



Canada

Department of Justice
Canada

Ministère de la Justice
Canada

Immigration and Refugee Protection Act (2001, c. 27)

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Act current to December 10th, 2006

Attention: See coming into force provision and notes, where applicable.

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Immigration and Refugee Protection Act

2001, c. 27

I-2.5

[Assented to November 1st, 2001]

An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Immigration and Refugee Protection Act*.

INTERPRETATION

Definitions

2. (1) The definitions in this subsection apply in this Act. "Board"
« *Commission* »

"Board" means the Immigration and Refugee Board, which consists of the Refugee Protection Division, Refugee Appeal Division, Immigration Division and Immigration Appeal Division.

"Convention Against Torture"
« *Convention contre la torture* »

"Convention Against Torture" means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed at New York on December 10, 1984. Article 1 of the Convention Against Torture is set out in the schedule.

"foreign national"
« *étranger* »

"foreign national" means a person who is not a Canadian citizen or a permanent resident, and includes a

stateless person.

"permanent resident"
« *résident permanent* »

"permanent resident" means a person who has acquired permanent resident status and has not subsequently lost that status under section 46.

"Refugee Convention"
« *Convention sur les réfugiés* »

"Refugee Convention" means the United Nations Convention Relating to the Status of Refugees, signed at Geneva on July 28, 1951, and the Protocol to that Convention, signed at New York on January 31, 1967. Sections E and F of Article 1 of the Refugee Convention are set out in the schedule.

Act includes regulations

(2) Unless otherwise indicated, references in this Act to "this Act" include regulations made under it.

OBJECTIVES AND APPLICATION

Objectives — immigration

3. (1) The objectives of this Act with respect to immigration are

- (a) to permit Canada to pursue the maximum 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;
- (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 to 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.

Objectives — refugees

(2) The objectives of this Act with respect to refugees are

- (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;
- (c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;
- (d) to offer 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 those 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 to 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.

Application

(3) This Act is to be construed and applied 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 taken under this Act are consistent with 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;
- (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.

ENABLING AUTHORITY

Minister of Citizenship and Immigration

4. (1) Subject to subsection (2), the Minister of Citizenship and Immigration is responsible for the

administration of this Act.

Solicitor General of Canada

(2) The Minister as defined in section 2 of the *Canada Border Services Agency Act* is responsible for the administration of this Act as it relates to

- (a) examinations at ports of entry;
- (b) the enforcement of this Act, including arrest, detention and removal;
- (c) the establishment of policies respecting the enforcement of this Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or
- (d) determinations under any of subsections 34(2), 35(2) and 37(2).

Specification

(3) Subject to subsections (1) and (2), the Governor in Council may specify

- (a) which Minister referred to in subsections (1) and (2) shall be the Minister for the purposes of any provision of this Act; and
- (b) that both Ministers may be the Minister for the purposes of any provision of this Act and the circumstances under which each Minister shall be the Minister.

Publication

(4) Any order made under subsection (3) must be published in Part II of the *Canada Gazette*.

2001, c. 27, s. 4; 2005, c. 38, s. 118.

Regulations

5. (1) Except as otherwise provided, the Governor in Council may make any regulation that is referred to in this Act or that prescribes any matter whose prescription is referred to in this Act.

Tabling and referral of proposed regulations

(2) The Minister shall cause a copy of each proposed regulation made pursuant to sections 17, 32, 53, 61, 102, 116, 150 and 150.1 to be laid before each House of Parliament, and each House shall refer the proposed regulation to the appropriate Committee of that House.

Alteration of proposed regulation

(3) A proposed regulation that has been laid before each House of Parliament under subsection (2) does not need to be so laid again, whether or not it has been altered.

Making of regulations

(4) The Governor in Council may make the regulation at any time after the proposed regulation has been laid before each House of Parliament under subsection (2).

2001, c. 27, s. 5; 2004, c. 15, s. 70.

Designation of officers

6. (1) The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated.

Delegation of powers

(2) Anything that may be done by the Minister under this Act may be done by a person that the Minister authorizes in writing, without proof of the authenticity of the authorization.

Exception

(3) Notwithstanding subsection (2), the Minister may not delegate the power conferred by subsection 77(1) or the ability to make determinations under subsection 34(2) or 35(2) or paragraph 37(2)(a).

AGREEMENTS

International agreements

7. The Minister, with the approval of the Governor in Council, may enter into an agreement with the government of a foreign state or with an international organization for the purposes of this Act.

Federal-provincial agreements

8. (1) The Minister, with the approval of the Governor in Council, 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.

Consistency with agreement

(2) Subject to subsection (3) but despite the other provisions of this Act, the following must be consistent with the federal-provincial agreements:

- (a) the selection and sponsorship of, and the acquisition of status by, foreign nationals under this Act; and
- (b) regulations governing those matters, including regulations respecting the examination in Canada of applications to become a permanent resident, or respecting the foreign nationals who may be selected on the basis of an investment in Canada.

Inadmissibility not limited

(3) Subsection (2) is not to be interpreted as limiting the application of any provision of this Act concerning inadmissibility to Canada.

Sole provincial responsibility — permanent residents

9. (1) Where a province has, under a federal-provincial agreement, sole responsibility for the selection of a foreign national who intends to reside in that province as a permanent resident, the following provisions apply to that foreign national, unless the agreement provides otherwise:

- (a) the foreign national, unless inadmissible under this Act, shall be granted permanent resident status if the foreign national meets the province's selection criteria;
- (b) the foreign national shall not be granted permanent resident status if the foreign national does not meet the province's selection criteria;
- (c) the foreign national shall not be granted permanent resident status contrary to the provisions of the law of the province governing the number of foreign nationals who may settle in the province as permanent

residents, whether that number is an estimate or a maximum, or governing the distribution of that number among classes of foreign nationals; and

(d) conditions imposed in accordance with the law of the province have the same force and effect as if they were made under this Act, if they are imposed on a foreign national on or before the grant of permanent resident status.

Sole provincial responsibility — appeals

(2) If a federal-provincial agreement gives a province sole responsibility to establish and apply financial criteria with respect to undertakings that sponsors living in that province may make in respect of a foreign national who applies to become a permanent resident, then, unless the agreement provides otherwise, the existence of a right of appeal under the law of that province respecting rejections by provincial officials of applications for sponsorship, for reasons of failing to meet financial criteria or failing to comply with a prior undertaking, prevents the sponsor, except on humanitarian and compassionate grounds, from appealing under this Act against a refusal, based on those reasons, of a visa or permanent resident status.

Consultations with the provinces

10. (1) 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.

Required consultations

(2) The Minister must consult with the governments of the provinces respecting the number of foreign nationals in each class who will become permanent residents each year, their distribution in Canada taking into account regional economic and demographic requirements, and the measures to be undertaken to facilitate their integration into Canadian society.

PART 1

IMMIGRATION TO CANADA

DIVISION 1

REQUIREMENTS BEFORE ENTERING CANADA AND SELECTION

Requirements Before Entering Canada

Application before entering Canada

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

If sponsor does not meet requirements

(2) The officer may not issue a visa or other document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act.

Selection of Permanent Residents

Family reunification

12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or

permanent resident.

Economic immigration

(2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.

Refugees

(3) A foreign national, inside or outside Canada, may be selected as a person who under this Act is a Convention refugee or as a person in similar circumstances, taking into account Canada's humanitarian tradition with respect to the displaced and the persecuted.

Sponsorship of Foreign Nationals

Right to sponsor family member

13. (1) A Canadian citizen or permanent resident may, subject to the regulations, sponsor a foreign national who is a member of the family class.

Group right to sponsor

(2) A group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province, and an unincorporated organization or association under federal or provincial law, or any combination of them may, subject to the regulations, sponsor a Convention refugee or a person in similar circumstances.

Obligation

(3) An undertaking relating to sponsorship is binding on the person who gives it.

Instructions of Minister

(4) An officer shall apply the regulations on sponsorship referred to in paragraph 14(2)(e) in accordance with any instructions that the Minister may make.

Regulations

Regulations

14. (1) The regulations may provide for any matter relating to the application of this Division, and may define, for the purposes of this Act, the terms used in this Division.

Regulations

(2) The regulations may prescribe, and govern any matter relating to, classes of permanent residents or foreign nationals, including the classes referred to in section 12, and may include provisions respecting

(a) selection criteria, the weight, if any, to be given to all or some of those criteria, the procedures to be followed in evaluating all or some of those criteria and the circumstances in which an officer may substitute for those criteria their evaluation of the likelihood of a foreign national's ability to become economically established in Canada;

(b) applications for visas and other documents and their issuance or refusal, with respect to foreign nationals and their family members;

(c) the number of applications that may be processed or approved in a year, the number of visas and other

documents that may be issued in a year, and the measures to be taken when that number is exceeded;

(d) conditions that may or must be imposed, varied or cancelled, individually or by class, on permanent residents and foreign nationals;

(e) sponsorships, undertakings, and penalties for failure to comply with undertakings;

(f) deposits or guarantees of the performance of obligations under this Act that are to be given by any person to the Minister; and

(g) any matter for which a recommendation to the Minister or a decision may or must be made by a designated person, institution or organization with respect to a foreign national or sponsor.

DIVISION 2

EXAMINATION

Examination by officer

15. (1) An officer is authorized to proceed with an examination where a person makes an application to the officer in accordance with this Act.

Provincial criteria

(2) In the case of a foreign national referred to in subsection 9(1), an examination of whether the foreign national complies with the applicable selection criteria shall be conducted solely on the basis of documents delivered by the province indicating that the competent authority of the province is of the opinion that the foreign national complies with the province's selection criteria.

Inspection

(3) An officer may board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts and hold the means of transportation until the inspection and examination are completed.

Instructions

(4) The officer shall conduct the examination in accordance with any instructions that the Minister may give.

Obligation — answer truthfully

16. (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

Obligation — relevant evidence

(2) In the case of a foreign national,

(a) the relevant evidence referred to in subsection (1) includes photographic and fingerprint evidence; and

(b) the foreign national must submit to a medical examination on request.

Evidence relating to identity

(3) An officer may require or obtain from a permanent resident or a foreign national who is arrested, detained or

subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.

Regulations

17. The regulations may provide for any matter relating to the application of this Division, and may include provisions respecting the conduct of examinations.

DIVISION 3

ENTERING AND REMAINING IN CANADA

Entering and Remaining

Examination by officer

18. (1) Every person seeking to enter Canada must appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.

Transit

(2) Subsection (1) also applies to persons who, without leaving Canada, seek to leave an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada.

Right of entry of citizens and Indians

19. (1) Every Canadian citizen within the meaning of the *Citizenship Act* and every person registered as an Indian under the *Indian Act* has the right to enter and remain in Canada in accordance with this Act, and an officer shall allow the person to enter Canada if satisfied following an examination on their entry that the person is a citizen or registered Indian.

Right of entry of permanent residents

(2) An officer shall allow a permanent resident to enter Canada if satisfied following an examination on their entry that they have that status.

Obligation on entry

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

Provincial criteria

(2) A foreign national referred to in subsection 9(1) must also establish, to become a permanent resident, that they hold a document issued by the province indicating that the competent authority of the province is of the opinion that the foreign national complies with the province's selection criteria.

Status and Authorization to Enter

Permanent resident

21. (1) A foreign national becomes a permanent resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(a) and subsection 20(2) and is not inadmissible.

Protected person

(2) Except in the case of a person described in subsection 112(3) or a person who is a member of a prescribed class of persons, a person whose application for protection has been finally determined by the Board to be a Convention refugee or to be a person in need of protection, or a person whose application for protection has been allowed by the Minister, becomes, subject to any federal-provincial agreement referred to in subsection 9(1), a permanent resident if the officer is satisfied that they have made their application in accordance with the regulations and that they are not inadmissible on any ground referred to in section 34 or 35, subsection 36(1) or section 37 or 38.

Temporary resident

22. (1) A foreign national becomes a temporary resident if an officer is satisfied that the foreign national has applied for that status, has met the obligations set out in paragraph 20(1)(b) and is not inadmissible.

Dual intent

(2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

Entry to complete examination or hearing

23. An officer may authorize a person to enter Canada for the purpose of further examination or an admissibility hearing under this Part.

Temporary resident permit

24. (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

Exception

(2) A foreign national referred to in subsection (1) to whom an officer issues a temporary resident permit outside Canada does not become a temporary resident until they have been examined upon arrival in Canada.

Instructions of Minister

(3) In applying subsection (1), the officer shall act in accordance with any instructions that the Minister may make.

Humanitarian and compassionate considerations

25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

Provincial criteria

(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

Regulations

26. The regulations may provide for any matter relating to the application of sections 18 to 25, and may include provisions respecting

- (a) entering, remaining in and re-entering Canada;
- (b) permanent resident status or temporary resident status, including acquisition of that status;
- (c) the circumstances in which all or part of the considerations referred to in section 24 may be taken into account;
- (d) conditions that may or must be imposed, varied or cancelled, individually or by class, on permanent residents and foreign nationals; and
- (e) deposits or guarantees of the performance of obligations under this Act that are to be given to the Minister.

Rights and Obligations of Permanent and Temporary Residents

Right of permanent residents

27. (1) A permanent resident of Canada has the right to enter and remain in Canada, subject to the provisions of this Act.

Conditions

(2) A permanent resident must comply with any conditions imposed under the regulations.

Residency obligation

28. (1) A permanent resident must comply with a residency obligation with respect to every five-year period.

Application

(2) The following provisions govern the residency obligation under subsection (1):

- (a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are
 - (i) physically present in Canada,
 - (ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,
 - (iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province,
 - (iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or

- (v) referred to in regulations providing for other means of compliance;
- (b) it is sufficient for a permanent resident to demonstrate at examination
 - (i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;
 - (ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination; and
- (c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

2001, c. 27, s. 28; 2003, c. 22, s. 172(E).

Right of temporary residents

29. (1) A temporary resident is, subject to the other provisions of this Act, authorized to enter and remain in Canada on a temporary basis as a visitor or as a holder of a temporary resident permit.

Obligation — temporary resident

(2) A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re-enter Canada only if their authorization provides for re-entry.

Work and study in Canada

30. (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.

Minor children

(2) Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.

Status Document

Status document

31. (1) A permanent resident and a protected person shall be provided with a document indicating their status.

Effect

(2) For the purposes of this Act, unless an officer determines otherwise

(a) a person in possession of a status document referred to in subsection (1) is presumed to have the status indicated; and

(b) a person who is outside Canada and who does not present a status document indicating permanent resident status is presumed not to have permanent resident status.

Travel document

(3) A permanent resident outside Canada who is not in possession of a status document indicating permanent resident status shall, following an examination, be issued a travel document if an officer is satisfied that

- (a) they comply with the residency obligation under section 28;
- (b) an officer has made the determination referred to in paragraph 28(2)(c); or
- (c) they were physically present in Canada at least once within the 365 days before the examination and they have made an appeal under subsection 63(4) that has not been finally determined or the period for making such an appeal has not yet expired.

Regulations

Regulations

32. The regulations may provide for any matter relating to the application of sections 27 to 31, may define, for the purposes of this Act, the terms used in those sections, and may include provisions respecting

- (a) classes of temporary residents, such as students and workers;
- (b) selection criteria for each class of foreign national and for their family members, and the procedures for evaluating all or some of those criteria;
- (c) anything referred to in paragraph (b) for which a decision or recommendation may or must be made by a designated person, institution or organization;
- (d) the conditions that must or may be imposed, varied or cancelled, individually or by class, on permanent residents and foreign nationals, including conditions respecting work or study;
- (e) the residency obligation under section 28, including rules for calculating applicable days and periods; and
- (f) the circumstances in which a document indicating status or a travel document may or must be issued, renewed or revoked.

DIVISION 4

INADMISSIBILITY

Rules of interpretation

33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Security

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

- (a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;
- (b) engaging in or instigating the subversion by force of any government;

- (c) engaging in terrorism;
- (d) being a danger to the security of Canada;
- (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
- (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

Exception

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

Human or international rights violations

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

- (a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;
- (b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*; or
- (c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

Exception

(2) Paragraphs (1)(b) and (c) do not apply in the case of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

Serious criminality

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

- (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;
- (b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or
- (c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

Criminality

(2) A foreign national is inadmissible on grounds of criminality for

- (a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;
- (b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;
- (c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or
- (d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

Application

(3) The following provisions govern subsections (1) and (2):

- (a) an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;
- (b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;
- (c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;
- (d) a determination of whether a permanent resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and
- (e) inadmissibility under subsections (1) and (2) may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act*.

Organized criminality

37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

- (a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or
- (b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

Application

(2) The following provisions govern subsection (1):

- (a) subsection (1) does not apply in the case of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest; and
- (b) paragraph (1)(a) does not lead to a determination of inadmissibility by reason only of the fact that the

permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.

Health grounds

38. (1) A foreign national is inadmissible on health grounds if their health condition

(a) is likely to be a danger to public health;

(b) is likely to be a danger to public safety; or

(c) might reasonably be expected to cause excessive demand on health or social services.

Exception

(2) Paragraph (1)(c) does not apply in the case of a foreign national who

(a) has been determined to be a member of the family class and to be the spouse, common-law partner or child of a sponsor within the meaning of the regulations;

(b) has applied for a permanent resident visa as a Convention refugee or a person in similar circumstances;

(c) is a protected person; or

(d) is, where prescribed by the regulations, the spouse, common-law partner, child or other family member of a foreign national referred to in any of paragraphs (a) to (c).

Financial reasons

39. A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them, and have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made.

Misrepresentation

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

(c) on a final determination to vacate a decision to allow the claim for refugee protection by the permanent resident or the foreign national; or

(d) on ceasing to be a citizen under paragraph 10(1)(a) of the *Citizenship Act*, in the circumstances set out in subsection 10(2) of that Act.

Application

(2) The following provisions govern subsection (1):

(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of

inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and

(b) paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.

Non-compliance with Act

41. A person is inadmissible for failing to comply with this Act

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and

(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.

Inadmissible family member

42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

(a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or

(b) they are an accompanying family member of an inadmissible person.

Regulations

43. The regulations may provide for any matter relating to the application of this Division, may define, for the purposes of this Act, any of the terms used in this Division, and may include provisions respecting the circumstances in which a class of permanent residents or foreign nationals is exempted from any of the provisions of this Division.

DIVISION 5

LOSS OF STATUS AND REMOVAL

Report on Inadmissibility

Preparation of report

44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

Referral or removal order

(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.

Conditions

(3) An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the

posting of a guarantee for compliance with the conditions, that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.

Admissibility Hearing by the Immigration Division

Decision

45. The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the following decisions:

- (a) recognize the right to enter Canada of a Canadian citizen within the meaning of the *Citizenship Act*, a person registered as an Indian under the *Indian Act* or a permanent resident;
- (b) grant permanent resident status or temporary resident status to a foreign national if it is satisfied that the foreign national meets the requirements of this Act;
- (c) authorize a permanent resident or a foreign national, with or without conditions, to enter Canada for further examination; or
- (d) make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.

Loss of Status

Permanent resident

46. (1) A person loses permanent resident status

- (a) when they become a Canadian citizen;
- (b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;
- (c) when a removal order made against them comes into force; or
- (d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination under subsection 114(3) to vacate a decision to allow their application for protection.

Permanent resident

(2) A person who ceases to be a citizen under paragraph 10(1)(a) of the *Citizenship Act*, other than in the circumstances set out in subsection 10(2) of that Act, becomes a permanent resident.

Temporary resident

47. A foreign national loses temporary resident status

- (a) at the end of the period for which they are authorized to remain in Canada;
- (b) on a determination by an officer or the Immigration Division that they have failed to comply with any

other requirement of this Act; or

(c) on cancellation of their temporary resident permit.

Enforcement of Removal Orders

Enforceable removal order

48. (1) A removal order is enforceable if it has come into force and is not stayed.

Effect

(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.

In force

49. (1) A removal order comes into force on the latest of the following dates:

(a) the day the removal order is made, if there is no right to appeal;

(b) the day the appeal period expires, if there is a right to appeal and no appeal is made; and

(c) the day of the final determination of the appeal, if an appeal is made.

In force — claimants

(2) Despite subsection (1), a removal order made with respect to a refugee protection claimant is conditional and comes into force on the latest of the following dates:

(a) the day the claim is determined to be ineligible only under paragraph 101(1)(e);

(b) in a case other than that set out in paragraph (a), seven days after the claim is determined to be ineligible;

(c) 15 days after notification that the claim is rejected by the Refugee Protection Division, if no appeal is made, or by the Refugee Appeal Division, if an appeal is made;

(d) 15 days after notification that the claim is declared withdrawn or abandoned; and

(e) 15 days after proceedings are terminated as a result of notice under paragraph 104(1)(c) or (d).

Stay

50. A removal order is stayed

(a) if a decision that was made in a judicial proceeding — at which the Minister shall be given the opportunity to make submissions — would be directly contravened by the enforcement of the removal order;

(b) in the case of a foreign national sentenced to a term of imprisonment in Canada, until the sentence is completed;

(c) for the duration of a stay imposed by the Immigration Appeal Division or any other court of competent

jurisdiction;

(d) for the duration of a stay under paragraph 114(1)(b); and

(e) for the duration of a stay imposed by the Minister.

Void — permanent residence

51. A removal order that has not been enforced becomes void if the foreign national becomes a permanent resident.

No return without prescribed authorization

52. (1) If a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances.

Return to Canada

(2) If a removal order for which there is no right of appeal has been enforced and is subsequently set aside in a judicial review, the foreign national is entitled to return to Canada at the expense of the Minister.

Regulations

Regulations

53. The regulations may provide for any matter relating to the application of this Division, and may include provisions respecting

(a) conditions that may or must be imposed, varied, or cancelled, individually or by class, on permanent residents and foreign nationals;

(b) the circumstances in which a removal order shall be made or confirmed against a permanent resident or a foreign national;

(c) the circumstances in which status may be restored;

(d) the circumstances in which a removal order may be stayed, including a stay imposed by the Minister and a stay that is not expressly provided for by this Act;

(e) the effect and enforcement of removal orders;

(f) the effect of a pardon under the *Criminal Records Act* on the status of permanent residents and foreign nationals and removal orders made against them; and

(g) the financial obligations that may be imposed with respect to a removal order.

DIVISION 6

DETENTION AND RELEASE

Immigration Division

54. The Immigration Division is the competent Division of the Board with respect to the review of reasons

for detention under this Division.

Arrest and detention with warrant

55. (1) An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.

Arrest and detention without warrant

- (2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,
- (a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); or
 - (b) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

Detention on entry

- (3) A permanent resident or a foreign national may, on entry into Canada, be detained if an officer
- (a) considers it necessary to do so in order for the examination to be completed; or
 - (b) has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security or for violating human or international rights.

Notice

- (4) If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.

Release — officer

56. An officer may order the release from detention of a permanent resident or a foreign national before the first detention review by the Immigration Division if the officer is of the opinion that the reasons for the detention no longer exist. The officer may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary.

Review of detention

57. (1) Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention.

Further review

- (2) At least once during the seven days following the review under subsection (1), and at least once during each 30-day period following each previous review, the Immigration Division must review the reasons for the continued detention.

Presence

- (3) In a review under subsection (1) or (2), an officer shall bring the permanent resident or the foreign national before the Immigration Division or to a place specified by it.

Release — Immigration Division

58. (1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that

- (a) they are a danger to the public;
- (b) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);
- (c) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human or international rights; or
- (d) the Minister is of the opinion that the identity of the foreign national has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity.

Detention — Immigration Division

(2) The Immigration Division may order the detention of a permanent resident or a foreign national if it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order and that the permanent resident or the foreign national is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.

Conditions

(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.

Incarcerated foreign nationals

59. If a warrant for arrest and detention under this Act is issued with respect to a permanent resident or a foreign national who is detained under another Act of Parliament in an institution, the person in charge of the institution shall deliver the inmate to an officer at the end of the inmate's period of detention in the institution.

Minor children

60. For the purposes of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

Regulations

- 61.** The regulations may provide for the application of this Division, and may include provisions respecting
- (a) grounds for and conditions and criteria with respect to the release of persons from detention;
 - (b) factors to be considered by an officer or the Immigration Division; and
 - (c) special considerations that may apply in relation to the detention of minor children.

DIVISION 7

RIGHT OF APPEAL

Competent jurisdiction

62. The Immigration Appeal Division is the competent Division of the Board with respect to appeals under this Division.

Right to appeal — visa refusal of family class

63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.

Right to appeal — visa and removal order

(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.

Right to appeal — removal order

(3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.

Right of appeal — residency obligation

(4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.

Right of appeal — Minister

(5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.

No appeal for inadmissibility

64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

Serious criminality

(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years.

Misrepresentation

(3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.

Humanitarian and compassionate considerations

65. In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.

Disposition

66. After considering the appeal of a decision, the Immigration Appeal Division shall

- (a) allow the appeal in accordance with section 67;
- (b) stay the removal order in accordance with section 68; or
- (c) dismiss the appeal in accordance with section 69.

Appeal allowed

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

- (a) the decision appealed is wrong in law or fact or mixed law and fact;
- (b) a principle of natural justice has not been observed; or
- (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Effect

(2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision-maker for reconsideration.

Removal order stayed

68. (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Effect

(2) Where the Immigration Appeal Division stays the removal order

- (a) it shall impose any condition that is prescribed and may impose any condition that it considers necessary;
- (b) all conditions imposed by the Immigration Division are cancelled;
- (c) it may vary or cancel any non-prescribed condition imposed under paragraph (a); and
- (d) it may cancel the stay, on application or on its own initiative.

Reconsideration

(3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division.

Termination and cancellation

(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.

Dismissal

69. (1) The Immigration Appeal Division shall dismiss an appeal if it does not allow the appeal or stay the removal order, if any.

Minister's Appeal

(2) In the case of an appeal by the Minister respecting a permanent resident or a protected person, other than a person referred to in subsection 64(1), if the Immigration Appeal Division is satisfied that, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, it may make and may stay the applicable removal order, or dismiss the appeal, despite being satisfied of a matter set out in paragraph 67(1)(a) or (b).

Removal order

(3) If the Immigration Appeal Division dismisses an appeal made under subsection 63(4) and the permanent resident is in Canada, it shall make a removal order.

Decision binding

70. (1) An officer, in examining a permanent resident or a foreign national, is bound by the decision of the Immigration Appeal Division to allow an appeal in respect of the foreign national.

Examination suspended

(2) If the Minister makes an application for leave to commence an application for judicial review of a decision of the Immigration Appeal Division with respect to a permanent resident or a foreign national, an examination of the permanent resident or the foreign national under this Act is suspended until the final determination of the application.

Reopening appeal

71. The Immigration Appeal Division, on application by a foreign national who has not left Canada under a removal order, may reopen an appeal if it is satisfied that it failed to observe a principle of natural justice.

DIVISION 8

JUDICIAL REVIEW

Application for judicial review

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

Application

(2) The following provisions govern an application under subsection (1):

- (a) the application may not be made until any right of appeal that may be provided by this Act is exhausted;
- (b) subject to paragraph 169(f), notice of the application shall be served on the other party and the

application shall be filed in the Registry of the Federal Court (“the Court”) within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;

(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;

(d) a judge of the Court shall dispose of the application without delay and in a summary way and, unless a judge of the Court directs otherwise, without personal appearance; and

(e) no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment.

2001, c. 27, s. 72; 2002, c. 8, s. 194.

Right of Minister

73. The Minister may make an application for leave to commence an application for judicial review with respect to any decision of the Refugee Appeal Division, whether or not the Minister took part in the proceedings before the Refugee Protection Division or Refugee Appeal Division.

Judicial review

74. Judicial review is subject to the following provisions:

(a) the judge who grants leave shall fix the day and place for the hearing of the application;

(b) the hearing shall be no sooner than 30 days and no later than 90 days after leave was granted, unless the parties agree to an earlier day;

(c) the judge shall dispose of the application without delay and in a summary way; and

(d) an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.

Rules

75. (1) Subject to the approval of the Governor in Council, the rules committee established under section 45.1 of the *Federal Courts Act* may make rules governing the practice and procedure in relation to applications for leave to commence an application for judicial review, for judicial review and for appeals. The rules are binding despite any rule or practice that would otherwise apply.

Inconsistencies

(2) In the event of an inconsistency between this Division and any provision of the *Federal Courts Act*, this Division prevails to the extent of the inconsistency.

2001, c. 27, s. 75; 2002, c. 8, s. 194.

DIVISION 9

PROTECTION OF INFORMATION

Examination on Request by the Minister and the Minister of Public Safety and

Emergency Preparedness

Definitions

76. The definitions in this section apply in this Division.

"information"
« *renseignements* »

"information" means security or criminal intelligence information and information that is obtained in confidence from a source in Canada, from the government of a foreign state, from an international organization of states or from an institution of either of them.

"judge"
« *jugé* »

"judge" means the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice.

2001, c. 27, s. 76; 2002, c. 8, s. 194.

Referral of certificate

77. (1) The Minister and the Minister of Public Safety and Emergency Preparedness shall sign a certificate stating that a permanent resident or a foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and refer it to the Federal Court, which shall make a determination under section 80.

Effect of referral

(2) When the certificate is referred, a proceeding under this Act respecting the person named in the certificate, other than an application under subsection 112(1), may not be commenced and, if commenced, must be adjourned, until the judge makes the determination.

2001, c. 27, s. 77; 2002, c. 8, s. 194; 2005, c. 10, s. 34.

Judicial consideration

78. The following provisions govern the determination:

(a) the judge shall hear the matter;

(b) the judge shall ensure the confidentiality of the information on which the certificate is based and of any other evidence that may be provided to the judge if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(c) the judge shall deal with all matters as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;

(d) the judge shall examine the information and any other evidence in private within seven days after the referral of the certificate for determination;

(e) on each request of the Minister or the Minister of Public Safety and Emergency Preparedness made at any time during the proceedings, the judge shall hear all or part of the information or evidence in the absence of the permanent resident or the foreign national named in the certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(f) the information or evidence described in paragraph (e) shall be returned to the Minister and the Minister

of Public Safety and Emergency Preparedness and shall not be considered by the judge in deciding whether the certificate is reasonable if either the matter is withdrawn or if the judge determines that the information or evidence is not relevant or, if it is relevant, that it should be part of the summary;

(g) the information or evidence described in paragraph (e) shall not be included in the summary but may be considered by the judge in deciding whether the certificate is reasonable if the judge determines that the information or evidence is relevant but that its disclosure would be injurious to national security or to the safety of any person;

(h) the judge shall provide the permanent resident or the foreign national with a summary of the information or evidence that enables them to be reasonably informed of the circumstances giving rise to the certificate, but that does not include anything that in the opinion of the judge would be injurious to national security or to the safety of any person if disclosed;

(i) the judge shall provide the permanent resident or the foreign national with an opportunity to be heard regarding their inadmissibility; and

(j) the judge may receive into evidence anything that, in the opinion of the judge, is appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.

2001, c. 27, s. 78; 2005, c. 10, s. 34(E).

Proceedings suspended

79. (1) On the request of the Minister, the permanent resident or the foreign national, a judge shall suspend a proceeding with respect to a certificate in order for the Minister to decide an application for protection made under subsection 112(1).

Proceedings resumed

(2) If a proceeding is suspended under subsection (1) and the application for protection is decided, the Minister shall give notice of the decision to the permanent resident or the foreign national and to the judge, the judge shall resume the proceeding and the judge shall review the lawfulness of the decision of the Minister, taking into account the grounds referred to in subsection 18.1(4) of the *Federal Courts Act*.

2001, c. 27, s. 79; 2002, c. 8, s. 194.

Determination that certificate is reasonable

80. (1) The judge shall, on the basis of the information and evidence available, determine whether the certificate is reasonable and whether the decision on the application for protection, if any, is lawfully made.

Determination that certificate is not reasonable

(2) The judge shall quash a certificate if the judge is of the opinion that it is not reasonable. If the judge does not quash the certificate but determines that the decision on the application for protection is not lawfully made, the judge shall quash the decision and suspend the proceeding to allow the Minister to make a decision on the application for protection.

Determination not reviewable

(3) The determination of the judge is final and may not be appealed or judicially reviewed.

Effect of determination — removal order

81. If a certificate is determined to be reasonable under subsection 80(1),

- (a) it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible;
- (b) it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and
- (c) the person named in it may not apply for protection under subsection 112(1).

Detention

Detention of permanent resident

82. (1) The Minister and the Minister of Public Safety and Emergency Preparedness may issue a warrant for the arrest and detention of a permanent resident who is named in a certificate described in subsection 77(1) if they have reasonable grounds to believe that the permanent resident is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.

Mandatory detention

(2) A foreign national who is named in a certificate described in subsection 77(1) shall be detained without the issue of a warrant.

2001, c. 27, s. 82; 2005, c. 10, s. 34.

Review of decision for detention

83. (1) Not later than 48 hours after the beginning of detention of a permanent resident under section 82, a judge shall commence a review of the reasons for the continued detention. Section 78 applies with respect to the review, with any modifications that the circumstances require.

Further reviews

(2) The permanent resident must, until a determination is made under subsection 80(1), be brought back before a judge at least once in the six-month period following each preceding review and at any other times that the judge may authorize.

Order for continuation

(3) A judge shall order the detention to be continued if satisfied that the permanent resident continues to be a danger to national security or to the safety of any person, or is unlikely to appear at a proceeding or for removal.

Release

84. (1) The Minister may, on application by a permanent resident or a foreign national, order their release from detention to permit their departure from Canada.

Judicial release

(2) A judge may, on application by a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable, order the foreign national's release from detention, under terms and conditions that the judge considers appropriate, if satisfied that the foreign national will not be removed from Canada within a reasonable time and that the release will not pose a danger to national security or to the safety of any person.

Inconsistency

85. In the case of an inconsistency between sections 82 to 84 and the provisions of Division 6, sections 82

to 84 prevail to the extent of the inconsistency.

Consideration During an Admissibility Hearing or an Immigration Appeal

Application for non-disclosure — Immigration Appeal Division

86. (1) The Minister may, during an admissibility hearing, a detention review or an appeal before the Immigration Appeal Division, make an application for non-disclosure of information.

Procedure

(2) Section 78 applies to the determination of the application, with any modifications that the circumstances require, including that a reference to “judge” be read as a reference to the applicable Division of the Board.

Consideration During Judicial Review

Application for non-disclosure — Court

87. (1) The Minister may, in the course of a judicial review, make an application to the judge for the non-disclosure of any information with respect to information protected under subsection 86(1) or information considered under section 11, 112 or 115.

Procedure

(2) Section 78, except for the provisions relating to the obligation to provide a summary and the time limit referred to in paragraph 78(d), applies to the determination of the application, with any modifications that the circumstances require.

DIVISION 10

GENERAL PROVISIONS

Loans

Loans

88. (1) The Minister of Finance may, from time to time, advance to the Minister out of the Consolidated Revenue Fund, up to the maximum amount that is prescribed, sums that the Minister may require in order to make loans for the purposes of this Act.

Regulations

(2) The regulations may provide for any matter relating to the application of this section, and may include provisions respecting classes of persons to whom, and the purposes for which, the loans may be made.

Fees

Regulations

89. The regulations may govern fees for services provided in the administration of this Act, and cases in which fees may be waived by the Minister or otherwise, individually or by class.

Social Insurance Number Cards

Minister directs special cards to be issued

90. The Minister may direct the Canada Employment Insurance Commission to issue to persons, other than Canadian citizens or permanent residents, Social Insurance Number Cards, by which the holders of such cards are identified as persons who may be required under this Act to obtain authorization to work in Canada.

Representation

Regulations

91. The regulations may govern who may or may not represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer or the Board.

Material Incorporated in Regulations

Incorporated material

92. (1) A regulation may incorporate by reference the following material:

(a) material produced by a person or body other than the Governor in Council;

(b) material referred to in paragraph (a) that has been subsequently adapted or edited in order to facilitate its incorporation for the purposes of the regulation;

(c) material that has been developed jointly with another government or government agency for the purpose of harmonizing the regulation with other laws; and

(d) material that is technical or explanatory in nature, such as specifications, classifications, illustrations or graphs, as well as examples that may assist in the application of the regulation.

Amended from time to time

(2) Material may be incorporated by reference on a specified date or as amended from time to time.

Incorporated material is not a regulation

(3) For greater certainty, material that is incorporated by reference in a regulation made under this Act is not a regulation for the purposes of the *Statutory Instruments Act*.

Statutory Instruments Act

93. Instructions given by the Minister under this Act and guidelines issued by the Chairperson under paragraph 159(1)(h) are not statutory instruments for the purposes of the *Statutory Instruments Act*.

Report to Parliament

Annual report to Parliament

94. (1) The Minister must, on or before November 1 of each year or, if a House of Parliament is not then sitting, within the next 30 days on which that House is sitting after that date, table in each House of Parliament a report on the operation of this Act in the preceding calendar year.

Contents of report

(2) The report shall include a description of

- (a) the activities and initiatives taken concerning the selection of foreign nationals, including measures taken in cooperation with the provinces;
- (b) in respect of Canada, the number of foreign nationals who became permanent residents, and the number projected to become permanent residents in the following year;
- (b.1) in respect of Canada, the linguistic profile of foreign nationals who became permanent residents;
- (c) in respect of each province that has entered into a federal-provincial agreement described in subsection 9(1), the number, for each class listed in the agreement, of persons that became permanent residents and that the province projects will become permanent residents there in the following year;
- (d) the number of temporary resident permits issued under section 24, categorized according to grounds of inadmissibility, if any;
- (e) the number of persons granted permanent resident status under subsection 25(1); and
- (f) a gender-based analysis of the impact of this Act.

PART 2

REFUGEE PROTECTION

DIVISION 1

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION

Conferral of refugee protection

95. (1) Refugee protection is conferred on a person when

- (a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;
- (b) the Board determines the person to be a Convention refugee or a person in need of protection; or
- (c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection.

Protected person

(2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Exclusion — Refugee Convention

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

DIVISION 2

CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION

Claim for Refugee Protection

Claim

99. (1) A claim for refugee protection may be made in or outside Canada.

Claim outside Canada

(2) A claim for refugee protection made by a person outside Canada must be made by making an application for a visa as a Convention refugee or a person in similar circumstances, and is governed by Part 1.

Claim inside Canada

(3) A claim for refugee protection made by a person inside Canada must be made to an officer, may not be made by a person who is subject to a removal order, and is governed by this Part.

Permanent resident

(4) An application to become a permanent resident made by a protected person is governed by Part 1.

Examination of Eligibility to Refer Claim

Referral to Refugee Protection Division

100. (1) An officer shall, within three working days after receipt of a claim referred to in subsection 99(3), determine whether the claim is eligible to be referred to the Refugee Protection Division and, if it is eligible, shall refer the claim in accordance with the rules of the Board.

Decision

(2) The officer shall suspend consideration of the eligibility of the person's claim if

(a) a report has been referred for a determination, at an admissibility hearing, of whether the person is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or

(b) the officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.

Consideration of claim

(3) The Refugee Protection Division may not consider a claim until it is referred by the officer. If the claim is not referred within the three-day period referred to in subsection (1), it is deemed to be referred, unless there is a suspension or it is determined to be ineligible.

Duty of claimant

(4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.

Ineligibility

101. (1) A claim is ineligible to be referred to the Refugee Protection Division if

(a) refugee protection has been conferred on the claimant under this Act;

(b) a claim for refugee protection by the claimant has been rejected by the Board;

(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;

(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;

(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).

Serious criminality

(2) A claim is not ineligible by reason of serious criminality under paragraph (1)(f) unless

(a) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed; or

(b) in the case of inadmissibility by reason of a conviction outside Canada, the Minister is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.

Regulations

102. (1) The regulations may govern matters relating to the application of sections 100 and 101, may, for the purposes of this Act, define the terms used in those sections and, for the purpose of sharing responsibility with governments of foreign states for the consideration of refugee claims, may include provisions

(a) designating countries that comply with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture;

(b) making a list of those countries and amending it as necessary; and

(c) respecting the circumstances and criteria for the application of paragraph 101(1)(e).

Factors

(2) The following factors are to be considered in designating a country under paragraph (1)(a):

(a) whether the country is a party to the Refugee Convention and to the Convention Against Torture;

(b) its policies and practices with respect to claims under the Refugee Convention and with respect to obligations under the Convention Against Torture;

(c) its human rights record; and

(d) whether it is party to an agreement with the Government of Canada for the purpose of sharing responsibility with respect to claims for refugee protection.

Review

(3) The Governor in Council must ensure the continuing review of factors set out in subsection (2) with respect to each designated country.

Suspension or Termination of Consideration of Claim

Suspension

103. (1) Proceedings of the Refugee Protection Division and of the Refugee Appeal Division are suspended on notice by an officer that

(a) the matter has been referred to the Immigration Division to determine whether the claimant is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or

(b) an officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that may be punished by a maximum term of imprisonment of at least 10 years.

Continuation

(2) On notice by an officer that the suspended claim was determined to be eligible, proceedings of the Refugee Protection Division and of the Refugee Appeal Division shall continue.

Notice of ineligible claim

104. (1) An officer may, with respect to a claim that is before the Refugee Protection Division or, in the case of paragraph (d), that is before or has been determined by the Refugee Protection Division or the Refugee Appeal Division, give notice that an officer has determined that

(a) the claim is ineligible under paragraphs 101(1)(a) to (e);

(b) the claim is ineligible under paragraph 101(1)(f);

(c) the claim was referred as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter and that the claim was not otherwise eligible to be referred to that Division; or

(d) the claim is not the first claim that was received by an officer in respect of the claimant.

Termination and nullification

(2) A notice given under the following provisions has the following effects:

(a) if given under any of paragraphs (1)(a) to (c), it terminates pending proceedings in the Refugee Protection Division respecting the claim; and

(b) if given under paragraph (1)(d), it terminates proceedings in and nullifies any decision of the Refugee Protection Division or the Refugee Appeal Division respecting a claim other than the first claim.

Extradition Procedure

Suspension if proceeding under *Extradition Act*

105. (1) The Refugee Protection Division and Refugee Appeal Division shall not commence, or shall suspend, consideration of any matter concerning a person against whom an authority to proceed has been issued under section 15 of the *Extradition Act* with respect to an offence under Canadian law that is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, until a final decision under the *Extradition Act* with respect to the discharge or surrender of the person has been made.

Continuation if discharge under *Extradition Act*

(2) If the person is finally discharged under the *Extradition Act*, the proceedings of the applicable Division may be commenced or continued as though there had not been any proceedings under that Act.

Rejection if surrender under *Extradition Act*

(3) If the person is ordered surrendered by the Minister of Justice under the *Extradition Act* and the offence for which the person was committed by the judge under section 29 of that Act is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, the order of surrender is deemed to be a rejection of a claim for refugee protection based on paragraph (b) of Section F of Article 1 of the Refugee Convention.

Final decision

(4) The deemed rejection referred to in subsection (3) may not be appealed, and is not subject to judicial review except to the extent that a judicial review of the order of surrender is provided for under the *Extradition Act*.

Limit if no previous claim

(5) If the person has not made a claim for refugee protection before the order of surrender referred to in subsection (3), the person may not do so before the surrender.

Claimant Without Identification

Credibility

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

Decision on Claim for Refugee Protection

Decision

107. (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.

No credible basis

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

Cessation of Refugee Protection

Rejection

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

- (a) the person has voluntarily reavailed themselves of the protection of their country of nationality;
- (b) the person has voluntarily reacquired their nationality;
- (c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;
- (d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or
- (e) the reasons for which the person sought refugee protection have ceased to exist.

Cessation of refugee protection

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection

referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Effect of decision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

Applications to Vacate

Vacation of refugee protection

109. (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

Rejection of application

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

Allowance of application

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

Appeal to Refugee Appeal Division

Appeal

110. (1) A person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection, or a decision of the Refugee Protection Division rejecting an application by the Minister for a determination that refugee protection has ceased or an application by the Minister to vacate a decision to allow a claim for refugee protection.

Restriction on appeals

(2) A determination that a refugee protection claim has been withdrawn or abandoned may not be appealed.

Procedure

(3) The Refugee Appeal Division shall proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept written submissions from the Minister, the person who is the subject of the appeal, and a representative or agent of the United Nations High Commissioner for Refugees, and any other person described in the rules of the Board.

Decision

111. (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

- (a) confirm the determination of the Refugee Protection Division;
- (b) set aside the determination and substitute a determination that, in its opinion, should have been made;
or
- (c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

Referrals

(2) The Refugee Appeal Division shall make the referral described in paragraph (1)(c) if it is of the opinion that a hearing is required or if it has allowed an appeal by the Minister that was based on a question of the claimant's credibility.

DIVISION 3

PRE-REMOVAL RISK ASSESSMENT

Protection

Application for protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Exception

- (2) Despite subsection (1), a person may not apply for protection if
- (a) they are the subject of an authority to proceed issued under section 15 of the *Extradition Act*;
 - (b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;
 - (c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or
 - (d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

Restriction

- (3) Refugee protection may not result from an application for protection if the person
- (a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;
 - (b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;
 - (c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

(d) is named in a certificate referred to in subsection 77(1).

Consideration of application

113. Consideration of an application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

Effect of decision

114. (1) A decision to allow the application for protection has

(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and

(b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

Cancellation of stay

(2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(d) and the regulations, the grounds on which the application was allowed and may cancel the stay.

Vacation of determination

(3) If the Minister is of the opinion that a decision to allow an application for protection was obtained as a result of directly or indirectly misrepresenting or withholding material facts on a relevant matter, the Minister may vacate the decision.

Effect of vacation

(4) If a decision is vacated under subsection (3), it is nullified and the application for protection is deemed to have been rejected.

Principle of Non-refoulement

Protection

115. (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.

Exceptions

(2) Subsection (1) does not apply in the case of a person

(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or

(b) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

Removal of refugee

(3) A person, after a determination under paragraph 101(1)(e) that the person's claim is ineligible, is to be sent to the country from which the person came to Canada, but may be sent to another country if that country is designated under subsection 102(1) or if the country from which the person came to Canada has rejected their claim for refugee protection.

Regulations

116. The regulations may provide for any matter relating to the application of this Division, and may include provisions respecting procedures to be followed with respect to applications for protection and decisions made under section 115, including the establishment of factors to determine whether a hearing is required.

PART 3 ENFORCEMENT

HUMAN SMUGGLING AND TRAFFICKING

Organizing entry into Canada

117. (1) No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.

Penalties — fewer than 10 persons

(2) A person who contravenes subsection (1) with respect to fewer than 10 persons is guilty of an offence and liable

(a) on conviction on indictment

(i) for a first offence, to a fine of not more than \$500,000 or to a term of imprisonment of not more than 10 years, or to both, or

(ii) for a subsequent offence, to a fine of not more than \$1,000,000 or to a term of imprisonment of not more than 14 years, or to both; and

(b) on summary conviction, to a fine of not more than \$100,000 or to a term of imprisonment of not more than two years, or to both.

Penalty — 10 persons or more

(3) A person who contravenes subsection (1) with respect to a group of 10 persons or more is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.

No proceedings without consent

(4) No proceedings for an offence under this section may be instituted except by or with the consent of the Attorney General of Canada.

Offence — trafficking in persons

118. (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.

Definition of "organize"

(2) For the purpose of subsection (1), "organize", with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

Disembarking persons at sea

119. A person shall not disembark a person or group of persons at sea for the purpose of inducing, aiding or abetting them to come into Canada in contravention of this Act.

Penalties

120. A person who contravenes section 118 or 119 is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.

Aggravating factors

121. (1) The court, in determining the penalty to be imposed under subsection 117(2) or (3) or section 120, shall take into account whether

- (a) bodily harm or death occurred during the commission of the offence;
- (b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;
- (c) the commission of the offence was for profit, whether or not any profit was realized; and
- (d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

Definition of "criminal organization"

(2) For the purposes of paragraph (1)(b), "criminal organization" means an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence.

OFFENCES RELATED TO DOCUMENTS

Documents

122. (1) No person shall, in order to contravene this Act,

(a) possess a passport, visa or other document, of Canadian or foreign origin, that purports to establish or that could be used to establish a person's identity;

(b) use such a document, including for the purpose of entering or remaining in Canada; or

(c) import, export or deal in such a document.

Proof of offence

(2) Proof of the matters referred to in subsection (1) in relation to a forged document or a document that is blank, incomplete, altered or not genuine is, in the absence of evidence to the contrary, proof that the person intends to contravene this Act.

Penalty

123. (1) Every person who contravenes

(a) paragraph 122(1)(a) is guilty of an offence and liable on conviction on indictment to a term of imprisonment of up to five years; and

(b) paragraph 122(1)(b) or (c) is guilty of an offence and liable on conviction on indictment to a term of imprisonment of up to 14 years.

Aggravating factors

(2) The court, in determining the penalty to be imposed, shall take into account whether

(a) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization as defined in subsection 121(2); and

(b) the commission of the offence was for profit, whether or not any profit was realized.

GENERAL OFFENCES

Contravention of Act

124. (1) Every person commits an offence who

(a) contravenes a provision of this Act for which a penalty is not specifically provided or fails to comply with a condition or obligation imposed under this Act;

(b) escapes or attempts to escape from lawful custody or detention under this Act; or

(c) employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed.

Deemed knowledge

(2) For the purposes of paragraph (1)(c), a person who fails to exercise due diligence to determine whether employment is authorized under this Act is deemed to know that it is not authorized.

Due diligence defence

(3) A person referred to in subsection 148(1) shall not be found guilty of an offence under paragraph (1)(a) if it is established that they exercised all due diligence to prevent the commission of the offence.

Penalties

125. A person who commits an offence under subsection 124(1) is liable

(a) on conviction on indictment, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both; or

(b) on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

Counselling misrepresentation

126. Every person who knowingly counsels, induces, aids or abets or attempts to counsel, induce, aid or abet any person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act is guilty of an offence.

Misrepresentation

127. No person shall knowingly

(a) directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

(b) communicate, directly or indirectly, by any means, false or misleading information or declarations with intent to induce or deter immigration to Canada; or

(c) refuse to be sworn or to affirm or declare, as the case may be, or to answer a question put to the person at an examination or at a proceeding held under this Act.

Penalties

128. A person who contravenes a provision of section 126 or 127 is guilty of an offence and liable

(a) on conviction on indictment, to a fine of not more than \$100,000 or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both.

Offences relating to officers

129. (1) Every person is guilty of an offence who

(a) being an officer or an employee of the Government of Canada, knowingly makes or issues any false document or statement, or accepts or agrees to accept a bribe or other benefit, in respect of any matter under this Act or knowingly fails to perform their duties under this Act;

(b) gives or offers to give a bribe or consideration to, or makes an agreement or arrangement with, an

officer to induce the officer not to perform their duties under this Act;

(c) falsely personates an officer or by any act or omission leads any person to believe that the person is an officer; or

(d) obstructs or impedes an officer in the performance of the officer's duties under this Act.

Punishment

(2) Every person who is guilty of an offence under subsection (1) is liable

(a) on conviction on indictment, to a fine of not more than \$50,000 or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

PROCEEDS OF CRIME

130. [Repealed, 2001, c. 32, s. 81]

Counselling offence

131. Every person who knowingly induces, aids or abets or attempts to induce, aid or abet any person to contravene section 117, 118, 119, 122, 124 or 129, or who counsels a person to do so, commits an offence and is liable to the same penalty as that person.

2001, c. 27, s. 131, c. 32, s. 81.

132. [Repealed, 2001, c. 32, s. 81]

PROSECUTION OF OFFENCES

Deferral

133. A person who has claimed refugee protection, and who came to Canada directly or indirectly from the country in respect of which the claim is made, may not be charged with an offence under section 122, paragraph 124(1)(a) or section 127 of this Act or under section 57, paragraph 340(c) or section 354, 366, 368, 374 or 403 of the *Criminal Code*, in relation to the coming into Canada of the person, pending disposition of their claim for refugee protection or if refugee protection is conferred.

Defence — incorporation by reference

134. No person may be found guilty of an offence or subjected to a penalty for the contravention of a provision of a regulation that incorporates material by reference, unless it is proved that, at the time of the alleged contravention,

(a) the material was reasonably accessible to the person;

(b) reasonable steps had been taken to ensure that the material was accessible to persons likely to be affected by the regulation; or

(c) the material had been published in the *Canada Gazette*.

Offences outside Canada

135. An act or omission that would by reason of this Act be punishable as an offence if committed in Canada is, if committed outside Canada, an offence under this Act and may be tried and punished in Canada.

Venue

136. (1) A proceeding in respect of an offence under this Act may be instituted, tried and determined at the place in Canada where the offence was committed or at the place in Canada where the person charged with the offence is or has an office or place of business at the time of the institution of those proceedings.

Where commission outside Canada

(2) A proceeding in respect of an offence under this Act that is committed outside Canada may be instituted, tried and determined at any place in Canada.

FORFEITURE

Forfeiture

137. (1) A court that convicts a person of an offence under this Act may, in addition to any other punishment imposed, order that any offence-related property seized in relation to the offence be forfeited to Her Majesty in right of Canada.

Regulations

(2) The regulations may define the expression “offence-related property” for the purposes of this section, may provide for any matter relating to the application of this section, and may include provisions respecting the return to their lawful owner, disposition, or disposition of the proceeds of disposition, of offence-related property that has been seized.

OFFICERS AUTHORIZED TO ENFORCE ACT

Powers of peace officer

138. (1) An officer, if so authorized, has the authority and powers of a peace officer — including those set out in sections 487 to 492.2 of the *Criminal Code* — to enforce this Act, including any of its provisions with respect to the arrest, detention or removal from Canada of any person.

Temporary assistants

(2) An officer may, in cases of emergency, employ a person to assist the officer in carrying out duties under this Act. That person has the authority and powers of the officer for a period of no more than 48 hours, unless approved by the Minister.

Search

139. (1) An officer may search any person seeking to come into Canada and may search their luggage and personal effects and the means of transportation that conveyed the person to Canada if the officer believes on reasonable grounds that the person

(a) has not revealed their identity or has hidden on or about their person documents that are relevant to their admissibility; or

(b) has committed, or possesses documents that may be used in the commission of, an offence referred to

in section 117, 118 or 122.

Search by person of same sex

(2) A search of a person under this section must be performed by a person of the same sex as the person being searched. If an officer of the same sex is not available, any suitable person of the same sex may be authorized by an officer to perform the search.

Seizure

140. (1) An officer may seize and hold any means of transportation, document or other thing if the officer believes on reasonable grounds that it was fraudulently or improperly obtained or used or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of this Act.

Interpretation

(2) Despite subsection 42(2) of the *Canada Post Corporation Act*, a thing or document that is detained under the *Customs Act* and seized by an officer is not in the course of post for the purposes of the *Canada Post Corporation Act*.

Regulations

(3) The regulations may provide for any matter relating to the application of this section and may include provisions respecting the deposit of security as a guarantee to replace things that have been seized or that might otherwise be seized, and the return to their lawful owner, and the disposition, of things that have been seized.

Oaths and evidence

141. Every officer has the authority to administer oaths and to take and receive evidence under oath on any matter arising out of this Act.

PEACE OFFICERS

Duties of peace officers to execute orders

142. Every peace officer and every person in immediate charge or control of an immigrant station shall, when so directed by an officer, execute any warrant or written order issued under this Act for the arrest, detention or removal from Canada of any permanent resident or foreign national.

Authority to execute warrants and orders

143. A warrant issued or an order to detain made under this Act is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may receive and execute it to arrest and detain the person with respect to whom the warrant or order was issued or made.

TICKETABLE OFFENCES

Prosecution of designated offences

144. (1) In addition to other procedures set out in this Act or in the *Criminal Code* for commencing a proceeding, proceedings in respect of any offence that is prescribed by regulation may be commenced in accordance with this section.

Procedure

(2) An officer may commence a proceeding by

- (a) completing a ticket that consists of a summons portion and an information portion;
- (b) delivering the summons portion of the ticket to the accused or mailing it to the accused at the accused's latest known address; and
- (c) filing the information portion of the ticket with a court of competent jurisdiction before or as soon as practicable after the summons portion has been delivered or mailed.

Content of ticket

(3) The summons and information portions of a ticket must

- (a) set out a description of the offence and the time and place of its alleged commission;
- (b) include a statement, signed by the officer, that there are reasonable grounds to believe that the accused committed the offence;
- (c) set out the amount of the prescribed fine for the offence and the manner in which and period within which it must be paid;
- (d) include a statement that, if the accused pays the fine within the period set out in the ticket, a conviction will be entered and recorded against the accused; and
- (e) include a statement that if the accused wishes to plead not guilty or for any other reason fails to pay the fine within the period set out in the ticket, the accused must appear in the court and at the time set out in the ticket.

Consequences of payment

(4) Payment of the fine by the accused within the period set out in the ticket constitutes a plea of guilty to the offence described in the ticket and, following the payment,

- (a) a conviction shall be entered against the accused and no further action shall be taken against the accused in respect of that offence; and
- (b) any thing seized from the accused under this Act relating to the offence described in the ticket, or any proceeds realized from its disposition, are forfeited to Her Majesty in right of Canada and may be disposed of as the Minister directs.

Regulations

(5) The regulations may provide for any matter relating to the application of this section, and may include provisions prescribing

- (a) the offences referred to in subsection (1) and the manner in which those offences may be described in tickets; and
- (b) the amount of the fine, not exceeding \$10,000, for a prescribed offence.

DEBT DUE TO HER MAJESTY

Debts due

145. (1) The following amounts are debts due to Her Majesty in right of Canada payable on demand:

- (a) a debt incurred by Her Majesty for which any person is liable under this Act;
- (b) an amount that a person has agreed to pay as a deposit or guarantee of performance of an obligation under this Act;
- (c) the costs incurred in removing a prescribed foreign national from Canada;
- (d) an amount that is ordered to be paid under section 147 on account of an unpaid liability; and
- (e) an amount referred to in paragraph 148(1)(g).

Debts due — sponsors

(2) Subject to any federal-provincial agreement, an amount that a sponsor is required to pay under the terms of an undertaking is payable on demand to Her Majesty in right of Canada and Her Majesty in right of the province concerned and may be recovered by Her Majesty in either or both of those rights.

Recovery of debt

(3) A debt may be recovered at any time.

COLLECTION OF DEBTS DUE TO HER MAJESTY

Certificates

146. (1) An amount or part of an amount payable under this Act that has not been paid may be certified by the Minister

- (a) without delay, if the Minister is of the opinion that the person liable for that amount is attempting to avoid payment; and
- (b) in any other case, on the expiration of 30 days after the default.

Judgments

(2) The certificate is to be filed and registered in the Federal Court and, when registered, has the same force and effect, and all proceedings may be taken, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate plus interest to the day of payment.

Costs

(3) The costs of registering the certificate are recoverable in the same manner as if they had been included in the certificate.

Garnishment

147. (1) If the Minister is of the opinion that a person is or is about to become liable to make a payment to a person liable to make a payment under this Act, the Minister may, by written notice, order the first person to pay to the Receiver General, on account of the second person's liability, all or part of the money otherwise payable to the second person.

Applicability to future payments

(2) If the Minister, under subsection (1), orders an employer to pay to the Receiver General money otherwise

payable to an employee as remuneration,

(a) the order is applicable to all future payments of remuneration until the liability is satisfied; and

(b) the employer shall pay to the Receiver General out of each payment of remuneration the amount that the Minister stipulates in the notice.

Discharge of liability

(3) The receipt of the Minister is a good and sufficient discharge of the original liability to the extent of the payment.

Regulations

(4) The regulations may provide for any matter relating to the application of this section.

TRANSPORTATION COMPANIES

Obligation of operators of vehicles and facilities

148. (1) A person who owns or operates a vehicle or a transportation facility, and an agent for such a person, must, in accordance with the regulations,

(a) not carry to Canada a person who is prescribed or does not hold a prescribed document, or who an officer directs not be carried;

(b) hold the prescribed documentation of a person whom it carries to Canada until an examination begins, present the person for examination and hold the person until the examination is completed;

(c) arrange for a medical examination and medical treatment and observation of a person it carries to Canada;

(d) provide prescribed information, including documentation and reports;

(e) provide facilities for the holding and examination of persons being carried to Canada;

(f) carry from Canada a person whom it has carried to or caused to enter Canada and who is prescribed or whom an officer directs to be carried;

(g) pay for all prescribed costs and fees relating to paragraphs (a), (b), (c) and (f); and

(h) provide security for compliance with its obligations under paragraphs (a) to (g).

Seizure of security for compliance

(2) If a person who owns or operates a vehicle or a transportation facility, or an agent of such a person, fails to comply with an obligation under this Act, all or part of any security provided by the person and any vehicle or other prescribed good owned or operated by the person may be detained, seized or forfeited to Her Majesty in right of Canada.

Use of information

149. The following provisions govern information provided under paragraph 148(1)(d):

(a) the information may be used only for the purposes of this Act or the *Department of Citizenship and*

Immigration Act or to identify a person for whom a warrant of arrest has been issued in Canada; and

(b) notice regarding use of the information must be given to the person to whom it relates.

2001, c. 27, s. 149; 2004, c. 15, s. 71.

Regulations

150. The regulations may provide for any matter relating to the purposes of sections 148 and 149, may define, for the purposes of this Act, terms used in those sections and may include provisions respecting

(a) the requirements and procedures applicable to a person who owns or operates a vehicle or a transportation facility;

(b) the costs and fees for which a person who owns or operates a vehicle or a transportation facility is liable;

(c) the procedures to be followed when a vehicle or other security is detained, seized, forfeited to Her Majesty in right of Canada or returned; and

(d) the procedures by which a person may make claim that their interest in a vehicle or other good is not affected by it being detained, seized or forfeited to Her Majesty in right of Canada.

SHARING OF INFORMATION

Regulations

150.1 (1) The regulations may provide for any matter relating to

(a) the collection, retention, use, disclosure and disposal of information for the purposes of this Act or for the purposes of program legislation as defined in section 2 of the *Canada Border Services Agency Act*; and

(b) the disclosure of information for the purposes of national security, the defence of Canada or the conduct of international affairs, including the implementation of an agreement or arrangement entered into under section 5 of the *Department of Citizenship and Immigration Act* or section 13 of the *Canada Border Services Agency Act*.

Conditions

(2) Regulations made under subsection (1) may include conditions under which the collection, retention, use, disposal and disclosure may be made.

2004, c. 15, s. 72; 2005, c. 38, s. 119.

PART 4

IMMIGRATION AND REFUGEE BOARD

COMPOSITION OF BOARD

Immigration and Refugee Board

151. The Immigration and Refugee Board consists of the Refugee Protection Division, the Refugee Appeal Division, the Immigration Division and the Immigration Appeal Division.

Composition

152. The Board is composed of a Chairperson and other members as are required to ensure the proper functioning of the Board.

Chairperson and other members

153. (1) The Chairperson and members of the Refugee Protection Division, Refugee Appeal Division and Immigration Appeal Division

- (a) are appointed to the Board by the Governor in Council, to hold office during good behaviour for a term not exceeding seven years, subject to removal by the Governor in Council at any time for cause, to serve in a regional or district office of the Board;
- (b) shall swear the oath or give the solemn affirmation of office set out in the rules of the Board;
- (c) are eligible for reappointment in the same or another capacity;
- (d) shall receive the remuneration that may be fixed by the Governor in Council;
- (e) are entitled to be paid reasonable travel and living expenses incurred while absent in the course of their duties, in the case of a full-time member, from their ordinary place of work or, in the case of a part-time member, while absent from their ordinary place of residence;
- (f) are deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act* and in the federal public administration for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*;
- (g) may not accept or hold any office or employment or carry on any activity inconsistent with their duties and functions under this Act; and
- (h) if appointed as full-time members, must devote the whole of their time to the performance of their duties under this Act.

Deputy Chairperson and Assistant Deputy Chairpersons

(2) One Deputy Chairperson for each Division referred to in subsection (1) and not more than 10 Assistant Deputy Chairpersons are to be designated by the Governor in Council from among the full-time members of those Divisions.

Full-time and part-time appointments

(3) The Chairperson and the Deputy Chairpersons and Assistant Deputy Chairpersons of the Divisions referred to in subsection (1) are appointed on a full-time basis and the other members are appointed on a full-time or part-time basis.

Qualification

(4) The Deputy Chairperson of the Immigration Appeal Division and a majority of the Assistant Deputy Chairpersons of that Division and at least 10 per cent of the members of the Divisions referred to in subsection (1) must be members of at least five years standing at the bar of a province or notaries of at least five years standing at the *Chambre des notaires du Québec*.

2001, c. 27, s. 153; 2003, c. 22, s. 173.

Disposition after member ceases to hold office

154. A former member of the Board, within eight weeks after ceasing to be a member, may make or take part in a decision on a matter that they heard as a member, if the Chairperson so requests. For that purpose, the former member is deemed to be a member.

Disposition if member unable to take part

155. If a member of a three-member panel is unable to take part in the disposition of a matter that the member has heard, the remaining members may make the disposition and, for that purpose, are deemed to constitute the applicable Division.

Immunity and no summons

156. The following rules apply to the Chairperson and the members in respect of the exercise or purported exercise of their functions under this Act:

(a) no criminal or civil proceedings lie against them for anything done or omitted to be done in good faith; and

(b) they are not competent or compellable to appear as a witness in any civil proceedings.

HEAD OFFICE AND STAFF

Head office

157. (1) The head office of the Board shall be in the National Capital Region as described in the schedule to the *National Capital Act*.

Residence — Chairperson

(2) The Chairperson must live in the National Capital Region or within reasonable commuting distance of it.

Personnel

158. The Executive Director and other personnel necessary for the proper conduct of the business of the Board shall be appointed in accordance with the *Public Service Employment Act*, and the personnel are deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*.

2001, c. 27, s. 158; 2003, c. 22, s. 225(E).

DUTIES OF CHAIRPERSON

Chairperson

159. (1) The Chairperson is, by virtue of holding that office, a member of each Division of the Board and is the chief executive officer of the Board. In that capacity, the Chairperson

(a) has supervision over and direction of the work and staff of the Board;

(b) may at any time assign a member appointed under paragraph 153(1)(a) to the Refugee Protection Division, the Refugee Appeal Division and the Immigration Appeal Division;

(c) may at any time, notwithstanding paragraph 153(1)(a), assign a member, other than a member of the Immigration Division, to work in another regional or district office in order to satisfy operational requirements, but an assignment may not exceed 90 days without the approval of the Governor in Council;

(d) designates from among the full-time members of the Board coordinating members for a Division, other than the Immigration Division;

(e) assigns administrative functions to the members of the Board;

(f) apportions work among the members of the Board and fixes the place, date and time of proceedings;

(g) takes any action that may be necessary to ensure that the members of the Board carry out their duties efficiently and without undue delay;

(h) may issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides, after consulting with the Deputy Chairpersons and the Director General of the Immigration Division, to assist members in carrying out their duties; and

(i) may appoint and, subject to the approval of the Treasury Board, fix the remuneration of experts or persons having special knowledge to assist the Divisions in any matter.

Delegation

(2) The Chairperson may delegate any of his or her powers under this Act to a member of the Board, other than a member of the Immigration Division, except that

(a) powers conferred under subsection 161(1) may not be delegated;

(b) powers referred to in paragraphs (1)(a) and (i) may be delegated to the Executive Director of the Board; and

(c) powers in relation to the Immigration Division may only be delegated to the Director General, directors or members of that Division.

Absence, incapacity or vacancy

160. In the event of the absence or incapacity of the Chairperson, or if the office of Chairperson is vacant, the Minister may authorize one of the Deputy Chairpersons or any other member of the Board to act as Chairperson.

FUNCTIONING OF BOARD

Rules

161. (1) Subject to the approval of the Governor in Council, and in consultation with the Deputy Chairpersons and the Director General of the Immigration Division, the Chairperson may make rules respecting

(a) the activities, practice and procedure of each of the Divisions of the Board, including the periods for appeal, the priority to be given to proceedings, the notice that is required and the period in which notice must be given;

(b) the conduct of persons in proceedings before the Board, as well as the consequences of, and sanctions for, the breach of those rules;

(c) the information that may be required and the manner in which, and the time within which, it must be provided with respect to a proceeding before the Board; and

(d) any other matter considered by the Chairperson to require rules.

Tabling in Parliament

(2) The Minister shall cause a copy of any rule made under subsection (1) to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the approval of the rule by the Governor in Council.

PROVISIONS THAT APPLY TO ALL DIVISIONS

Sole and exclusive jurisdiction

162. (1) Each Division of the Board has, in respect of proceedings brought before it under this Act, sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction.

Procedure

(2) Each Division shall deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

Composition of panels

163. Matters before a Division shall be conducted before a single member unless, except for matters before the Immigration Division, the Chairperson is of the opinion that a panel of three members should be constituted.

Presence of parties

164. Where a hearing is held by a Division, it may, in the Division's discretion, be conducted in the presence of, or by a means of live telecommunication with, the person who is the subject of the proceedings.

Powers of a commissioner

165. The Refugee Protection Division and the Immigration Division and each member of those Divisions have the powers and authority of a commissioner appointed under Part I of the *Inquiries Act* and may do any other thing they consider necessary to provide a full and proper hearing.

Proceedings — all Divisions

166. Proceedings before a Division are to be conducted as follows:

(a) subject to the other provisions of this section, proceedings must be held in public;

(b) on application or on its own initiative, the Division may conduct a proceeding in private, or take any other measure that it considers necessary to ensure the confidentiality of the proceedings, if, after having considered all available alternate measures, the Division is satisfied that there is

(i) a serious possibility that the life, liberty or security of a person will be endangered if the proceeding is held in public,

(ii) a real and substantial risk to the fairness of the proceeding such that the need to prevent disclosure outweighs the societal interest that the proceeding be conducted in public, or

(iii) a real and substantial risk that matters involving public security will be disclosed;

(c) subject to paragraph (d), proceedings before the Refugee Protection Division and the Immigration Division concerning a claimant of refugee protection, proceedings concerning cessation and vacation applications and proceedings before the Refugee Appeal Division must be held in private;

(d) on application or on its own initiative, the Division may conduct a proceeding in public, or take any other

measure that it considers necessary to ensure the appropriate access to the proceedings if, after having considered all available alternate measures and the factors set out in paragraph (b), the Division is satisfied that it is appropriate to do so;

(e) despite paragraphs (b) and (c), a representative or agent of the United Nations High Commissioner for Refugees is entitled to observe proceedings concerning a protected person or a person who has made a claim to refugee protection; and

(f) despite paragraph (e), the representative or agent may not observe any part of the proceedings that deals with information protected under subsection 86(1), or with information in respect of which an application has been made and not rejected under subsection 86(1).

Right to counsel

167. (1) Both a person who is the subject of Board proceedings and the Minister may, at their own expense, be represented by a barrister or solicitor or other counsel.

Representation

(2) If a person who is the subject of proceedings is under 18 years of age or unable, in the opinion of the applicable Division, to appreciate the nature of the proceedings, the Division shall designate a person to represent the person.

Abandonment of proceeding

168. (1) A Division may determine that a proceeding before it has been abandoned if the Division is of the opinion that the applicant is in default in the proceedings, including by failing to appear for a hearing, to provide information required by the Division or to communicate with the Division on being requested to do so.

Abuse of process

(2) A Division may refuse to allow an applicant to withdraw from a proceeding if it is of the opinion that the withdrawal would be an abuse of process under its rules.

Decisions and reasons

169. In the case of a decision of a Division, other than an interlocutory decision:

(a) the decision takes effect in accordance with the rules;

(b) reasons for the decision must be given;

(c) the decision may be rendered orally or in writing, except a decision of the Refugee Appeal Division, which must be rendered in writing;

(d) if the Refugee Protection Division rejects a claim, written reasons must be provided to the claimant and the Minister;

(e) if the person who is the subject of proceedings before the Board or the Minister requests reasons for a decision within 10 days of notification of the decision, or in circumstances set out in the rules of the Board, the Division must provide written reasons; and

(f) the period in which to apply for judicial review with respect to a decision of the Board is calculated from the giving of notice of the decision or from the sending of written reasons, whichever is later.

REFUGEE PROTECTION DIVISION

Proceedings

170. The Refugee Protection Division, in any proceeding before it,

(a) may inquire into any matter that it considers relevant to establishing whether a claim is well-founded;

(b) must hold a hearing;

(c) must notify the person who is the subject of the proceeding and the Minister of the hearing;

(d) must provide the Minister, on request, with the documents and information referred to in subsection 100(4);

(e) must give the person and the Minister a reasonable opportunity to present evidence, question witnesses and make representations;

(f) may, despite paragraph (b), allow a claim for refugee protection without a hearing, if the Minister has not notified the Division, within the period set out in the rules of the Board, of the Minister's intention to intervene;

(g) is not bound by any legal or technical rules of evidence;

(h) may receive and base a decision on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances; and

(i) may take notice of any facts that may be judicially noticed, any other generally recognized facts and any information or opinion that is within its specialized knowledge.

REFUGEE APPEAL DIVISION

Proceedings

171. In the case of a proceeding of the Refugee Appeal Division,

(a) the Minister may, after giving notice within the period that is required by the rules, intervene in the appeal, including for the purpose of filing submissions;

(b) the Division may take notice of any facts that may be judicially noticed and of any other generally recognized facts and any information or opinion that is within its specialized knowledge; and

(c) a decision of a panel of three members of the Refugee Appeal Division has, for the Refugee Protection Division and for a panel of one member of the Refugee Appeal Division, the same precedential value as a decision of an appeal court has for a trial court.

IMMIGRATION DIVISION

Composition

172. (1) The Immigration Division consists of the Director General and other directors and members necessary to carry out its functions and who are employed in accordance with the *Public Service Employment Act*.

Powers

(2) The Director General and the directors of the Immigration Division have all the powers and may carry out the duties and functions of members of the Division.

Proceedings

173. The Immigration Division, in any proceeding before it,

(a) must, where practicable, hold a hearing;

(b) must give notice of the proceeding to the Minister and to the person who is the subject of the proceeding and hear the matter without delay;

(c) is not bound by any legal or technical rules of evidence; and

(d) may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.

IMMIGRATION APPEAL DIVISION

Court of record

174. (1) The Immigration Appeal Division is a court of record and shall have an official seal, which shall be judicially noticed.

Powers

(2) The Immigration Appeal Division has all the powers, rights and privileges vested in a superior court of record with respect to any matter necessary for the exercise of its jurisdiction, including the swearing and examination of witnesses, the production and inspection of documents and the enforcement of its orders.

Proceedings

175. (1) The Immigration Appeal Division, in any proceeding before it,

(a) must, in the case of an appeal under subsection 63(4), hold a hearing;

(b) is not bound by any legal or technical rules of evidence; and

(c) may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.

Presence of permanent resident

(2) In the case of an appeal by a permanent resident under subsection 63(4), the Immigration Appeal Division may, after considering submissions from the Minister and the permanent resident and if satisfied that the presence of the permanent resident at the hearing is necessary, order the permanent resident to physically appear at the hearing, in which case an officer shall issue a travel document for that purpose.

REMEDIAL AND DISCIPLINARY MEASURES

Request

176. (1) The Chairperson may request the Minister to decide whether any member, except a member of the

Immigration Division, should be subject to remedial or disciplinary measures for a reason set out in subsection (2).

Reasons

(2) The request is to be based on the reason that the member has become incapacitated from the proper execution of that office by reason of infirmity, has been guilty of misconduct, has failed in the proper execution of that office or has been placed, by conduct or otherwise, in a position that is incompatible with due execution of that office.

Measures

177. On receipt of the request, the Minister may take one or more of the following measures:

- (a) obtain, in an informal and expeditious manner, any information that the Minister considers necessary;
- (b) refer the matter for mediation, if the Minister is satisfied that the issues in relation to the request may be appropriately resolved by mediation;
- (c) request of the Governor in Council that an inquiry be held under section 178; or
- (d) advise the Chairperson that the Minister considers that it is not necessary to take further measures under this section or sections 178 to 185.

Appointment of inquirer

178. On receipt of a request referred to in paragraph 177(c), the Governor in Council may, on the recommendation of the Minister of Justice, appoint a judge of a superior court to conduct an inquiry.

Powers

179. The judge has all the powers, rights and privileges that are vested in a superior court, including the power

- (a) to issue a summons requiring any person to appear at the time and place mentioned in the summons to testify about all matters within that person's knowledge relative to the inquiry and to produce any document or thing relative to the inquiry that the person has or controls; and
- (b) to administer oaths and examine any person on oath.

Staff

180. The judge may engage the services of counsel and other persons having technical or specialized knowledge to assist the judge in conducting the inquiry, establish the terms and conditions of their engagement and, with the approval of the Treasury Board, fix and pay their remuneration and expenses.

Exceptions to public hearing

181. (1) An inquiry must be held in public. However, the judge may, on application, take any appropriate measures and make any order that the judge considers necessary to ensure the confidentiality of the inquiry if, after having considered all available alternate measures, the judge is satisfied that there is

- (a) a real and substantial risk that matters involving public security will be disclosed;
- (b) a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure

outweighs the societal interest that the inquiry be conducted in public; or

(c) a serious possibility that the life, liberty or security of a person will be endangered.

Confidentiality of application

(2) If the judge considers it appropriate, the judge may take any measures and make any order that the judge considers necessary to ensure the confidentiality of a hearing held in respect of an application under subsection (1).

Rules of evidence

182. (1) In conducting an inquiry, the judge is not bound by any legal or technical rules of evidence and may receive, and base a decision on, evidence presented in the proceedings that the judge considers credible or trustworthy in the circumstances of the case.

Intervenors

(2) An interested party may, with leave of the judge, intervene in an inquiry on any terms and conditions that the judge considers appropriate.

Right to be heard

183. The member who is the subject of the inquiry shall be given reasonable notice of the subject-matter of the inquiry and of the time and place of any hearing and shall be given an opportunity, in person or by counsel, to be heard at the hearing, to cross-examine witnesses and to present evidence.

Report to Minister

184. (1) After an inquiry has been completed, the judge must submit a report containing the judge's findings and recommendations, if any, to the Minister.

Recommendations

(2) The judge may, for any of the reasons set out in subsection 176(2), recommend in the report that the member be suspended without pay or removed from office or that any other disciplinary measure or any remedial measure be taken.

Transmission of report to Governor in Council

185. If the Minister receives a report of an inquiry in which the judge makes a recommendation, the Minister shall send the report to the Governor in Council who may, if the Governor in Council considers it appropriate, suspend the member without pay, remove the member from office or impose any other disciplinary measure or any remedial measure.

Rights not affected

186. Nothing in sections 176 to 185 affects any right or power of the Governor in Council in relation to the removal of a member from office for cause.

PART 5

TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND RELATED AMENDMENTS, COORDINATING AMENDMENTS, REPEALS AND COMING INTO FORCE

TRANSITIONAL PROVISIONS

Definition of "former Act"

187. For the purposes of sections 188 to 201, "former Act" means the *Immigration Act*, chapter I-2 of the Revised Statutes of Canada, 1985, and, where applicable, the regulations and rules made under it.

Continuation

188. (1) The Immigration and Refugee Board continued by section 57 of the former Act is hereby continued.

Chairperson, Deputy Chairpersons, Assistant Deputy Chairpersons

(2) The Chairperson, Deputy Chairpersons and Assistant Deputy Chairpersons appointed under the former Act continue in the same capacity with the Board until the expiry or revocation of their respective appointments.

Continuation — members

(3) A member appointed under the former Act to the Convention Refugee Determination Division or the Immigration Appeal Division continues in office as a member of the Board until the expiry or revocation of their appointment.

Executive Director

* (4) The person who, on the coming into force of this section, held the office of Executive Director of the Board is deemed to have been appointed to that office under section 158, without prejudice to any salary and benefits he or she may receive by virtue of having held that office before that coming into force.

* [Note: Section 188 in force June 28, 2002, see SI/2002-97.]

Powers

***189.** Sections 94.6, 102.001 to 102.003 and 107.1 of the former Act are, despite paragraph 274(a), deemed not to be repealed and the Minister may exercise any of the powers described in those sections with respect to any business or fund that was approved by the Minister before the coming into force of paragraph 274(a).

* [Note: Paragraph 274(a) in force June 28, 2002, see SI/2002-97.]

Application of this Act

***190.** Every application, proceeding or matter under the former Act that is pending or in progress immediately before the coming into force of this section shall be governed by this Act on that coming into force.

* [Note: Section 190 in force June 28, 2002, see SI/2002-97.]

Convention Refugee Determination Division

***191.** Every application, proceeding or matter before the Convention Refugee Determination Division under the former Act that is pending or in progress immediately before the coming into force of this section, in respect of which substantive evidence has been adduced but no decision has been made, shall be continued under the former Act by the Refugee Protection Division of the Board.

* [Note: Section 191 in force June 28, 2002, see SI/2002-97.]

Immigration Appeal Division

***192.** If a notice of appeal has been filed with the Immigration Appeal Division immediately before the coming into force of this section, the appeal shall be continued under the former Act by the Immigration Appeal Division of the Board.

* [Note: Section 192 in force June 28, 2002, see SI/2002-97.]

Continuation by Immigration Division

***193.** Every application, proceeding or matter before the Adjudication Division under the former Act that is pending or in progress immediately before the coming into force of this section, in respect of which substantive evidence has been adduced but no decision has been made, shall be continued under this Act by the Immigration Division of the Board.

* [Note: Section 193 in force June 28, 2002, see SI/2002-97.]

Refugee Protection Division

194. In cases referred to in section 191, a decision by the Refugee Protection Division following a hearing that has been commenced by the Convention Refugee Determination Division is not subject to an appeal under section 110.

Convention Refugee Determination Division

***195.** A decision made by the Convention Refugee Determination Division before the coming into force of this section is not subject to an appeal under section 110.

* [Note: Section 195 not in force.]

Appeals

***196.** Despite section 192, an appeal made to the Immigration Appeal Division before the coming into force of this section shall be discontinued if the appellant has not been granted a stay under the former Act and the appeal could not have been made because of section 64 of this Act.

* [Note: Section 196 in force June 28, 2002, see SI/2002-97.]

Stays

197. Despite section 192, if an appellant who has been granted a stay under the former Act breaches a condition of the stay, the appellant shall be subject to the provisions of section 64 and subsection 68(4) of this Act.

Refugee Protection Division

198. The Refugee Protection Division has jurisdiction to consider decisions of the Convention Refugee Determination Division that are set aside by the Federal Court, the Federal Court of Appeal or the Supreme Court of Canada, and shall dispose of those matters in accordance with the provisions of this Act.

2001, c. 27, s. 198; 2002, c. 8, s. 194.

Redetermination

199. Sections 112 to 114 apply to a redetermination of a decision set aside by the Federal Court with

respect to an application for landing as a member of the post-determination refugee claimants in Canada class within the meaning of the *Immigration Regulations, 1978*.

Exclusion

***200.** Subsection 31(1) does not apply with respect to persons who were permanent residents, within the meaning of the former Act, on the coming into force of this section.

* [Note: Section 200 in force June 28, 2002, see SI/2002-97.]

Regulations

201. The regulations may provide for measures regarding the transition between the former Act and this Act, including measures regarding classes of persons who will be subject in whole or in part to this Act or the former Act and measures regarding financial and enforcement matters.

CONSEQUENTIAL AND RELATED AMENDMENTS

Access to Information Act

202. [Amendment]

Agricultural Marketing Programs Act

203. [Amendment]

Animal Pedigree Act

204. and 205. [Amendments]

Bank Act

206. [Amendment]

Budget Implementation Act, 1998

207. [Amendment]

Business Development Bank of Canada Act

208. [Amendments]

Canada Business Corporations Act

209. [Amendment]

Canada Customs and Revenue Agency Act

210. [Amendment]

Canada Elections Act

211. to 214. [Amendments]

Canada Labour Code

215. [Amendment]

Canada Shipping Act

216. to 218. [Amendments]

Canada Student Financial Assistance Act

219. [Amendment]

Canada Student Loans Act

220. [Amendment]

Canada Transportation Act

221. and 222. [Amendments]

Canadian Security Intelligence Service Act

223. to 226. [Amendments]

Chemical Weapons Convention Implementation Act

227. [Amendment]

Citizenship Act

227.1 to 232. [Amendments]

Comprehensive Nuclear Test-Ban Treaty Implementation Act

233. [Amendment]

Cooperative Credit Associations Act

234. [Amendment]

Copyright Act

235. to 241. [Amendments]

Corrections and Conditional Release Act

242. and 243. [Amendments]

Criminal Code

244. [Amendment]

245. [Repealed, 2004, c. 15, s. 110]

246. and 247. [Amendments]

Emergencies Act

248. and 249. [Amendments]

Extradition Act

250. to 252. [Amendments]

Foreign Publishers Advertising Services Act

253. [Amendments]

Income Tax Act

254. [Amendment]

Insurance Companies Act

255. [Amendment]

International Centre for Human Rights and Democratic Development Act

256. to 258. [Amendments]

Investment Canada Act

259. [Amendment]

Labour Adjustment Benefits Act

260. [Amendment]

Mutual Legal Assistance in Criminal Matters Act

261. [Amendments]

National Energy Board Act

262. [Amendment]

Old Age Security Act

263. to 267. [Amendments]

Pilotage Act

268. [Amendment]

Privacy Act

269. [Amendment]

Proceeds of Crime (Money Laundering) Act

270. [Amendment]

Trade-marks Act

271. [Amendment]

Trust and Loan Companies Act

272. [Amendment]

Terminology

Terminology

273. Unless the context requires otherwise, “*Immigration Act*” is replaced by “*Immigration and Refugee Protection Act*” in

(a) any regulation, as defined in section 2 of the *Statutory Instruments Act*, and

(b) any other instrument made

(i) in the execution of a power conferred by or under an Act of Parliament, or

(ii) by or under the authority of the Governor in Council.

COORDINATING AMENDMENTS

273.1 [Amendments]

REPEALS

274. [Repeals]

COMING INTO FORCE

Coming into force

***275.** The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

* [Note: Sections 1 and 4 in force December 6, 2001, see SI/2001-119; sections 2, 3, 5 to 72, 74 to 109, 112 to 170, 172 to 193, 196 to 244 and 246 to 274 in force June 28, 2002, see SI/2002-97.]

SCHEDULE

(Subsection 2(1))

SECTIONS E AND F OF ARTICLE 1 OF THE UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

ARTICLE 1 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

AMENDMENT NOT IN FORCE

-- 2005, c. 20, s. 81:

81. Section 100 of the *Immigration and Refugee Protection Act* is amended by adding the following after subsection (4):

Quarantine Act

(5) If a traveller is detained or isolated under the *Quarantine Act*, the period referred to in subsections (1) and (3) does not begin to run until the day on which the detention or isolation ends.

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