Canada</i> <https://irb.gc.ca/en/news/2021/Pages/revised-chairperson-guideline-2.aspx>.</p> |
|--|---|

| | |
|-------------------------|--|
| New resource | Annual Detention Statistics—2012–2022 |
| Relevant Section | Chapter 7, Section VIII (Detention and Detention Review), p. 603 |
| Link or text | < https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2012-2022-eng.html > |
| Discussion | An update to include reference to more recent detention statistics. The reference in the last paragraph on this page “...to a high of 8,781 in 2018-19” should be replaced with “... to a high of 8,825 in 2019-20,” as indicated in the updated report. |

| | |
|-------------------------|---|
| New resource | Samer Muscati & Hanna Gros, “Another Canadian Province to End Immigration Detention in Jails” (Human Rights Watch, June 16, 2023) |
| Relevant Section | Chapter 7, Section VIII (Detention and Detention Review), p. 603 (bottom of page) |

| | |
|---------------------|---|
| Link or text | < https://www.hrw.org/news/2023/06/16/another-canadian-province-end-immigration-detention-jails#:~:text=Ontario%27s%20government%20is%20terminating%20its,end%20to%20the%20abusive%20practice > |
| Discussion | An important update concerning the longstanding practice of detaining non-citizens in maximum-security provincial jails: Ontario is the eighth province to terminate its immigration detention contract with the federal government. |

| | |
|-------------------------|--|
| New resource | <i>Brown v. Canada (Citizenship and Immigration)</i> , 2020 FCA 130 |
| Relevant Section | Chapter 7, Section VIII (Detention and Detention Review), pp. 605-609 [replace FC decision with FCA decision] |
| Link or text | < https://canlii.ca/t/j93cf > |
| Discussion | <p>The Federal Court in this case certified the following question:</p> <p style="padding-left: 40px;">Does the <i>Canadian Charter of Rights and Freedoms</i> ... impose a requirement that detention for immigration purposes not exceed a prescribed period of time, after which it is presumptively unconstitutional, or a maximum period, after which release is mandatory? (see p. 610 (note 1) of the casebook).</p> <p>The Federal Court of Appeal answered the question in the negative. At the same time, the Court clarified disclosure obligations owed to the detainee, stating that “[a]ll relevant information must be disclosed” and not just “information on which the Minister intends to rely” (para. 142).</p> |

Chapter 8: Economic Class

| | |
|---------------------|--|
| New resource | The National Occupation Classification (NOC) |
|---------------------|--|

| Relevant Section | Chapter 8, Section III.C (Tools), p. 630 | | | | | | | | | | |
|-------------------------|---|----------|----------|--------------|--------|---------------|--------|---------------|--------|---------------|--------|
| Link or text | < https://noc.esdc.gc.ca > | | | | | | | | | | |
| Discussion | <p>The NOC was substantially updated in 2021 and implemented in November 2022. It now contains 516 occupations (an increase from 500 in the NOC 2016). The former skill types and levels in the NOC 2016 have been replaced with Training, Education, Experience and Responsibilities (TEER) categories. The new terminology is intended to be more precise, tracking the level of training, of formal education, of experience required to gain entry into each occupation, and the responsibilities associated to it.</p> <p>The second major change revolves around the number of TEER categories. In the new NOC structure, there are six TEER categories, up from the four skill levels in the NOC 2016.</p> <p>Another major change is the structural move from a four-tiered to a five-tiered classification system. NOC codes changed from a 4-digit format to a new 5-digit format.</p> <p>Previously, in order to be eligible for the vast majority of economic classes, an applicant required work experience that fell under NOC skill types 0, A, or B. After the switch, most economic class programs require TEER category 0, 1, 2 or 3.</p> <p>The following table* shows how NOC 2016 skill types compare to TEER categories in NOC 2021:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #e1f5fe;"> <th style="text-align: left; padding: 5px;">NOC 2016</th> <th style="text-align: left; padding: 5px;">NOC 2021</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Skill Type 0</td> <td style="padding: 5px;">TEER 0</td> </tr> <tr> <td style="padding: 5px;">Skill Level A</td> <td style="padding: 5px;">TEER 1</td> </tr> <tr> <td style="padding: 5px;">Skill Level B</td> <td style="padding: 5px;">TEER 2</td> </tr> <tr> <td style="padding: 5px;">Skill Level B</td> <td style="padding: 5px;">TEER 3</td> </tr> </tbody> </table> | NOC 2016 | NOC 2021 | Skill Type 0 | TEER 0 | Skill Level A | TEER 1 | Skill Level B | TEER 2 | Skill Level B | TEER 3 |
| NOC 2016 | NOC 2021 | | | | | | | | | | |
| Skill Type 0 | TEER 0 | | | | | | | | | | |
| Skill Level A | TEER 1 | | | | | | | | | | |
| Skill Level B | TEER 2 | | | | | | | | | | |
| Skill Level B | TEER 3 | | | | | | | | | | |

| | | |
|--|---------------|--------|
| | Skill Level C | TEER 4 |
| | Skill Level D | TEER 5 |
| <p>* The source for this table is: Shelby Thevenot, “How NOC changes affect Express Entry candidates”, CIC News, August 2, 2022; and see “Find your National Occupational Classification (NOC)”, online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/eligibility/find-national-occupation-code.html></p> | | |

| | |
|--|--|
| New resource | Julie Resetarits, “Category-based Invitations: Towards an Express Entry Revolution?” (June 6, 2023) |
| Relevant Section | Chapter 8, Section III D. “Express Entry” (pp. 633-650) |
| Link or text | < https://www.mccarthy.ca/en/insights/blogs/spotlight-can-asia/category-based-invitations-towards-express-entry-revolution > |
| Discussion & Additional Resources | <p>Launch of new category-based invitation rounds for candidates with French language ability or those working in fields affected by labour shortages. A significant development, aiming to address critical shortages in a defined list of occupations and the following five fields:</p> <ul style="list-style-type: none"> • healthcare • science, technology, engineering, and mathematics (STEM) professions • trades, such as carpenters, plumbers and contractors • transport • agriculture and agri-food <p>The following related resources provide additional context:</p> |

| | |
|--|--|
| | <p>1. For an overview of all three types of rounds of invitation, see: Government of Canada, Express Entry rounds of invitations”, online: < https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile/rounds-invitations.html>.</p> <p>2. Amendments to the IRPA were required to launch the new category-based invitation rounds. The amendments were included in the budget bill in 2022: < https://www.parl.ca/legisinfo/en/bill/44-1/c-19>.</p> <p>3. For more information on category-based invitation rounds, see: Government of Canada, And, “Canada launches new process to welcome skilled newcomers with work experience in priority jobs as permanent residents”, News Release, May 31, 2023 < https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/05/canada-launches-new-process-to-welcome-skilled-newcomers-with-work-experience-in-priority-jobs-as-permanent-residents.html>; and “Express Entry rounds of invitations: Category-based selection” < https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/submit-profile/rounds-invitations/category-based-selection.html>.</p> <p>4. For a sample backgrounder on one of the specific fields targeted for the 2023 category-based invitation rounds, see: “Category-based selection -Health workers: < https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/06/category-based-selection---health-workers.html>.</p> <p>5. A STEM-specific draw has been included in the list of targeted fields for 2023 and is a key plank of a new “Tech Talent Strategy”. See, “Minister Fraser launches Canada’s first-ever Tech Talent Strategy at Collision 2023”, News Release, June 27, 2023 < https://www.canada.ca/en/immigration-refugees-citizenship/news/2023/06/minister-fraser-launches-canadas-first-ever-tech-talent-strategy-at-collision-2023.html>.</p> <p>6. For a table that lists all the Express Entry rounds to date, see: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/ministerial-instructions/express-entry-rounds.html>.</p> |
|--|--|

| | |
|----------------------|--|
| New resources | <p>“Atlantic Immigration Program” (last modified 25 July 2023)</p> <p>“Rural and Northern Immigration Pilot: about the pilot” (last modified 25 July 2023)</p> |
|----------------------|--|

| | |
|-------------------------|---|
| Relevant Section | Chapter 8, III Economic Class Permanent Residents <insert between H (Provincial Nominee Programs) and I (Quebec’s Economic Immigration Programs)> |
| Link or text | <p>Atlantic Immigration Program (AIP): <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/atlantic-immigration.html></p> <p>Rural and Northern Immigration Pilot (RNIP): <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/rural-northern-immigration-pilot.html></p> |
| Discussion | <p>The AIP is a federal, employer-driven immigration program that aims to help employers recruit skilled foreign workers and international graduates to meet labour market needs in the Atlantic region (New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island).</p> <p>The RNIP is a federal program designed to address specific economic and demographic challenges in 11 smaller communities across Canada. Changes were recently introduced to expand the geographic boundaries of participating communities, reduce the amount of settlement funds participants are required to have and strengthen program integrity.</p> |

| | |
|-------------------------|---|
| New resource | <p>Government of Canada, “Home Child Care Provider Pilot and Home Support Worker Pilot: Assessing the application against selection criteria” (last modified 18 July 2023)</p> <p>NOC 44100 – Home child care providers – cares for children under the age of 18 NOC 44101 – Home support workers, caregivers and related occupations - provides personal care and companionship for seniors, persons with disabilities and convalescent clients</p> |
| Relevant Section | Chapter 8, III K. Caregivers |
| Link or text | < https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/economic-classes/pathways-for-caregivers/child-care-provider-support-pilots/assessing-application-selection-criteria.html > |

| | |
|-------------------|---|
| | NOC codes: < https://noc.esdc.gc.ca/?GoCTemplateCulture=en-CA > |
| Discussion | On April 30 th , 2023, the Ministerial Instructions (MIs) were amended , reducing the amount of qualifying work experience required from 24 months to 12 months. Qualifying work experience is now defined as one year of full-time, paid work in Canada as either Home child care provider or a Home support worker (cannot be a mix of both jobs). Note, as well, updated codes for these two occupations as included in the NOC 2021. The caregiver program was launched as a five-year pilot. Further changes to the program, via legislative amendment, are anticipated prior to June 2024. |

Chapter 9: Family Class

| | |
|-------------------------|---|
| New resource | Government of Canada, “Countries with suspensions or restrictions on international adoptions” (last modified 30 August 2023) |
| Relevant Section | Chapter 9, Section D, 1. Non-Biological Parents and Children, p. 833 |
| Link or text | < https://www.canada.ca/en/immigration-refugees-citizenship/services/canadians/adopt-child-abroad/restrictions.html# > |
| Discussion | In addition to the factors immigration officers are directed to consider in relation to international adoptions, a sponsorship application will not be approved if the child’s country of origin is included in IRCC’s list of countries with suspensions or restrictions on international adoptions. |

| | |
|---------------------|---|
| New resource | Government of Canada, “Parents and Grandparents Program re-opens this fall” |
|---------------------|---|

| | |
|-------------------------|---|
| Relevant Section | Chapter 9, Section III E. “Parents and Grandparents” (pp. 838-841) |
| Link or text | < https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/parents-grandparents-program-re-opens-fall.html > |
| Discussion | IRCC will be sending invitations to apply to 24,200 randomly selected potential sponsors from the pool of submissions dating back to the year 2020. The invitations will be initiated over a two-week period starting October 10, 2023. A maximum of 15,000 applications will be accepted for 2023. |

Chapter 10: Refugee Protection in Canada

| | |
|-------------------------|--|
| New resource | Amendment to the Safe Third Country Agreement provisions |
| Relevant Section | Chapter 10, Section III.B (The Safe Third Country Agreement and Other Canadian Policies), pp. 909-915 [see esp. bottom of p. 914] |
| Link or text | <i>Regulations Amending the Immigration and Refugee Protection Regulations (Examination of Eligibility to Refer Claim)</i> , SOR/2023-58 < https://www.gazette.gc.ca/rp-pr/p2/2023/2023-04-12/html/sor-dors58-eng.html > |
| Discussion | Section 159.4 of the <i>Immigration and Refugee Protection Regulations</i> was amended so that the <i>Safe Third Country Agreement</i> with the United States applies to refugee protection claimants crossing the land border into Canada at any point, not just to those who cross at land-based ports of entry. This provision only applies to deflect the claimant back to the United States for the first fourteen days after entry. The amendment to the regulations was widely seen as closing a “loophole” in the original <i>Safe Third Country Agreement and Regulations</i> , under which those who crossed into Canada other than at a port of entry were still eligible to make a claim for refugee protection in Canada. |

| | |
|-------------------------|--|
| New resource | <i>Canadian Council for Refugees v. Canada (Citizenship and Immigration)</i> , 2023 SCC 17 |
| Relevant Section | Chapter 10, Section III.B (The Safe Third Country Agreement and Other Canadian Policies), pp. 909-915 |
| Link or text | < https://canlii.ca/t/jxp04 > |
| Discussion | <p>In a unanimous decision, authored by Kasirer J., the Supreme Court of Canada found that s. 101(1)(e) of the <i>Immigration and Refugee Protection Act</i> and s. 159.3 of the <i>Immigration and Refugee Protection Regulations</i> do not violate section 7 of the <i>Canadian Charter of Rights and Freedoms</i>. The risk of detention, a one-year bar on claiming asylum, and practices of medical isolation in the United States were all found to raise section 7 interests. However, the principles of fundamental justice were not violated, as the regime was found to not suffer from gross disproportionality or overbreadth. The risk of <i>refoulement</i> would violate section 7 and the principles of fundamental justice, except the risk is mitigated by “safety” valves in the legal regime which provide for curative mechanisms. Kasirer J remitted the question of whether the provisions in question violate section 15 of the <i>Charter</i> back to the Federal Court, as this question had not been decided below.</p> <p>More detail is provided in an update in Chapter 4, above.</p> |
| New resource | Sharry Aiken & Alex Neve, <i>Refugee “Responsibility Sharing” – Challenging the Status Quo: a special issue of the PKI Global Justice Journal</i> (2023) 7 PKI Global Justice Journal 6. |
| Relevant Section | Chapter 10, Section III.B (The Safe Third Country Agreement and Other Canadian Policies), pp. 909-915 [see esp. bottom of p. 909-911]; addition to Supplementary Reading, p. 1055. |
| Link or text | < https://globaljustice.queenslaw.ca/news/special-issue-on-refugee-responsibility-sharing-agreements-aug-2023 > |
| Discussion | Fourteen short articles by refugee scholars and advocates, together with an editorial introduction by Aiken & Neve, place the Canada-U.S. refugee pact in the wider context of international refugee law and developments globally. |

| | |
|-------------------------|--|
| New resource | Change to the Refugee Claims Process |
| Relevant Section | Chapter 10, Section IV.A (Overview of Refugee Status Determination in Canada), p. 917 |
| Link or text | < https://irb.gc.ca/en/applying-refugee-protection/Pages/index.aspx > |
| Discussion | Refugee claims can no longer be initiated at an office of Immigration, Refugees and Citizenship Canada (IRCC). They can either be initiated in person at a port of entry or online. Once initiating the online claim, a claimant has 90 days to complete and submit the application. |
| New resource | Changes to Chairperson’s Guidelines (various) |
| Relevant Section | Chapter 10, Section IV.A (Overview of Refugee Status Determination in Canada), p. 922 |
| Link or text | < https://irb.gc.ca/en/legal-policy/policies/Pages/chairperson-guideline.aspx > |
| Discussion | The following changes to the Chairperson’s Guidelines have been made: <ul style="list-style-type: none"> • <i>Guideline 1 – Civilian Non-Combatants Fearing Persecution in Civil War Situations</i> was revoked on January 5, 2022. • <i>Guideline 3 – Child Refugee Claimants: Procedural and Evidentiary Issues</i> will be replaced with a new guideline on <i>Proceedings Involving Minors at the Immigration and Refugee Board</i> on October 31, 2023. • <i>Guideline 4 – Chairperson’s Guidelines 4: Women Refugee Claimants Fearing Gendered Persecution</i>, which had not been modified since 1996, were replaced in July 2022 with new guidelines on <i>Gender Considerations in Proceedings Before the Immigration and Refugee Board</i>. |

| | |
|-------------------------|---|
| | <ul style="list-style-type: none"> • <i>Guideline 9 – Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics</i> were revised in December 2021. |
| New resource | <i>Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)</i> , 2020 FCA 196 |
| Relevant Section | Chapter 10, Section IV.A (Overview of Refugee Status Determination in Canada), p. 922 (Notes) |
| Link or text | < https://canlii.ca/t/jblsl > |
| Discussion | The Federal Court of Appeal confirmed that paragraph 159(1)(h) of the <i>Immigration and Refugee Protection Act</i> authorized the Chairperson to designate decisions that include factual findings as judicial guidelines. |
| New resource | Cumulative Acts of Discrimination and Persecution: RAD VC1-00029 (September 13, 2021) |
| Relevant Section | Chapter 10, Section V.G (Cumulative Acts of Discrimination Amounting to Persecution), p. 963 |
| Link or text | < https://www.canlii.org/en/ca/irb/doc/2021/2021canlii140064/2021canlii140064.pdf > |
| Discussion | The IRB designated this decision as reasons of interest for its analysis of cumulative discrimination with an intersectional approach. |
| New resource | Replacement of Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution |

| | |
|-------------------------|---|
| Relevant Section | Chapter 10, Subsection V.H.3 (Membership in a Particular Social Group), p. 981 [Note 6] |
| Link or text | < https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx > |
| Discussion | Guideline Four was reviewed, resulting in its replacement by “Gender Considerations in Proceedings Before the Immigration and Refugee Board” (July 2022). |

| | |
|-------------------------|---|
| New resource | Revisions to Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (2021) |
| Relevant Section | Chapter 10, Subsection V.H.3 (Membership in a Particular Social Group), p. 981, note 7 |
| Link or text | < https://irb.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx > |
| Discussion | These Guidelines underwent a formal evaluation and were revised. A case using the revised Guidelines, which the IRB has designated as a case of interest, is X (Re), 2022 Can KII 133471 (CA IRB), < https://canlii.ca/t/jw1mg >. |

Chapter 11: Citizenship

| | |
|-------------------------|---|
| New resource | Change to Oath of Citizenship |
| Relevant Section | Chapter 11, Subsection II.C.5 (The Oath), p. 1096 |

| | |
|---------------------|---|
| Link or text | <i>Citizenship Act</i> (R.S.C., 1985, c. C-29), Schedule – Oath or Affirmation of Citizenship < https://laws-lois.justice.gc.ca/eng/acts/c-29/page-8.html#h-1304734 > |
| Discussion | <p>The oath of citizenship was amended by <i>An Act to amend the Citizenship Act (Truth and Reconciliation Commission of Canada’s call to action number 94)</i> (S.C. 2021, c. 13) to reflect the Calls to Action of the Truth and Reconciliation Commission. The new oath or affirmation of citizenship now reads:</p> <p style="padding-left: 40px;">I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada, including the Constitution, which recognizes and affirms the Aboriginal and treaty rights of First Nations, Inuit and Métis peoples, and fulfil my duties as a Canadian citizen.</p> |