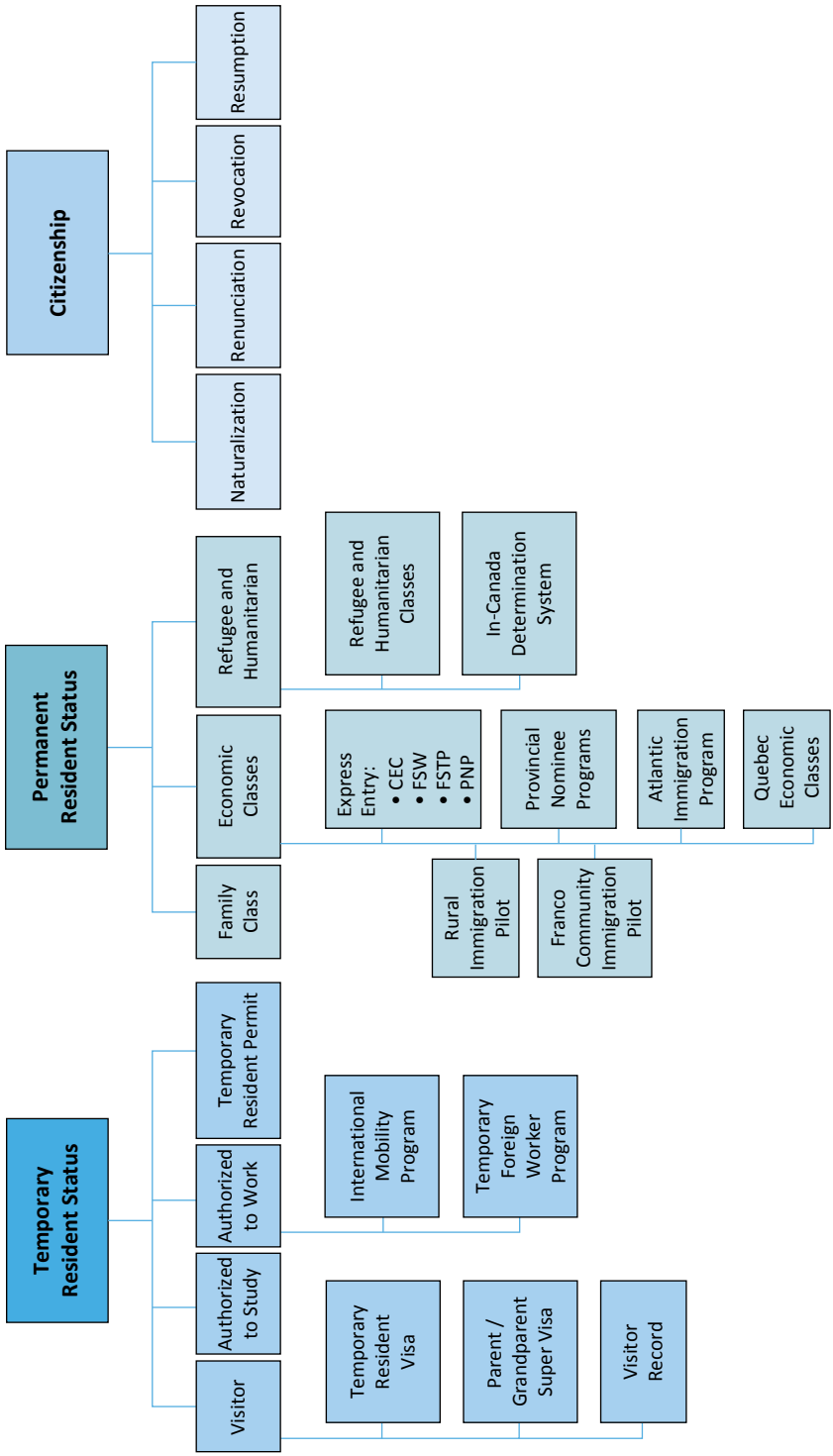
PART I

The Fundamentals of Immigration and Refugee Law

CHAPTER 1 Introduction
CHAPTER 2 Decision-Makers
CHAPTER 3 Admissibility

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Citizenship and Immigration Classes and Programs



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I. Introduction

Canada is a country with a highly developed social support system, a diverse population, and incredible natural resources. As a result, it is a highly attractive destination for people from around the world.

Over the past decade, Canada has granted permanent resident status in increasing numbers from approximately 300,000 to 475,000 people per year.[1] The 2025-2026 Departmental Plan shifted dramatically toward lower numbers, reducing overall temporary resident volumes to about 5 percent of Canada's population, and also reducing permanent resident intake. This shift was in response to concerns around infrastructure capacity and public confidence in the immigration system.[2] New in the 2025-2026 plan was a commitment to caps and restrictions on temporary residents, including international students and foreign workers.

It is now undeniable that a globalized economy goes beyond the exchange of goods, technologies, and services across international borders; this expansion is illustrated by the rise in the movement of people—individuals with specific technical skills, financial assets ready to be invested, and various cultural backgrounds to add to Canada's social fabric. While the movement of so many people can assist in accessing untapped markets throughout the world, in the midst of this Canada is also witnessing a very rare public backlash against sustained high levels of immigration.[3]

Canada, with its long history of managed immigration, is probably one of the most successful modern economies that is taking advantage of the potential in foreign human capital. Aided by a reputation for a high standard of living, cities that are recognized to be some of the best urban areas to live in the world, and an international reputation for its tolerant approach to newcomers,[4] Canada has, until recently, been

1 Immigration, Refugees and Citizenship Canada [IRCC], "Immigration, Refugees and Citizenship Canada's 2025-26 Departmental Plan" (last modified 24 September 2025), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/departmental-plans/2025-26-departmental-plan/departmental-plan-2025-2026-full.html>.

2 Nadine Yousif & Jessica Murphy, "How Canada Soured on Immigration" (25 October 2024), online: <https://www.bbc.com/news/articles/cp9z5rpgkyeo>.

3 Rupa Banerjee et al, "Canada's Long-Standing Openness to Immigration Comes Under Pressure" (24 June 2025), online: <https://www.migrationpolicy.org/article/canada-immigration-policy-inflection-point>.

4 Organisation for Economic Co-operation and Development [OECD], *Society at a Glance 2011: OECD Social Indicators* (Paris: OECD, 2011) at 98, online (pdf): <https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/04/society-at-a-glance-2011_g1g12dd2/soc_glance-2011-en.pdf>.

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perceived as a destination of choice for those seeking new opportunities for themselves and their families.[5]

While the overall total number of immigrants to Canada has increased over the last 40 years, its composition has also changed in a significant manner. Whereas the reunification of family members was seen as a cornerstone of Canadian immigration policy in the mid-1980s, young economic migrants now represent the major category.[6] Immigration has moved from a simple demographic tool to an important component of the country's economic engine.

In addition to an increase in numbers, the immigration process itself has become extremely complex. The roles and responsibilities of the provinces and territories, which were negligible in the early 1990s, have now become a significant part of the immigration equation. For example, now the targets for annual immigration levels are determined after lengthy discussions between federal authorities and provincial and territorial authorities.

The advent of community-driven immigration programs further adds to the already complex immigration landscape. The Yukon Community Pilot (closed June 30, 2025), the Rural Community Immigration Pilot, and the Morden [Manitoba] Community Driven Immigration Initiative each had their own eligibility requirements and were specifically designed to attract economic immigrants to communities outside of the larger metropolitan cities.

The criteria and definitions found within the various programs can, in some instances, appear complicated and are often subject to interpretation. The number of cases argued in front of the courts based on a divergent understanding of the legislation demonstrates how intricate the rules have become.

Two programs that best exemplify this complexity are the Express Entry (EE) process and Provincial Nominee Program (PNP), which encourage individuals to work toward permanent resident status in Canada. In programs such as these, the government has made a clear shift toward encouraging individuals to "earn" permanent resident status in Canada.

Historically, as a subset of the economic migrant class, the Business Immigration Program comprised three main categories: entrepreneur, self-employed, and investor. As of this writing, only the self-employed category is operational at the federal level (though paused as of 2026), but many provinces have an entrepreneur category.

5 OECD/Bertelsmann Stiftung, "How Do OECD Countries Compare in Their Attractiveness for Talented Migrants?" *Migration and Policy Debates*, No 19 (Paris: OECD, 2019), online (pdf): <https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/05/how-do-oecd-countries-compare-in-their-attractiveness-for-talented-migrants_aaf3f7c8/ba9ce632-en.pdf>. See also Diana Roy & Amelia Cheatham, "What Is Canada's Immigration Policy?" (last modified 17 October 2025), online: <https://www.cfr.org/backgrounder/what-canadas-immigration-policy>.

6 In 1985, 41 percent of newcomers were in the family class category, while 31 percent were in the economic category.

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While the *Immigration Act*[7] of 1976 enshrined Canada's commitment to members of the family class and the fulfillment of Canada's international obligations (i.e., refugees), the overall objectives of the legislation were achieved for the first time through the monitoring of Canada's annual immigration levels. This also meant that the government could finally use immigration as a way to respond to Canada's economic needs (i.e., to increase levels of immigration in certain categories and reduce it in others).

Amendments to the *Immigration Act* in 1983 and 1986 saw the introduction of the entrepreneur and investor categories, respectively. Individuals in both of these categories would be selected on the basis of their business experience, but those applying through the investor category would be required only to invest a significant amount of capital for a fixed period of time, without the requirement to actively manage a business in Canada. Investors wanted a management-free approach to their investment, unlike those in the entrepreneur category, who would receive permanent resident status on the condition that they establish a viable business venture in Canada after immigrating.

In June 2002, the *Immigration and Refugee Protection Act*[8] came into effect and replaced the *Immigration Act* of 1976. The new legislation was introduced in the spring/summer of 2001, prior to the events of September 11, but came into effect in June 2002. The new legislation aimed to close up perceived holes in the immigration system by providing specific definitions that outlined what was being included in the new legislation while attempting to balance Canada's economic needs with its humanitarian and compassionate reputation.

In addition, a reading of the objectives of the IRPA reveals that the economic benefits of immigration and the support it provides to the development of a strong economy had become a cornerstone of Canadian immigration policy.[9] Important amendments were made to the definitions of independent applicants and criteria pertaining to the business category. Moreover, the provinces and territories began to play larger, more enticing roles to boost immigration and support their local economies.

The creation of ministerial instructions (MIs) has challenged the way Canadian immigration practitioners perceive, interpret, and apply the law and policy. The IRPA granted the minister of immigration, refugees, and citizenship the authority to create MIs,[10] which had to be followed despite not having been vetted and approved by Parliament. The MIs were more than policy, but less than law.

The first set of MIs was issued in November 2008, and ever since, this mechanism has significantly changed the way immigration files are selected and processed. The MIs allow the minister to unilaterally alter the processing of immigration files. As of

7 SC 1976-77, c 52, s 1.

8 SC 2001, c 27 [IRPA].

9 See IRPA, s 3.

10 IRPA, s 14.1.

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this writing, Bill C-12 threatens to completely blow open the doors on the minister's power to cancel entire categories of visa processing, and to cancel even validly issued visas/permits.[11]

What has not changed over the years is the complexity of the legislative and regulatory language; definitions and requirements are increasingly complex, particularly to the uninitiated. Although IRCC, formerly known as Citizenship and Immigration Canada, offers the vast majority of the information online for free, specific information can be challenging to locate and is often a patchwork of several documents.[12] In addition to the IRPA and its regulations, there are manuals, instruction guides, policy papers, bilateral agreements, MIs, online Q&As, and operational bulletins, all of which are aimed at guiding officers in their decision-making. Making these documents publicly available has the added benefit of assisting practitioners and self-representing prospective immigrants to Canada in understanding the decision-making process.

Consideration should also be given to the pertinent body of case law that exists. The Federal Court, the Federal Court of Appeal, and the Supreme Court of Canada have also rendered decisions that have affected immigration processes and the interpretation of the legislation.

All of the above-noted information should be considered in light of the fact that, irrespective of the immigration category or stream under which a person has submitted an application, the onus is always on the person applying ("the applicant") to clearly demonstrate that they meet all of the requirements. This is a critical factor, as all too often individuals do not provide enough of the required documentation to clearly demonstrate that they meet *all* of the necessary elements of the immigration category under which they have applied and, thus, are refused.

II. Immigration Overview

Generally, an individual's status in Canada falls into one of four categories: temporary resident, permanent resident, Convention refugee/protected person, or citizen. Each status possesses its own set of laws, policies, and procedures.

11 Bill C-12, *Strengthening Canada's Immigration System and Borders Act*, 1st Sess, 45th Parl, 2026 (assented to 26 March 2026) SC 2026, c 4; Canadian Immigration Lawyers Association, "Bill C-12 Introduces Sweeping Changes to Immigration Law Under the Guise of Border Security" (16 October 2025), online: <https://cila.co/bill-c-12-introduces-sweeping-changes-to-immigration-law-under-the-guise-of-border-security>.

12 For example, there used to be a Foreign Worker Manual—FW 1 (which had everything in one PDF document), but now there are multiple website pages, operational bulletins, MIs, and program delivery instructions. Therefore, an applicant should review all these sources to ensure they qualify. See IRCC, "Operational Instructions and Guidelines" (last modified 4 June 2026), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals.html>.

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The various immigration processes are divided into two broad categories: temporary resident status and permanent resident status.

Briefly, temporary resident status may be granted to a foreign national who would like to visit, work, or study in Canada for a limited time. In comparison, a foreign national who wishes to remain in Canada permanently must submit an application for permanent resident status through one of the numerous immigration processing streams, such as EE, a PNP, refugee/humanitarian classes, or the family class. Once the application has been approved by IRCC, the foreign national is then granted permanent resident status and may live in Canada indefinitely.

It is important to note that a foreign national must, while in Canada, maintain valid temporary resident status, even if their application requesting permanent resident status is being processed by IRCC.

To gain admission to Canada as a temporary resident, a foreign national must submit an application to IRCC for processing unless they are from a visa-exempt country. A foreign national who is a citizen of a visa-exempt country can submit a request for entry at the border, although there are exceptions to this general rule (see Chapter 4, Temporary Resident Status: Introduction, Visitors, and Temporary Resident Permits). Please note that most visa-exempt persons still require an Electronic Travel Authorization in order to board a commercial vessel bound for Canada.

Foreign nationals who arrive at the border without the proper authorizations in hand may be removed immediately from Canada or may be required to appear before the Immigration and Refugee Board of Canada (IRB) (see Chapter 15, Immigration Hearings and Detention) unless they arrive in search of protection and make a refugee claim (see Chapter 12, Refugees and Protected Persons).

Navigating through the temporary resident process can be extraordinarily difficult, especially with the establishment of the Electronic Travel Authorization requirement, biometric data collection, the use of visa application centres, and changes effected by MIs.

The permanent resident process has also become quite complex. For example, Canada's EE system is an online administrative process that allows the Government of Canada to manage and invite foreign nationals to proceed through the immigration process. Through this channel, foreign nationals are required to submit an online profile and are awarded "points" for meeting the various criteria. The government will then invite applicants who have the requisite number of points to proceed to the application phase.

An argument can be made that this administrative process changes the legal requirements for obtaining permanent resident status through one of IRCC's programs (Canadian Experience Class, Federal Skilled Worker Program, etc.), because a foreign national is prohibited from submitting an application unless they have first been selected through the EE system.

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The rights of permanent residents to enter and remain in Canada are determined solely by the IRPA and the *Immigration and Refugee Protection Regulations*.[13] The legislation provides that, under certain conditions, a permanent resident may lose that status and be forced to leave Canada (see Chapter 6, Permanent Resident Status: Introduction and Residency Requirements).

Once a permanent resident has accumulated enough physical presence in Canada, they may submit an application for Canadian citizenship. Historically, Canadian citizenship was irrevocable; however, it is now possible—in very limited circumstances—for an individual to lose Canadian citizenship (see Chapter 11, Citizenship).[14]

This book examines the laws, case law, policies, and processes involved in obtaining the various types of status in Canada and provides guidance on how to successfully manoeuvre through the system.

III. The Management of Immigration and Citizenship Programs

Canada's immigration management scheme is created by the IRPA, which was passed into law in 2001 and came into force on June 28, 2002, replacing the *Immigration Act* of 1976. Although the minister of immigration, refugees, and citizenship is responsible for the overall administration of the Act, two other ministers have significant responsibilities under the IRPA: the minister of public safety (the PS minister)[15] and the minister of employment and social development (the ESDC minister).

The PS minister is responsible for the administration of the following:[16]

- examinations at ports of entry;
- the enforcement of the IRPA, including arrest, detention, and removal;
- the establishment of policies respecting the enforcement of the IRPA and inadmissibility on grounds of security, organized criminality, or violating human or international rights; and
- declarations referred to in section 42.1 (known as "ministerial relief").

13 SOR/2002-227 [IRPR].

14 Since May 2015, the *Strengthening Canadian Citizenship Act*, SC 2014, c 22 has permitted citizenship to be revoked. It was partially repealed by the Liberal government. In June 2017, Bill C-6 received royal assent and this provision was amended to ensure that the Federal Court became the decision-maker in citizenship revocation cases, unless the applicant requests that the minister render the decision.

15 IRPA, s 4; public safety was previously administered by a single minister of public safety and emergency preparedness, but the role was split in October 2021. See Matt Horwood, "Splitting Public Safety, Emergency Preparedness Post a Sign Future Disasters Are 'Top of Mind' for Feds," *Hill Times* (9 November 2021), online: <https://www.hilltimes.com/2021/11/09/splitting-public-safety-emergency-preparedness-post-a-sign-future-disasters-are-top-of-mind-for-feds/327610>.

16 IRPA, s 4(2).

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These goals are achieved through the Canada Border Services Agency (CBSA), which was created in 2003;[17] the president of the CBSA reports directly to the PS minister.

The ESDC minister is responsible for making regulations that pertain to the following:[18]

- conditions that may be imposed on individuals by class, employers, and/or educational institutions in respect of permanent residents and foreign nationals;
- the power to inspect and verify employer compliance; and
- the consequences of non-compliance or contravention by an employer.

Service Canada is the section of Employment and Social Development Canada that is responsible for the delivery and review of employer approvals and compliance.

Understanding the division and delegation of responsibilities under the IRPA is essential to the practice of immigration law. It is important to ensure that the appropriate government official does in fact have the authority to render a determination given in a case, or the decision can be overturned. In the *Instrument of Designation and Delegation*,[19] the Minister clearly outlines the authority associated with various sections of the IRPA and the government official or office responsible for each section. The CBSA document "Delegation of Authority and Designations of Officers by the Minister of Public Safety and Emergency Preparedness Under the Immigration and Refugee Protection Act and the Immigration and Refugee Protection Regulations"[20] outlines which CBSA officer or office is authorized to perform which duty or function.

Canada's immigration program is managed by several government departments that work together to achieve the goals and objectives of the legislation. In comparison, Canada's citizenship program is managed solely by the minister through IRCC.

As mentioned, with immigration and citizenship law, a variety of government departments and officials enter the process at different stages. Therefore, it is important to ensure that officers render decisions within the scope of their authority and that applicant files are processed efficiently in accordance with the law.

To effectively manage Canada's immigration processes, IRCC implemented the Global Case Management System (GCMS). The GCMS is an "integrated and

17 *Canada Border Services Agency Act*, SC 2005, c 38 (assented to 3 November 2005).

18 IRPA, ss 32(d.1)-(d.4).

19 IRCC, *Instrument of Designation and Delegation: Immigration and Refugee Protection Act and Regulations* (Ottawa: IRCC, 2025), online (pdf): <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/il/il3-eng.pdf>.

20 (Last modified 24 January 2018), online: <https://www.cbsa-asfc.gc.ca/agency-agence/actreg-loireg/delegation/irpa-lipr-2016-07-eng.html>. See also CBSA, "Amendment to the Delegation of the Powers, Duties, and Functions of the President of the Canada Border Services Agency and Designation of Officers Under the Customs Act" (last modified 28 May 2021), online: <https://www.cbsa-asfc.gc.ca/agency-agence/actreg-loireg/delegation/custom_douane2021-04-27-eng.html>.

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worldwide [computer] system used internally to process applications for citizenship and immigration services."[21]

Prior to the existence of the GCMS system, the various departments had completely separate computer systems; interestingly, IRCC had two separate systems: the Computer Assisted Immigration Processing System (CAIPS) and the Field Operational Support System (FOSS). CAIPS was the computer system that visa offices outside Canada would use to manage immigration applications, and FOSS was the operational support system used within Canada.

The consolidation of these two computer systems gave IRCC a single global system with cross-departmental access, yielding stronger program integrity, greater efficiency, and improved service delivery. For example, the GCMS allows for the verification of biometric data at the border, tracks the travel patterns of foreign nationals, allows officers to cross-reference the data from historical applications, and can trigger examinations into potential abuses.

Technological advancements will continue to affect the management of Canada's immigration processes and will continue to be an organizational priority for IRCC, as stated in the developmental plan for IRCC for 2025-26.[22] The increased use of data analytics in immigration decision-making is currently a very controversial topic in the immigration advocacy community.[23]

In line with this approach, the government introduced and passed Bill C-21, *An Act to Amend the Customs Act*,[24] which permits the CBSA to collect personal biographic data on individuals who are departing Canada and authorizes the disclosure of the information to other government departments and partners.

21 IRCC, "Privacy Impact Assessment Summary—Global Case Management System (GCMS)—Phase II" (last modified 16 October 2017) at para 1, online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/access-information-privacy/privacy-impact-assessment/global-case-management-system-2.html>.

22 See "Immigration, Refugees and Citizenship Canada's 2025-26 Departmental Plan," *supra* note 1.

23 Radio Canada International, "Immigration Lawyers Concerned IRCC's Use of Processing Technology Leading to Unfair Visa Refusals" (16 September 2025), online: <https://ici.radio-canada.ca/rci/en/news/2192570/immigration-lawyers-concerned-irccs-use-of-processing-technology-leading-to-unfair-visa-refusals>.

24 CBSA, "Royal Assent of Bill C-21 Strengthens Border Management" (last modified 14 December 2018), online: <https://www.canada.ca/en/border-services-agency/news/2018/12/royal-assent-of-bill-c-21-strengthens-border-management.html>.

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IV. Sources of Immigration, Refugee, and Citizenship Law

Immigration in Canada is governed by both domestic law and international law. Domestic law governing immigration includes the Constitution (which includes the *Canadian Charter of Rights and Freedoms*[25]), the *Canadian Bill of Rights*,[26] federal and provincial statutes and regulations, and case law. The primary sources of immigration law are the federal IRPA, the IRPR under that statute, and case law interpreting the statute and regulations. The federal–provincial agreements that govern immigration to a particular province are also considered domestic law. The *Citizenship Act*[27] is another important federal statute, as it sets out the procedures for obtaining Canadian citizenship.

International law includes multinational treaties and conventions. Canada has signed and ratified a number of international agreements that affect our immigration rules—for example, the 1951 United Nations *Convention Relating to the Status of Refugees*[28] and the accompanying 1967 *Protocol Relating to the Status of Refugees*,[29] as well as the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.[30] By ratifying and implementing these agreements, Canada has committed to structuring our domestic law in a manner that is consistent with the legislative models in other like-minded countries.

Some of these treaties are multilateral, involving many countries. Others relate to a few specific countries—for example, the Canada–United States–Mexico Agreement (CUSMA; formerly known as NAFTA), which contains specific provisions to facilitate temporary business entry among Canada, the United States, and Mexico.

Section 7 of the IRPA grants the minister of immigration, refugees, and citizenship the power to enter into agreements with other countries or with certain international organizations. These agreements must be approved by the federal Cabinet (they are tabled in the House of Commons before ratification) and must be implemented in a manner that is consistent with the purposes of the IRPA.

25 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

26 SC 1960, c 44.

27 RSC 1985, c C-29.

28 United Nations, 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954), online (pdf): <https://www.ohchr.org/sites/default/files/refugees.pdf>.

29 United Nations, 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967), online (pdf): <https://www.ohchr.org/Documents/ProfessionalInterest/protocolrefugees.pdf>.

30 United Nations, 29 May 1993, 1870 UNTS 167 (entered into force 1 May 1995), online (pdf): <https://assets.hcch.net/docs/77e12f23-d3dc-4851-8f0b-050f71a16947.pdf>.

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A. The Immigration and Refugee Protection Act and Regulations: Overview

The IRPA came into force on June 28, 2002, replacing the *Immigration Act* of 1976. It introduced new provisions designed to increase national security and public safety, balanced with provisions intended to make it simpler for admissible persons to enter Canada.

The IRPA provides a framework for the operation of Canada's immigration and refugee systems, setting out general rules and principles, rights and obligations of permanent and temporary residents and protected persons, and key enforcement provisions. The IRPR provide the details needed for its implementation and operation. The IRPA and IRPR change relatively frequently, and legal professionals are encouraged to regularly review the IRCC website (<https://www.canada.ca/en/immigration-refugees-citizenship.html>), the Justice Laws website (<https://laws.justice.gc.ca/eng>), and the *Canada Gazette* website (<https://gazette.gc.ca/accueil-home-eng.html>) for the most up-to-date information.

1. IRPA Objectives

The IRPA sets out separate objectives for the provisions regarding immigrants and the provisions regarding refugees. The objectives offer important guidance to immigration officers, the IRB, and the courts with respect to how the statute should be applied and interpreted.

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

- to maximize the social, cultural, and economic benefits of immigration;
- to enrich and strengthen the social and cultural fabric of Canadian society while respecting the federal, bilingual, and multicultural character of Canada;
- to support and assist the development of minority official language communities in Canada;
- to support the development of a strong and prosperous Canadian economy in which the benefits of immigration are shared across all regions of Canada;
- to reunite families in Canada;
- to integrate permanent residents into Canada, while recognizing mutual obligations for new immigrants and Canadian society;
- to support consistent standards and prompt processing;
- 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;
- to protect the health and safety of Canadians and maintain the security of Canadian society;

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- 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 who pose security risks; and
- to cooperate with the provinces to better recognize the foreign credentials of permanent residents.

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

- to recognize that the priority of the IRPA is to save lives and protect displaced and persecuted persons;
- to fulfill Canada's international legal obligations with respect to refugees and affirm its commitment to international efforts to assist with resettlement;
- to grant fair consideration to those who come to Canada claiming persecution;
- to offer a safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, as well as persons at risk of torture or cruel and unusual treatment or punishment;
- 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;
- to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;
- to protect the health and safety of Canadians and maintain the security of Canadian society; and
- to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.

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

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2. The Immigration and Refugee Board

The structure and mandate of the IRB—a federal administrative tribunal—are created by the IRPA. The IRB has four divisions: the Immigration Division, the Immigration Appeal Division, the Refugee Protection Division, and the Refugee Appeal Division. Within these divisions, members perform the following functions:

- hold admissibility hearings to determine whether individuals may enter or remain in Canada,
- hold detention reviews,
- hear and decide appeals on immigration matters (such as sponsorship refusals, removal orders of permanent residents, and alleged breaches of the permanent resident residency obligation), and
- decide refugee claims made by individuals in Canada.

The IRB's decisions are usually subject to judicial review by the Federal Court of Canada.

B. Policy

Immigration policies are an important source of guidance and direction. How the law is applied in practice often evolves in response to government policy, especially where the law leaves room for discretion in administrative decision-making. Immigration policies can also have a wide range of objectives, such as promoting fairness and determining the areas to which the government should give priority.

IRCC publishes most immigration policies on its website in the form of operational bulletins and program delivery instructions, the web-friendly format that outlines operational guidance.

C. The Constitution

The *Constitution Act, 1867*[31] (formerly the *British North America Act, 1867*[32]) is a major part of Canada's Constitution and formally created a federal dominion. It outlines the structure and defines the functions of the Government of Canada, the House of Commons, the Senate, and the justice system. It also sets out the division of powers between two levels of government—federal and provincial/territorial.

Interestingly, Canada's Constitution and its original and defining source of law, the *British North America Act, 1867* and its amendments (statutes of the Parliament of the United Kingdom), provided the framework for Canada's democracy. However, it permitted only the United Kingdom to make certain constitutional amendments. It

31 30 & 31 Vict, c 3 (UK), reprinted in RSC 1985, Appendix II, No 5.

32 SS 1867, c 3.

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was not until the *Canada Act, 1982*,[33] a British statute, that this changed and Canada's Parliament and legislatures were given the power to amend the Constitution without any involvement of the British Parliament. The *Canada Act, 1982* allowed for the patriation of Canada's Constitution, and Schedule B of the *Canada Act, 1982* included the text of the *Constitution Act, 1982* in both English and French. A truly Canadian constitution was created with the *Constitution Act, 1982*, which contains the Charter.

1. Section 95: Concurrent Powers of Legislation

With respect to agriculture and immigration, the *Constitution Act, 1867* makes a special provision for the division of powers. With respect to immigration, section 95 states the following:

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

Therefore, a province may make laws in relation to the immigration of people into the province, provided that those laws are not inconsistent or in conflict with any federal law. In the area of immigration, the two levels of government hold concurrent powers of legislation. However, if there is a conflict between validly enacted federal and provincial legislation, it is the federal legislation that prevails.

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

- Section 3(1)(c) refers to the objective "to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada."
- Section 3(1)(j) refers to the Act's objective "to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society."
- Section 8(1) states that the federal minister of immigration, refugees, and citizenship "may enter into an agreement with the government of any province for the purposes of this Act. The Minister must publish, once a year, a list of the federal–provincial agreements that are in force."
- Section 10(1) states that the minister "may consult with the governments of the provinces on immigration and refugee protection policies and programs, in

33 1982, c 11.

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order to facilitate cooperation and to take into consideration the effects that the implementation of this Act may have on the provinces."

a. Immigration Agreements

Section 8 of the IRPA provides that the minister, with the approval of the Cabinet, may enter into agreements with the provinces and territories. Each province has one or more such agreements in place, tailored to meet its specific economic, social, and labour market needs and priorities. These agreements facilitate the exchange of information between the federal government and the provinces during the development of immigration programs and policies. For example, the Canada–Ontario Immigration Agreement, first signed in 2005, provided that the federal government would transfer Cdn$920 million to Ontario over five years to assist with the integration of new immigrants, including language training. Some federal–provincial agreements are comprehensive and provide details on a wide range of immigration matters. The memorandum of understanding or immigration agreements that the federal government now has in place with British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Prince Edward Island, and Yukon are comprehensive in this way.

However, there are usually other, more detailed agreements[34] that cover specific subjects—for example, French-speaking immigrants or details pertaining to the PNP,[35] which are relevant to British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, and Yukon. The PNP allows a province or territory to nominate people as immigrants if it believes that they will contribute to the economic growth of the province or territory. Discussion of these provincial programs, each of which has its own criteria, is beyond the scope of this book.[36]

IRCC's *Annual Report to Parliament on Immigration* is generally a good source to check for information about current federal–provincial agreements. Counsel who are interested in a specific federal–provincial agreement or immigration program are

34 See e.g. the various Ontario–federal agreements and memorandums of understanding in place at IRCC, "Ontario—Federal–Provincial/Territorial Agreements" (last modified 1 June 2026), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/federal-provincial-territorial/ontario.html>.

35 Each province or territory calls the program by a different name. For the purpose of this book, the various provincial and territorial programs will be generically referred to as a PNP, unless otherwise indicated.

36 For more information, see IRCC, "Immigrate as a Provincial Nominee" (last modified 17 April 2026), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/provincial-nominees.html>.

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advised to search that province's website for specific information or to go to the IRCC website and read the department's latest annual report.[37]

b. Canada–Québec Accord

Canada and Quebec have had immigration agreements since 1971, the most recent being the 1991 Canada–Québec Accord.[38] From Quebec's perspective, two objectives are particularly important. Objective 2 states that, among other things, the Accord strives to maintain "the preservation of Québec's demographic importance within Canada and the integration of immigrants to that province in a manner that respects the distinct identity of Québec." Objective 4 states that "Québec has the rights and responsibilities set out in this Accord with respect to the number of immigrants destined to Québec and the selection, reception and integration of those immigrants."

Under the Accord, Quebec has the sole responsibility for the selection of permanent residents who wish to settle in that province. This is unlike any other federal–provincial immigration agreement. Immigrants who are destined for Quebec must first apply to the province for approval. Individuals who are successfully selected by Quebec are then referred to IRCC, whose officers review the file for inadmissibility and ensure that the applicants continue to meet the necessary provincial criteria throughout the federal aspect of processing up until the time of becoming a permanent resident. (The grounds of inadmissibility are discussed in Chapter 3, Admissibility.)

The federal government remains responsible for setting annual targets for the admission of all immigrants and visitors and for the administrative function of processing applications and physical admission to Canada at ports of entry. Quebec may impose additional selection criteria for immigrants to Quebec and is responsible for integrating immigrants into the community.

2. The Canadian Charter of Rights and Freedoms

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

37 As of this writing, see IRCC, *2025 Annual Report to Parliament on Immigration* (Ottawa: IRCC, 2025), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/annual-report-parliament-immigration-2025.html>.

38 IRCC, "Canada–Québec Accord Relating to Immigration and Temporary Admission of Aliens" (5 February 1991), online: <http://www.cic.gc.ca/english/department/laws-policy/agreements/quebec/can-que.asp>.

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D. The Citizenship Act

All the provisions of the current *Citizenship Act* came into full force and effect by 2018. The changes to this legislation have made it easier for a permanent resident of Canada to obtain Canadian citizenship. Under the new legislation, applicants can meet the "residency" requirement by being physically present in Canada for three years within the five years prior to the date of application instead of the previously required physical presence for four years out of five. Evidence of compliance with income tax provisions continues to be a requirement; however, the applicant is no longer required to demonstrate an intention to reside in Canada after citizenship has been granted. Historically, all citizens share the same rights and privileges, such as the right to vote and hold office, and all share the same obligations and duties. However, Canadian citizenship can be revoked from individuals who have committed certain acts against the state (e.g., terrorism or espionage) or who have obtained citizenship fraudulently.

The *Citizenship Act* permits multiple citizenships, allowing Canadians to be citizens of other countries as well as of Canada.

With a few exceptions, such as the children of diplomats, all persons born in Canada are Canadian citizens (*jus soli*). In some instances, a child who is born outside Canada and who has at least one Canadian ancestor could also be a Canadian citizen (*jus sanguinis*).[39]

V. Interpretation Tools

A. Immigration Regulations and Ministerial Instructions

Regulations and MIs under the IRPA must be published in the *Canada Gazette* along with a regulatory impact analysis statement. These explanatory notes are helpful in determining how the regulations or instructions are to be applied, and they generally cover points such as the following:

- description of the regulation, including its purpose and function;
- alternatives to the regulation that were considered;
- benefits and costs to the public of the regulation;
- consultations that took place with interested parties and the public in the drafting of the regulation; and
- compliance and enforcement issues.

There are numerous regulations under the IRPA, covering a variety of subject areas. The largest is the IRPR, which consists of 21 parts and provides detailed guidance regarding the application of the IRPA, including definitions of family

39 *An Act to Amend the Citizenship Act*, SC 2008, c 14.

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relationships; the criteria for applying to the various permanent and temporary resident programs; definitions of classes of refugees; and procedures for detentions, release, removals, and appeals.

Other regulations include the following:

- *Immigration Division Rules*;[40]
- *Refugee Protection Division Rules*;[41]
- *Refugee Appeal Division Rules*;[42]
- *Immigration Appeal Division Rules*;[43]
- *Federal Courts Citizenship, Immigration and Refugee Protection Rules*;[44] and
- *Protection of Passenger Information Regulations*.[45]

B. Citizenship Regulations

Similar to the regulations described above, the *Citizenship Regulations*[46] clarify some of the details for processing citizenship applications. For example, they provide specific criteria pertaining to adoptions, renunciation, revocation, and language. They also provide information about the oath of citizenship, the procedures for citizenship ceremonies, and the fees for becoming a citizen.

C. Policy Instruments

As noted above, policy fills in the gaps in a statute or its regulations and is intended to promote consistency, fairness, and transparency. Most policy develops and evolves over time on an informal basis and is influenced by Federal Court decisions.

1. IRCC Policy Instruments

IRCC uses a variety of policy instruments. Consider the following:

1. *Operational manuals and program delivery instructions*. IRCC publishes operational manuals and website instructions to assist applicants and to guide the activities of immigration and citizenship officers.

   Note that IRCC is no longer updating the manuals; instead, the department has made the program delivery instructions available online, in a modernized format.

40 SOR/2002-229.

41 SOR/2012-256.

42 SOR/2012-257.

43 SOR/2002-230.

44 SOR/93-22.

45 SOR/2005-346.

46 SOR/93-246.

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2. *Operational bulletins (OBs).* OBs are issued to deliver important practical instructions to officers and staff. The minister may issue a number of OBs each month, so it is advisable to check these regularly to see whether the processing of a given application will be affected. Both current and archived OBs can be found on the Publications and Manuals page on the IRCC website.

It is important to keep in mind that although these policy instruments are important, they are merely policy and do not have the force of law. In case of a divergence in the two, the law always prevails over policy.

2. Immigration and Refugee Board: Tribunal Rules and Policy Instruments

The IRB rules are generally binding, like any other regulations. The rules are authorized by section 161(1) of the IRPA and include rules of procedure for each of its divisions:

- *Immigration Appeal Division Rules*,[47]
- *Immigration Division Rules*,[48]
- *Refugee Protection Division Rules*,[49] and
- *Refugee Appeal Division Rules*.[50]

Consider the following policy instruments of the IRB:

1. *Chairperson's guidelines.* The chairperson's guidelines are authorized by section 159(1)(h) of the IRPA to provide guiding principles for resolving cases and to further the government's strategic objectives. The chairperson of the IRB is permitted to make guidelines, identify decisions as important precedents, and assist members of the IRB in carrying out their duties. Decision-makers are not required to follow the chairperson's guidelines but are required to justify cases of non-compliance. The following guidelines[51] existed as of June 2026:
   - Guideline 2: Detention;
   - Guideline 3: Proceedings Involving Minors at the Immigration and Refugee Board;

47 SOR/2002-230.

48 SOR/2002-229.

49 SOR/2012-256.

50 SOR/2012-257.

51 See IRB, "Chairperson's Guidelines" (last modified 12 August 2026), online: <https://irb.gc.ca/en/legal-policy/policies/Pages/chairperson-guideline.aspx>. Note that Guideline 1 and Guideline 5 were revoked.

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- Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board;
- Guideline 6: Changing the Date or Time of a Proceeding;
- Guideline 7: Concerning Preparation and Conduct of a Hearing in the Refugee Protection Division;
- Guideline 8: Accessibility to IRB Proceedings—Procedural Accommodations and Substantive Considerations; and
- Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics.

2. *Jurisprudential guides*. The jurisprudential guides[52] are authorized by section 159(1)(h) of the IRPA. Their purpose is to facilitate consistency in decision-making in similar cases. A jurisprudential guide reiterates the reasoning of the IRB in a specific decision so that it can be applied in similar cases. The jurisprudential guides are not mandatory, but decision-makers are required to justify non-compliance with the guides in cases with similar facts.
3. *Persuasive decisions*. Persuasive decisions[53] are decisions identified by the deputy chairperson or director general, as the case may be, as being valuable and well-reasoned determinations. Decision-makers are encouraged to follow the same reasoning in their own decisions to ensure consistency. However, unlike with the jurisprudential guides, decision-makers are not required to justify their choice to not follow a persuasive decision.
4. *Policies*. Policies[54] are formal statements that provide operational guidance and outline administrative processes. The following are three examples of policies:
   - Policy on the Use of Social Media by Authorized Individuals at the Immigration and Refugee Board of Canada (updated May 2016),
   - Policy on Disclosing Information Regarding the Conduct of Authorized Representatives to Regulatory Bodies (September 2015), and
   - Reasons Review Policy (updated September 2021).
5. *Chairperson's instructions*. Chairperson's instructions provide formal direction to IRB staff with respect to their roles and responsibilities. These instructions are narrow in scope and seek to preserve the independence of the various boards.[55]

52 See IRB, "Jurisprudential Guides" (last modified 25 August 2023), online: <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/jurisprudential-guides.aspx>.

53 See IRB, "Decisions" (last modified 3 February 2025), online: <https://irb-cisr.gc.ca/en/decisions/Pages/index.aspx>.

54 See IRB, "Policies" (last modified 25 August 2023), online: <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/policies.aspx>.

55 See IRB, "Chairperson's Instructions" (last modified 25 August 2023), online: <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/chairperson-instructions.aspx>.

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