History:

* When Canada was a new nation, economic growth was essential, and was dependent on imm.
	+ Economic interests have always driven imm in Canada, has always been discretionary.
		- Discretion: MIs introduced in 2008 – allow Min to make decisions that fundamentally alter imm policies and programs w/out going through Parl process.
			* **S.87.3** = MIs.
* In the 60s and 70s, the gov liberalized a lot of policy, including imm policy.
	+ Eliminated explicitly racial policies, replaced w more direct economic provisions.

Policies:

* Libertarian:
	+ Begins with an assumption about the equal moral worth of indvs.
	+ Puts indvs before the community.
	+ Justification = imm system shouldn’t discriminate.
* Communitarian:
	+ Controlling who gets to be in is a powerful expression of a nation’s identity and autonomy.
	+ Justification = a comm is no longer a comm if it stops being self-defined, too many outsiders.

MAIN ACTORS

|  |  |
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| **CIC**: Citizenship and Imm Can | - Broad decision-making, receives all applications in and out of Can.- No enforcement, just decisions. |
| **CBSA**: Can Border Services Agency | - Enforcement (ie. Removals). |
| **IRB**: Imm and Ref Board of Can | - Administrative tribunal, deals w appeals of decisions. Branches:* **IAD**: Imm Appeal Division:
* - Family class, loss of status, removal orders.
* - Trial *de novo*.
* - Can hear H&C cases.
* **ID**: Imm Division:
* - Admissibility issues, detention reviews.
* - Sets aside decision if error in law/fact, breach of principle of natural justice.
 |
| **FC**: Federal Court | - Judicial review only (goes back to other off for redetermination).- Anything ID and IAD don’t do (ex. FSW app denial). |
| **FCA**: FC Appeal | - Certified questions of general importance only. |
| **SCC** | - Need leave to appeal from FCA |

PERMANENT RESIDENTS **Ss.27-28, R.70**

- Getting PR:

**S.21 + R.6** (meet obgs, obtain req docs, not inadmissible, arrive – have to apply before coming).

**R.70**: Apply, coming to establish PR, member of a class, meets criteria, not inadmissible.

- PR:

**S.27**: The right to enter and remain in Canada, subject to review and compliance w IRPA.

**S.28**: Residence obligations.

- Based on a 5-year period.

- For 2 years must be in Canada, OR fall under one of the exceptions.

- Discretion built in (2)(c) – H&C.

- Loss of status:

**S.46**: Failure to comply w s.28, removal order, etc.

- Accompanying family members:

 **R.70(4)**: FN who gets PR’s family will also get PR if not inadmissible.

- “Family” as defined in **R.1(3)** = spouse or CL, dependent child, dependent of dependent (**Rs.1-2**)

ECONOMIC CLASS

FEDERAL SKILLED WORKERS (FSW) **Rs.75-85**

- 3 categories: FN, PR, CZN.

- Can apply from in or out of Canada.

- No appeal to IAD, only recourse is to FC.

* No public aid, have to hire a lawyer.
* Judicial review only.
	+ Best shot is issue of procedural fairness, reviewed on standard of correctness. Otherwise standard is reasonableness, high level of deference.
* Deadlines to apply from time of FSW app denial:
	+ From outside Canada = 60 days.
	+ From inside Canada = 50 days.

- **If low-skilled worker, look at PNP**.

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| **R.75(2)**: Reqs | - **(a-c)**: In last 10 years, >1 years full-time paid work experience (or part) in NOC O/A/B, completed main duties of that job.- **(d)**: Language proficiency.- **(e)**: Can education credential or equivalency. |
| **MI 1** Nov.29/08 | - Application only considered if:* AEO (**R.82**).
* W/in listed occupations (see list).
* PhD stream (>2 years in, or completed <1 year ago).
 |
| **MI 2** June 6/10 | - Changed listed of accepted occupations.- Cap of 20,000 non-AEO apps, w max of 1,000 per occupational category.- Mandatory language testing |
| **MI 3** July 1/11 | - Reduced total cap to 10,000, w 500 per occupation. |
| **R.76**: Points system | - **(1)**: Need 67 points + sufficient settlement funds OR AEO.- **(3/4)**: Substituted evaluation. |
| **- R.78** | - Education |
| **- R.79** | - Language |
| **- R.80** | - Work experience |
| **- R.81** | - Age |
| **- R.82** | - AEO.- **(2)(a)**:LMO WP (**R.203**) valid at app *and* visa issuance, working for that employer, permanent.- **(2)(b)**:Intnl agreement WP (**R.204**) valid at app *and* visa issuance, working for that employer, permanent.- **(2)©**: No WP & not under **R.186** but has LMO-approved permanent offer.- **(2)(d)**: Non-LMO, non-intnl agreement WP but has LMO-approved offer. |
| **- R.83** | - Adaptability |
| Sharma v Min of Citizenship and Imm FC 2011 | - Denied PR (India, in NZ). Studying to be lawyer and accountant, no full time job. Issue = Off substituted neg eval (integration in labour market) (**R.76(3)(4)**).- Rsbl sub neg eval, BUT breach of procedural fairness b/c had enough points, didn’t know neg sub was happening, no chance to respond to concerns.- Onus on applicant, but may involve issues of procedural fairness. |
| Chowdhury v Min FC 2012 | - Denied PR (Bangladesh). Issue = point award for education (**R.78**).- Off Not rsbl: Lessened award for degree after 1st judicial review app, no notice (pro fair). For other degree, referenced different uni website, weird math.- Need right tool for the job, transparency. |
| Al Islamaili v Min FC 2012 | - Denied PR (Oman). Issue = details of employment not sufficient to meet def of FSW (**R.72(2)(b)(c)**).- Off rsbl: Off can’t assume role of pilot, or that being pilot means he met NOC req.- Onus on applicant to provide sufficient evidence. |
| Singh v Min FC 2012 | - Denied PR (India, in Aus). Issue = no points for adaptability (**R.83**), insufficient evidence of relationship to “family” in Canada.- Off rsbl: Gave reasons, didn’t have to ask for more info – onus on applicant. |
| Liang (and Gurung) v Min FC 2012 | - Seeking *mandamus* orders compelling Min to process their apps of PR under FSW. Liang selected to rep ppl who applied before MIs. Issue = Min unreasonably delayed processing by giving higher priority to newer apps w diff criteria.- Policy can’t account for delay. Min can set timelines BUT: - Liang: Specific section of IRPA says it can’t act retroactively. - Gurung: Gov made statement saying they would be processed in 6-12 months.- Court will use MI statements of timeslines as yardstick to measure rsbl time. |
| Grigaliunas v Min FC 2012 | - Denied PR (Poland). Issue = not enough points, economic establishment. Off rejected applicant’s request for reconsideration and sub eval (**R.76(3)**).- Off clearly considered possibility of using discretion, decided not to.- No obligation to exercise sub discretion, language is “may”. |

FEDERAL SKILLED TRADES **MI6**

- Capped at 3,000.

- 43 eligible occupations: industrial, electric, construction, maintenance, technical jobs, etc.

- Requirements:

 - 2 years work experience in skilled trade in last 5 years.

 - Language proficiency.

 - Full time job offer for >1 year, OR PNP certificate.

INVESTORS **R.90(1)**

- Temporarily suspended but “start up” visas now in place (private partnership/approved biz venture).

- Need net worth of $1.6 million, must invest $800,000 – diff point system.

ENTREPRENEURS **Rs.97, 98**

- Must control >33.3% of qualifying biz, create >1 job.

- Currently suspended.

SELF-EMPLOYED PERSONS **Rs.88(1), 100-102**

- Significant contribution to specific econ activities – world-class athletes, artists, musicians, farm mgrs.

- Possibility if you see a cultural contribution, always provide alternatives.

CANADIAN EXPERIENCE CLASS (CIC) **R.87.1**

- Can only apply from w/in Canada

- No substituted evaluation.

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| **R.87.1** CIC | - **(2)(a)(b)(c)**: W/in last 3 yrs, >1 of work experience in O/A/B, performed duties.- **(2)(d)**: Language proficiency (based on job).- **(3)(a)(b)**: Employment during full-time student, self-employment, and unauthorized work don’t count.- **(3)(c)**: Had to have TR status during work or study. |
| **MI 10** | - Part-time work during full-time studies counts.- Excluded 6 common NOC B categories:* Cooks (6322), Food service supervisors (6311), Admin officers (1221), Admin assistants (1241), Accounting techs and bookkeepers (1311), Retail sales supervisors (6211).

- Cap of 200 for each NOC B, w/in total of 12,000. |

PROVINCIAL NOMINATION PROGRAM(PNP) **R.87**

- Get nomination certificate from prov, CIC makes final decision, sub eval possible.

* Nomination done purely by prov – not in regs.
* BC-Canada: BC specifically prohibited from considering non-econ factors as primary.

- Can apply from in or out of Canada.

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| **R.87** PNP | - **(2)(a)**: Must be named in nomination certificate, indent to stay in that prov.- **(3)(4)**: Fed Off can substitute eval if certificate is not sufficient indicator of ability to establish economically. |
| **R.204(c)** TFW | - CIC can issue WP to FN w/out LMO if prov has provided recommendation. |
| Categories of BC PNP | - Skilled workers (exp, O/A/B, full-time offer).- Health care workers (offer or sponsorship).- International graduates (no exp but certified, and full-time offer in O/A/B).- Entry-level/semi-skilled workers (specific industries (trucking, tourism, food processing, etc.), 9mo work exp, C/D can app for North-East BC)* **Good option for low-skilled workers**.

- Business imm. (strategic projects, entrepreneur, etc.). |
| Additional reqs for BC PNP | - Must have sufficient support funds – **POLICY** – most making minimum wage.- No unresolved refugee claims or status issues.- Must have legal status. |
| Wai v Min FC 2009 | - Denied PR (UK) PNP Man. Issue = fed sub eval (**R.87(3)**), econ establishment.- Here 2 years, supported by mom. Says certificate evidence of ability to find work.- Off put her concerns to prov and Wai, chance to respond. Rsbl decision.- Even if judge thinks positive decision possible, doesn’t mean neg was unrsbl.- Substituted evaluation meaningfully available to CIC.  |
| Sran and Sran v Min FC 2012 | - Denied PR (India, in NZ) PNP AB, parents live in Calgary. Issue = econ establishment- enough weight to accomp wife’s credentials? Less than prov gave.- Off only evaluated W as a factor in H’s app, not in her own right. Relied too heavily on FSW tools, didn’t focus on PNP criteria. Unrsbl.- PNP very different from FSW, wrong tool for the job. |
| He v Min FC 2012 | - Denied PR (China) PNP NB. Issue = misrep (**s.40(1)(a)**).- Concerns of authenticity of employment. Letter sent. Responses considered and weighed but Off not convinced. Once applicant given chance to respond to concerns, Off has no obligation to request more or better evidence.- Significant discretion to Off, notes link evidence to decision helpful. |

LIVE-IN CAREGIVERS **Rs.110-115**

\*\*Not truly part of the economic class\*\*

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| **R.111** WP | - Must have WP |
| **R.112** WP | - WP only if: - **(a)**: App for LIC WP before entering Canada. - **(b)**: Completed equivalent of Canadian secondary school. - **(c)**: Either: 6 mo full-time training in field, OR 1 yr full-time paid in last 3 yrs. - **(d)**: Language. - **(e)**: Employment contract – **POLICY**: hard to change employers |
| **R.113** Req | - **(1)(a-c)**: Make an app, are TR, have WP (must maintain status to apply).- **(1)(d)**: Either 2 of 4 yrs after entry or 3,900 hrs during 22 mos of last 4 yrs:- **(2)(a)**: 2 yrs/3,900 hrs can be more than 1 employer, but not at the same time. - **(2)(b)**: 3,900 hrs not to include more than 390 hrs overtime. |

FAMILY CLASS **Rs.116-137**

- Purpose is family reunification.

* Economic potential only really matters in terms of support – undertakings.

- Can appeal of IAD (except in-Canada spousal class).

- **POLICY:** Public panic about marriage fraud, no real numbers to back it up.

* Framed by CIC as terrible, something to protect Canadians from.
* **New regs (72.1 below)** on conditional PR imposed to target marriage fraud.
	+ Applies to apps received after Oct.25, 2012.
		- Problems: Abuse and neglect, even w the exception. Ppl determined will carry on anyhow. Invasive of relationships, random assessments. Cultural understandings of relationships differ – “genuine-ness” may not be a good measure as approached by CIC.

GENERAL

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| **S.13** | - CZN or PR can sponsor a defined family member |
| **Ss.13.1, 13.2** | - In order to sponsor, must make a binding undertaking. |
| **R.117** Members of family class | - Sponsor’s spouse, CL, conj, dependent child, mom or dad, grandma or grandpa, orphan under 18 who is related, adopted kid under 18.- **(1)(h)**: Lonely Canadian – no FM here, none to sponsor.- **(9)(d)**: Doesn’t count as FM if wasn’t declared on app. |
| **Rs.1, 2** Defs | - **1. CL**: Conj relationship, cohabiting for >1 yr.**-** **2.** **Conj**: Conj relationship for >1 yr.* Designed to capture those who can’t live together for real reasons.

- **2.** **Dependent child**: Under 22, not married/over 22 full-time student or disability.- **2. Marriage**: Valid under Cdn law and law of where it took place.- **2. Relative**: Related by blood or adoption.* Mostly relevant to lonely Canadian provision.
 |
| **R.4** Genuine | - Spouse, CL, conj, or adoption, doesn’t count if relationship is not genuine or bad faith. |
| **R.4.1** Loophole | - Prevents couple from breaking up, 1 marrying Cdn and then sponsoring original. |
| **R.5** Marriage validity | - Spouse, CL, conj doesn’t count if they are under 16, married to someone else at time of this marriage, lived apart for 1 yr and has a new partner.- Also means that if can’t get a divorce, can still sponsor CL if separated from spouse long enough – captures cultural diffs. |
| **R.72.1** Marriage fraud | - **(1)(2)**: S and Sd must live together for 2yrs after PR if together <2 yrs and no kids.- **(4)**: Must supply “evidence of compliance” on request.- **(5)(6)(7)**: Exceptions for death, abuse, neglect, etc. |

SPOUSE OR CL IN CANADA

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| **Rs.123-129**  | - **124**: Counts if spouse or CL cohabiting in Can, have TR, subject of sponsorship app.- No appeal to IAD.- Same relationship rules as for overseas relationships. |

SPONSORSHIP

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| **Rs.130-134** Sponsorship | - **130**: Must be at least 18, live in Canada (unless CZN), file a Sponsorship app. A Sd PR has to wait 5 yrs to sponsor someone else.* No determination made if sponsorship is withdrawan.

- **132**: Will reimburse for any social assistance by Sd. Duration varies:* >3 yrs for partner +TR period if got TR to apply for PR.
* 10 yrs or to age 25 for kids, or 3 yrs (+TR period).
* 20 yrs for parents and grandparents and their accompaniers.
* 10 yrs for everyone else.
* **(4)**: S must enter into an agreement.
* **135**: Default begins from the day they become PR, lasts until fully repaid.

- **133**: PR status not granted unless S continues to be eligible – conditions listed. |

OTHER FMs

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| **R.122** Accompanying FM | - Accompanying FM of Sd may come if Sd gets PR and they are not inadmissible. |
| **S.42** Inad | - FN can be inad b/c of inad FM, accompanying or not.- **R.23**: Non-accompanying FMs that make you inad. |
| **R.24** Exception | - A FN/PR is exempt from the excessive demand inadmissibility if Sd is spouse or kid. |

APPEALS/IAD

\*\*Doesn’t apply for Spouse or CL-in-Canada class\*\*

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| **S.63(1)** Appeal | - S can appeal if Sd is not issued PR. Ability to appeal belongs to S. |
| **S.64** No appeal | - **(1)**: No appeal if inad for security, human/intnl rights, serious or organized crim* **(2)**: Serious crim specifically defined – punish*ed* in Can by >6 mos OR out of Can punish*able* by max.10 yrs in Can.

- **(3)**: No appeal if inad for misrep, unless about spouse, CL or kid. |
| **S.65** H&C grounds | - IAD can’t use H&C grounds unless person is member of family class, and S is S. |
| **S.67** Allowing appeal | - **(1)**: To appeal, IAD must be satisfied: Decision wrong in law or fact, principle of natural justice was ignored, or best interests of child and H&C warrant special relief.- **(2)**: *De novo*, substitute own decision. |
| **S.70(1)**: Off bound | - In examining FN or PR, Off is bound by IAD decision to allow appeal with regard to the matters on appeal. |

CASES

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| De Guzman v Min FCA 2001 | - App for PR, didn’t declare kids, tried to sponsor them, not family class (so no IAD). Issue = Validity of **R.117(9)(d)**.- Test for intnl law:* 1) Act as a whole in contravention of Canada’s obligations under intnl conventions to which it is a signatory?
* 2) If yes, look at regs for clear legislative intent to override those obligations.

- Interpret Act as in a way compliant w intnl conventions, **S.3(3)(f)**. Concurring judge winds back a bit. Other options (H&C), no violation of *Charter* or intnl law. |
| Mavi v Min SCC 2011 | - Issue = sponsorship undertaking, procedural fairness. Mavi defaulted (**R.132**).- Crown has duty of pro fair to: Notify of claim, Give opportunity to say why circumstances militate against collection, Consider them, Notify of decision. BUT, no obligation to give reasons.- Debt can never be forgiven, but there is big discretion for other arrangements.- There are procedural fairness requirements in the admin of undertakings. |
| Nijjar v Min IAD 2010 | - Sponsorship for spouse refused. Issue = genuineness of marriage (**R.4**).- Little direct contact, few phone calls, no real knowledge of each other, long delay in starting sponsorship app – not genuine. |
| Thorton IAD 2010 | - Off found Sd not to be in family class. Issue = CL/conjugal relationships, same-sex relationship in the Philippines.- Never “cohabited” enough for CL, long terms of separation, other relationships btwn.- What a “conjugal relationship” means is different in each situation (**R.2**). |
| Abiola-Okanlawon IAD 2011 | - PR for Sd spouse denied. Issue = Didn’t meet def of CL, not a member of family class.- CL in Nigeria, then W left for US. H had other relationship. Only visits since then.- Def. of CL not met (**R.1**) |
| Mabhena v Min IAD 2010 | - PR denied to Sd H on basis of S being in default of previous undertaking. Issue = H&C grounds to allow sponsorship (**S.65, R.133(1)(h)**).- Appellant is CZN, son born in USA for support/health reasons, then sponsored.- Son on social assistance through mom, in default of undertaking, can’t sponsor H.- Unusual circumstances made son PR not CZN, best interests to have dad there. |

TEMPORARY ADMISSIONS

TRP = Temporary Resident Permit

- Like a special “mini H&C” pursuant to s.24 for ppl who would be otherwise inadmissible.

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| **S.24** | - Inad or doesn’t meet Act req, Off can issue TRP if “justified in the circumstances”.* Compelling circumstances required.

- Can be cancelled at any time. |
| **R.64** PR | - TRP holders may become PRs after 3 yrs (health inad), or 5 yrs (anything else), and have no subsequent inad. |

TRV = Temporary Resident Visa

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| **S.22, 29, 30** Requirements | - Apply, get required visa, not inadmissible.- **S.29(1)(a)(b)**: TR has right to be here, but must comply w conditions and reqs.- **S.30**: Can’t work or study w/out authorization. |
| **R.179** Reqs | - Apply, will leave, has passport, not inad, not under **S.22.1**. |
| **R.180** Reqs | - Must meet all reqs at time of TRV issuance and entry to Canada. |
| **S.22.1** Discretion | - Min can still bar TR for reasons of public policy. |
| **R.7(1)(2)** Applies | - All FN entering temporarily require TR visa, unless exempt. |
| **R.190** Exemptions | - List of countries, diplomats, transit on flights, crewmembers, etc.- Still need to prove temp intent, but don’t need a visa for activities. |
| **R.183** Limits | - **(1)**: Must leave at the end, can’t work or study unless authorized.- **(2)**: Authorized length of stay depends on means of support in Canada. Usually 6 mo. |
| **R.185** Conditions | - Off can set conditions about length of stay, type of employment or study allowed, where travel is allowed, reporting. |
| **R.182** Restoration | - On application w/in 90 days of losing TR status due to conditions in **R.185** (duration of stay, type of work or employer, type of study), if haven’t breached anything else.* No “implied status”, just a grace period.
 |
| Li v Min FC 2012 | - WP app denied - language and work experience reqs. Gave evidence on both. App had positive LMO (restaurant) that required worker to have English.- Issue = Does WP applicant require a pro fair opportunity to know about and respond to Off’s concerns? No, onus on applicant, except in certain circumstances.* What’s at stake for WP is diff than for family reunification, or PR, for ex. Can just reapply, no high burden of pro fair.

- Off decision unrsbl on evidence, just bad decision. |

VISITORS **Rs.191-193**

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| **R.191** | - A class of TR, must comply w section 9 reqs (generally TRV reqs). |
| **R.187** Biz Visitors | - **(1)** Seek to engage in intnl biz activity in Can w/out entering Can labour market.- **(2)**: Lays out what counts.  |

STUDENTS **Rs.210-222**

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| **R.210** | - Prescribes students as a class of TR. |
| **R.211** | - Only a member of the student class if authorized as such. |
| **R.212** Need permit | - FN can’t study in Canada unless authorized to do so. |
| **R.188** Exceptions | - Don’t need SP if FM of diplomat, part of visiting army, program <6mos. |
| **Rs.213-215** When to apply | - **213**: Must apply before coming to Canada UNLESS:- **214(a-d)**: From US, Greenland, St.Pierre/Miquelon- **214(e), 215**: Other exceptions |
| **R.216, 219-220** Reqs | - **216**: Apply, will leave at end of authorized stay, meets other reqs.- **219**: Need let of admission unless FM of FN w existing WP, SP, or TRP.- **220**: Need sufficient financial resources for tuition, living, and transport. |
| **R.217** Renewal | - Can apply to renew if not expired, complied w all conditions, in good standing.- **R.189**: If applied, then expired, can keep studying while waiting for decision – “implied status”. |
| **R.221** No permit | - No SP if engaged in unauthorized work/study or didn’t comply w condition UNLESS:- It’s been 6 mo since end of lapse, got TRP, or only unauthorized on certain conditions (type of studies, institution, etc.).- **R.189**: Applied to renew, expired, waiting for decision – “implied status”. |
| **R.222** End of SP | - SP becomes invalid on expiry or when removal order becomes enforceable. |

TEMPORARY FOREIGN WORKERS (TRW) **Rs.194-209**

- POLICY: Skilled workers allowed to stay as FSW, low skilled have to leave.

- Usual formula = TRV+WP

* WP is often employer-specific.
	+ Might be ineligible for EI b/c legally restricted from getting new job, even though physically able to be employed.
	+ Under worker comp claims, if worker is physically to work, but in a different occupation, the comp board ignores WP restrictions and treats them as employable.
		- Often don’t even claim, maybe due to concern over status.

- All TRWs except seasonal workers are eligible to apply for PR.

* Hard to get points to be FSW.
* If in NOC C or D, not eligible for CEC. Also, putting it under CEC leaves selection to employers.
* Best option is probably PNP.

- Family reunification is also more difficult.

- Problems of overlapping jurisdiction (HRSDC, CIC, CBSA).

* Ex. Regulation of recruitment is provincial, so inconsistent. Feds have bad track record of enforcing against employers (ex. HRSDC gives LMOs but doesn’t monitor them at all).
	+ Disjuncture btwn fed authority who issues/authorizes, and where ppl can go for remedies.

- Increasing reliance on TFW – are they really “temporary”?

- Goldring article – “Precarious migration status”.

* Takes issue w binary of legal/illegal.
* Precarious status 🡪 marked by absence of: labour mobility, right to remain in Canada, status that isn’t contingent on something/someone else (employer, spouse, etc.), access to social rights.
	+ Also limited options to remedy status problems.
		- No appeal except JR for ppl who lose TR.
	+ Precarious status constructed by specific state policies, regulations, practices implementation, etc.
* The degree of entitlement to social services varies w status.

WORK PERMITS

- FN applying for work permits who work in the health field, at schools, etc. probably need a medical exam. See medical inadmissibility section.

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| **R.198** Where to apply from | - Have to apply before coming to Canada unless under **R.190** or **R.199**.- **199**: Have WP, working under **R.186**, have SP, have TRP valid >6 mo, FM of any of those, fall under **206/207**, under intnl agreement, just waiting for formal permit. |
| **R.200** Requirements | - Gets WP if: App before coming to Canada, will leave, see list.- If WP based on job offer, offer must be genuine **(5)**, and has already employed ppl in similar job, wages, conditions for 2 years before this app(**(1)(c)(ii.1)(B)**).- (**3)(g)**: Can’t get WP if worked in Can for one or more periods totally 4yrs, exceptions* **(4)**: Work while authorized full-time student doesn’t count.
 |
| **R.201** Renewal | - Can apply for renewal if: do so before expiration, complied w all conditions.- **(u)**: If awaiting approval and permit expires, “implied status”, can keep working. |
| **\*\*\*\*** | - Need LMO unless covered by **Rs.204-208** (**205** exception?).- Assume LMO is needed, check for exceptions. |
| **Rs.186, 187** Work w/out a permit | - **187**: Biz visitors (some work, not engaging in Canadian labour market).- **186**: Work on-campus while full-time student **(f)**, religious leaders, sports participants, etc. Don’t have long-term labour market engagements.- **201(u)**: Permit expired, waiting on renewal application decision. |

OPEN PERMITS

- If it’s clearly not market based, will be open.

- Can work for anyone, no LMO or employer restrictions. Can get IF:

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| **R.204** | - WP pursuant to intnl trade agreements, but NOT agricultural workers.* NOTE: PNP apps can obtain open WP under seasonal agri workers.
 |
| **R.206** | - No other means of support, as refugee claimant or subject of unenforceable RO. |
| **R.207** | - LIC class, spouse of CL partner class, protected person, H&C approved, FM of those. |
| **R.208** | - No other means of support, as student become destitute beyond their control- No other means of support, holds TRP valid for >6 mo. |
| **R.202** | - \*\*Under **Rs.206,207** don’t become TR\*\* |

CLOSED WORK PERMITS

- Employer needs to show they need someone, have offered to Canadians, have LMO under **R.203**, etc.

- Will always be closed if requires LMO or specific job offer, even if no LMO.

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| **R.203** LMO process | - Neutral or positive effect on job market, not inconsistent w fed-prov agreement, if relevant meets LIC reqs.- Might qualify for exemption from 2 previous yrs requirement (**(1)(e)/1.1** – dramatic change in econ conditions). |
| **R.200** Non-LMO | - May be given w/out LMO but still requires job offer |
| **R.205** Non-LMO | - Intend to do work that is major benefit for Canada, is charitable/religious, etc. (includes post-grad WP). |

HUMANITARIAN & COMPASSIONATE PR **S.25, Rs.66-69**

- Designed to deal w situations not anticipated by the legislation.

* About requesting an exception from the ordinary application of the Act. Can request for exemption from any section EXCEPT **Ss.34, 35, 37**.
	+ IAD has jurisdiction to hear H&C cases (ex. *De Guzman*), unless under those sections.

 TRP

- Factors are different from H&C, but still discretionary.

- Short-term solution sometimes used while waiting for H&C app to go through.

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| **Operational Manual** Factors to be considered | - Circumstances:* Factors that make person’s presence in Canada necessary.
* Type/class of app and pertinent family composition.
* Medical treatment involved, whether or not it is rsbly available/effective.
* Tangible/intangible benefits that may accrue to person concerned and others.
* Identity of sponsor or employer.
 |
| **S.24** | - Can get TRP if inad or don’t meet reqs, and “justified in the circumstances”. BUT:- **(4)**: Can’t be used by refugee claimants if <1yr since refused, withdrawn or abandoned claim.- **(5)**: Designated FNs (**S.20.1(2)** “Irregular arrivals”) can’t app for 5yrs from designation. |
| **R.64** | - Sets out the class. |
| **R.65** | - May become PR after 3 yrs (health), or 5 yrs (other), but not if inad for **Ss,34-37**. |

H&C

|  |  |
| --- | --- |
| **Rs.66, 67** Where to apply | - PR apply from in Canada w app to remain.- FN can apply from inside or outside Canada w app for PR visa. |
| **Rs.67/68(b)(c)** | - Must not be “otherwise inadmissible”. |
| **R.69** FM | - FM can be included. |
| **S.25** On application | - *Must* consider on request if applicant in Canada, *may* if outside Canada (*De Guzman*).- But can’t do H&C for inad under **Rs.34, 35, 37**.- **(1.1)** Only if fees are paid – part of completing the request. Can’t waive. |
| **S.25(1.01)** DFN | - Designated FNs have to wait 5 yrs after designation + some other factors. |
| **S.25.1** Min can act | - Min can consider H&C w/out application, except under **Rs.34, 35, 37**.- Can waive fees here. |
| **S.25.2** Public policy | - Min can consider public policy factors in absence of H&C factors.- Can waive fees here. |
| **S.25(1.2)(1.21)** Refugees | - **(b)(c)**: Can’t make a claim at the same time as, or w/in 12 mos of making rfg app, with exceptions (**1.21**) if removal would be health risk or against best interest of child. |
| **IP5** Instructions | - Onus is entirely on applicant to provide all relevant H&C factors and evidence.- Factors to consider:* Establishment in, and ties to, Canada.
* Best interests of child (BIC).
* Factors in country of origin (including med inadequacies, discrimination that doesn’t amount to persecution, harassment or other hardships not covered in **Ss.96, 97** – refugee factors).
* “Discrimination”: A distinction based on personal characteristics of an indv that results in some disadvantage to that indv.
* “Persecution”: Serious and persistent violation of fundamental human rights.
* “Hardship”: Unusual, underserved or disproportionate hardship.
* Health considerations.
* Family violence considerations.
* Consequences of the separation of relatives.
* Inability to leave Canada that has led to establishment, and/or
* Any other relevant factor not related to **Ss.96, 97**.
 |
| **OB542** Instructions | - If H&C app is refused, referred to CIC for further action.- May lead to removal order and enforcement action. |
| Baker v Min SCC 1999 | - Came as visitor, stayed as illegal LIC for 11yrs. Has 4 children in Can, all CZNs, 4 in Jamaica. Psychotic episode, couldn’t work, reliant on social assistance, getting better.Deportation order. Applied for exemption from req to apply for PR from outside Can (**R.6**), on H&C grounds.- App denied, rude reasons, focused on no. of children and mental illness – went for JR.- Issue = pro fair, rsbl apprehension of bias, BIC.- Duty of pro fair met b/c reasons given. BUT rsbl apphsion of bias from those reasons.* Higher duty, need reasons, when impact on applicant is greater.
* Decision based on her race, job, kids, mental illness, didn’t look at evidence. Also dismissive of BIC – not a determinative factor, but must “give them substantial weight and be alive, alert and sensitive”.
* Failure to use guidelines not fatal, but indicative of rsblness of decision.
* Values in intnl law, even unimplemented, can help inform stat interp and JR.

- Decision unrsbl, sent for redetermination by diff Off. H&C, BIC, intnl values. |
| Caine v Min FC 2011Hard to reconcile these two | - Denial of H&C PR. Came to Can when 17 b/c raped repeatedly by family, no assistance. No rfg claim ever made. Has had 3 daughters in Can.- Issue = BIC. Off said applicant failed to show bringing kids back to St. Vincent would cause “disproportionate hardship”, establishment in Can not enough.- Hardship from H&C denial must be “unusual and undeserved or disproportionate”.- Establishment actually used against her as evidence of ability to re-establish.* Court didn’t want to reward for being here w/out authorization.

- Decision found rsbl. Might have been diff w more evidence. |
| Sylvester v Min FC 2012 | - Denial of H&C PR. Fled Grenada in 1990 due to family abuse, death threats if report. Upon arrival, raped and robbed by friend’s uncle, didn’t report, fear of deportation.- Had son in Can, CZN, has full custody. Lost job as cleaner, on social assistance.- Filed for rfg protection in 2005. Rfg claim denied – been here 15 yrs, fear only subjective + improving protection for women in Grenada.- Filed for H&C exemption against applying in Can, denied.- Off found Grenada improving protection for women, evidence of mental health facilities in Grenada, not so integrated it would be hardship to leave, dismissing volunteer and church work and focusing only on lack of $ contribution. Only somewhat alert to BIC – not enough.- BIC standard is negative impact, not undeserved, undue, or disproportionate. |

INADMISSIBILITY **Ss.33-38**

MEDICAL INADMISSIBILITY

- Who needs a medical exam?

* Every FN applying for PR.
* Work permits where protection of public health is essential.
	+ Ex. Caregivers, health professionals, school workers, etc.
* Renewals of TR for more than 6 months (most don’t get here), or if flagged upon entry.
* All refugee claimants.
* Ppl living in Canada where there is a high disease incidence.
* Anyone that an Off or ID “has rsbl grounds to believe” may be inad on health grounds.
	+ May come up at the border/customs, for ex., if someone looks ill.

- The exam happens at the point of application. If health problem comes up after that, unlikely to be a prob.

* Principal applicant, accompanying and non-accompanying FMs get screened. Any inad can make principal applicant inad (**S.42**(**+R.23**) **+ R.72(1)(e)(i)**).

- Medical Offs designated by CIC have a formula to determine cost on basis of the diagnosis.

* Pass that info to imm Off, who makes admissibility determinations.

- If applicants are going to be rejected, they normally get a “fairness letter” and are given a chance to refute the evidence or demonstrate that they have plans to manage the expenses (*Hilewitz*).

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| **S.38(1)** Med inad | - FN inad on health grounds if their health condition is (a) likely to be a danger to public health or (b) public safety, or **(c)** might rsbly be expected to cause excessive demand on health or social services.- Def of “excessive demand”, “health” and “social services” in **R.1** (see below). |
| **S.38(2)** Exceptions | - Members of family class exempt from **38(1)(c)**: Spouse, CL partner, or child of sponsor.- **R.117(9)(d)** applies to exclude ppl from family class if not declared. |
| **R.1(1)** Excessive Demand | - (a) A demand on health or social services where anticipated costs would likely exceed avg Canadian per capital costs over a period of 5 consecutive yrs…unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive yrs, OR,- (b) A demand on health or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian CZNs or PRs.- Policy: Based on level of ~$31,000 over 5 yrs. |
| **R.1(1)** Health Services | - Any health services for which the majority of the funds are contributed by govs (see list). |
| **R.1(1)** Social Services | - Social services such as home care, specialized residential/education services, rehab, personal support etc., and provision of devices related to those services:- (a) That are intended to assist a person in functioning physically, emotionally, etc.- (b) For which majority of funding, including indirect financial support to an assisted person, is contributed by govs, either directly or through publicly funded agencies. |
| Hilewitz and de Jong v Min SCC 2005 | - Both applicants qualified under classes requiring substantial financial resources, and both denied b/c of intellectual disability of a dependent child (**s.38(1)(c)**) (\*\*note s.38(2) doesn’t apply b/c coming through economic class, not family class\*\*).* Issue = should financial resources/ability to pay be considered in making a determination about excessive demand on health/social services?

- Hilewitz: Child would need social services. Offered evidence they never relied on social services in South Africa, had founded a special school, had arranged employment for kid in Canada, showed willingness + ability to pay for social services.* Off didn’t read this response. Applied for judicial review.

- De Jong: Child would need social services. Offered evidence that child was accepted by a private school (main concern).* Off didn’t consider this info. JR, new off considered that she might not stay in school, family might move or experience economic hardship, etc. JR again.

- History of leg shows intention to shift from categorical exclusion to one based on indv assessments – “excessive demands” req an evaluation of actual demands, including both medical and non-medical factors.* Threshold is “rsbl probability”, no “remote possibility”. Based on family’s circumstances now, what is more likely than not to happen?

- Individualized approach to excessive demand, consider all factors including finances. |
| Cuarte v Min FC 2012 | - Applicant came through PNP, applied for PR. Son inad under **s.38(1)(c)** (special ed), making parents and bros inad as well under s.42(a).* Dad submitted plan to mitigate excessive demand, w a personal declaration of ability and intention to pay.

- Off denied on basis that there was no mechanism of reimbursement for publicly funded education services in Saskatchewan.- After *Hilewitz*, indv assessment required – have to look at particular indv needs, rather than needs of a person belonging to certain category of impairment or avg public funds for special ed schools.* Confirmed importance of indv assessment. Lack of repayment mechanism not a relevant factor, fails to consider family’s intent and ability to pay.
 |

CRIMINAL INADMISSIBILITY

- If a person is inad and just waiting for the time to pass, can still get TRP (**s.24**).

- **S.64:** No appeals to IAD for findings of inad based on **S.34, 35, 37**.

* **S.42.1**: Min may, on application by FN or on his own initiative, make exceptions under ss.34, 35, 37 if he is satisfied that it is not contrary to the national interest – can consider national security and public safety, but is not limited to just those considerations.

- An “act of Parliament” refers only to federal laws – provincial offences do not attract inadmissibility.

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| **S.36(1)** Serious Criminality | - PR or FN is inad on grounds of serious criminality (can cause PR to lose status – apply differently for FN and PR) for:- **(a)** Conviction in Canada of offence punishable by max of at least 10 yrs imprisonment, or for which punishment was imposed of >6 mos.- **(b)** Conviction outside Canada that, if committed in Canada, would be punishable by max of at least 10 yrs.- **(c)** Committing an act outside Canada that is an offence where it was committed and, if committed in Canada, would be an offence punishable by max of at least 10 yrs. |
| **S.36(2)** Criminality | - FN inad on grounds of criminality for:- **(a)** Conviction in Canada of one offence punishable by indictment OR two summary offences not arising from the same act.- **(b)** Conviction outside Canada that, if committed in Canada, would as above.- **(c)** Committing an act outside Canada that is an offence where it was committed and if committed in Canada would be equivalent to one indictable offence.- **(d)** Commuting a prescribed offence on entering Canada (**R.19**).- **(3)(a)** Hybrid offences treated as indictable. |
| **S.36(3)** Modifying (1)&(2) | - **(b)** Can’t base inad on conviction for which there has been acquittal or record suspension in Canada.- **(c)** Rehabilitation is possible for convictions or acts outside of Canada.- **(d)** “Committed an act” is determined on BoP, not BARD.* From Policy Manual ENF02: “committing an act” should be used where Off has “credible info” indicating the person committed an offence.
* These sections only used where there has be a charge but no trial yet (not where charges have been dropped), where there has been an acquittal, discharge or deferral, or where the record has been expunged or suspended.
* Significant discretion.

- **(e)** Inad can’t be based on youth offences or on *Contraventions Act*. |
| **S.37** Organized Criminality | - PR or FN inad on grounds of inad for:- **(a)** Being a member of an org that is “rsbly believed” to be involved in pattern of criminal activity organized by a number of ppl, convicted or not.- **(b)** Engaging in activities “such as” ppl smuggling, human trafficking, $ laundering.- **(2)** Doesn’t apply to the ppl who were smuggled or trafficked.- Not eligible for H&C under **s.25**. |
| **R.18** Deemed Rehabilitation- Not available for serious criminality or organized criminality | - Exception for youth offences applies throughout.- **(1)** Can be deemed rehabilitated for s.36(3)(c) (for offences/acts outside Canada):- **(2)(a)(i)-(ii)** Convicted outside Canada of 1 non-serious indictable offence (less than 10 yrs max), 10 yrs have passed since completion of the sentence.* B/c of non-serious indictable req, does not apply to serious criminality.

- (2)(a)(iii)-(vii)Clock starts again if convicted of:* Indictable (or hybrid) offence in Canada.
* Summary offence in last 10 yrs, or more than 1 before that in Canada.
* Any offence outside Canada.
* More than 1 summary offence outside Canada in last 10 yrs.
* Or “committing an act”.

- **(2)(b)(i)** Convicted outside Canada of 2 or more summary offences and 5 yrs have passed since completion of the most recent sentence.**-** (2)(b)(ii)-(vii) Clock starts again if convicted of:* Indictable (or hybrid) offence in Canada.
* Any offence in Canada in last 5 yrs
* Any offence outside Canada in last 5 yrs.
* More than 1 summary offence in Canada.
* Any offence outside Canada that would be indictable in Canada.
* Or “committing an act”.

- **(2)(c)(i)-(ii)** Committed an act outside Canada that is an offence where it was committed and if committed in Canada would be an indictable offence, and max term of imprisonment is less <10 yrs, and 10 yrs have passed since commission of offence.**-** (2)(c)(iii)-(vii) Clock starts again if convicted of:* Summary offence in Canada in last 10 yrs, or 1 or more summary offence before last 10 yrs.
* Offence outside Canada that would be an offence here in last 10 yrs.
* More than 1 offence outside Canada that would be summary convictions here before last 10 yrs.
* Offence outside Canada that would be indictable offence here.
 |
| **R.17** Individual Rehabilitation | - If applicant doesn’t qualify for deemed rehab, can still make rehab application (s.36(3)(c)).- Prescribed period is 5 yrs w (a)&(b) no intervening offences.- Only applies to criminality and serious criminality arising from convictions or “acts” outside of Canada, not to organized criminality or convictions in Canada.- Could demonstrate rehab through: sentencing programs, remorse, possibly H&C, etc. |
| Park v Min FC 2010 | - FN app for PR refused based on spouse’s inad – he was convicted in S Korea of offence of “drunken driving”, which put him under **s.36(2)(b)**.- Issue is whether offences are equivalent (Q of law), so reviewable on standard of correctness – totally inconsistent w *Abid*.* Must establish whether essential elements of both offences are equivalent. Can’t assume that similar offence is actually the same.
* Look at precise wording of statutes, use expert evidence if available.

- Off made no error of law in conducting equivalency. Applicant loses. |
| Abid v Min FC 2011 | - Abid was refugee since 2005, applied for PR. Was convicted of “wire fraud” in US and served time. Off rejected application based on finding the offence and conviction in the US were equivalent to one in Canada.- Issue is whether offences are equivalent (factual determination), so reviewable on standard of reasonableness – totally inconsistent w *Park*.* Evidence provided “rsbl grounds to believe” that the conviction was for actual fraud, as req in Canada for similar offence.
* Look at precise wording (w expert evidence if available), evaluate whether evidence would support a Canadian conviction.

- Off rsbl in conducting equivalency. Applicant loses.- Note court found H&C submissions in broad letter about applicant being a decent and honest person who just made a mistake.* Off mis-counted kids and didn’t look at fact the conviction was 17 yrs ago.
* H&C guidelines say to consider likelihood of reoffending.
 |
| Min v Khosa SCC 2009 | - Issue = what is the breadth of the IAD H&C jurisdiction?- Applicant convicted of criminal negligence causing death in an automobile street race, issued removal order.* Serious crime, but sentence less than 2 yrs, which was old bar for IAD.

- IAD looked *Ribic* factors in considering whether to grant H&C:* Seriousness of offence.
* Possibility of rehabilitation.
* Time and establishment in Canada.
* Family and community support.
* Consequences to the family of removal.
* Hardship in country of nationality.

- Court added factor of remorsefulness, and found he wasn’t remorseful enough.- JR based on refusal of IAD to give special relief, so standard of reasonableness* Found the level of deference given to a tribunal is such that it’s enough if they show they considered and were aware of the necessary factors, can’t re-weigh.
* Wording in s.67(1)(c) indicates Parl intent to give deference.

- Reasonableness standard “takes its colour from the context”.* Said all *Ribic* factors were considered.
* H&C ruling are “fact-dependent and policy-driven”.

- Dissent said the decision was not rsbl, that court was fixated only on remorse.- IAD has wide breadth on matters of H&C and will be granted much deference. |

INADMISSIBILITY ON SECURITY GROUNDS

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| **S.34** | - **(1)** PR or FN inad on security grounds for:- **(a)** Engaging in an act of espionage against or contrary to Canada’s interests.- **(b)** Engaging in or instigating the subversion by force of any gov, or **(b.1)** engaging in an act of subversion against a democratic gov as understood in Canada.- **(c)** Engaging in terrorism.* Definition from *Suresh*. 2 elements: 1) Organization committed an act w intent to cause death or bodily harm to civilians, 2) Purpose of the act was to intimidate civilians or to compel a gov or something to do or abstain from doing something.

- **(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.- **(f)** Being a member of an organization that there are rsbl grounds to believe engages, has engaged or will engage in acts under (a), (b), (b.1), or (c).* Def of “member” in *Singh*. Broad and unrestricted interp – formal or actual membership not a prerequisite, informal participation or support may count. Consider nature of involvement, time, degree of commitment, etc.
 |

INADMISSIBILITY FOR VIOLATING HUMAN OR INTERNATIONAL RIGHTS

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| **S.35** | - **(1)** PR or FN inad on grounds of violating human or intnl rights for:- **(a)** Committing an act outside Canada that is an offence in the *Crimes Against Humanity and War Crimes Act* (ex. genocide, war crime, crime against humanity, etc.).* **R.15**: Findings of fact from Intnl Crim Court etc. are conclusive. Can include domestic determinations (ex. IRB refugee admissibility decisions, etc.).

- **(b)** Being a prescribed senior official in the service of a gov that, in the opinion of the Min, engages or has engaged in terrorism, systematic or gross human rights violation, genocide, etc.* **R.16**: Def of “prescribed senior official”.

- **(c)** Being a person, other than PR, whose entry or stay in Canada is restricted pursuant to intnl sanctions. |

SECURITY CERTIFICATES **Ss.76-87.2**

- Division 9: Certificates and Protection of Information.

* Procedures for when the gov has info it wants to protect.

- Very contentious:

* Often coincide w circumstances when a person is “unremovable” (can’t remove a protected person, can’t remove to torture, a list of where Canada won’t return ppl, etc.).
* Involves administrative, rather than judicial detention.
	+ Don’t have the same procedural safeguards as in a criminal case.
* At odds w key principles of the criminal justice system:
	+ Secret trials.
	+ Long-term detentions w/out trial.

Process

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| **S.77** Filing certificate | - Two Ministers sign a certificate stating that a PR or FN is inad on grounds of security, violating human or intnl rights, serious criminality, or organized criminality (**ss.34, 35, 36(1), 37**) and refer it to the FC, along w info and evidence on which the certificate is based. The applicant gets a summary that enables them to be rsbly informed of the case but it can’t include anything that, in the Min’s opinion, would be injurious to national security or endanger the safety of any person if disclosed.- Other proceedings stop. |
| **S.78** Judge review | - Judge looks at the secret info and determines whether the certificate is “reasonable”. |
| **S.79** Appeals | - Appeals follow FC procedure of certified question only. |
| **S.80** Removal | - If a certificate is found rsbl, it is conclusive proof of inad and is a removal order in force immediately – don’t have to have admissibility hearing. |

Detention

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| **S.81** May detain | - Min may arrest and detain a person named in a certificate if they have rsbl grounds to believe that person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.* Detention not req, but has never been used w/out it.
 |
| **S.82** Review | - (1)&(2) Detention is reviewed at 48 hours, and then every 6 months, until a certificate is deemed rsbl.- (3) After certificate found rsbl, can apply to FC for another review.- (4) Can be released on conditions, can have conditions reviewed.- SCC has signaled that at some point indefinite detention would constitute a s.12 *Charter* breach (*Charkaoui*). |

Protecting the Peron’s Interests

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| **S.83** | - Judge scrutinizes the claim that the info must be kept secret.- Rules of evidence are relaxed to allow new info at any time and to allow evidence that would not be admissible in a criminal trial.- A special advocate is appointed. |
| **S.85** Special Advocate | - List of lawyers established by the Minister of Justice, lawyers paid by DOJ.- (s.85.1(2)) May challenge Min’s claim that info needs to be kept secret and the claim that the info being kept secret is relevant and reliable.- (s.85.1(3)) Not a solicitor-client relationship.- (s.85.4(2)) After seeing the protected info, the special advocate can only communicate with the person w judge’s authorization and subject to any conditions the judge considers appropriate. |

Cases

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| Charkaoui v Canada SCC 2007 | - \*\*Current IRPA provisions implemented to comply w this ruling.\*\*- 5 men subject to security certificates b/c of suspected links w Islamic terrorist groups. Had been jailed for years. All were unremovable b/c of torture concerns.- Charkoui was PR, 2 others FN – applies differently to these groups.- Issue = does the certificate *process* violate the Constitution?* S.7 (life, liberty, security), s.9 (arbitrary detention), s.10(c) (prompt detention review), s.12 (cruel and unusual treatment), s.15 (equal protection).

- S.7: Detention incidental to removal - clearly violates right to liberty.* Have principles of fundamental justice relevant to the case been observed in substance, having regard to the context and the seriousness of the violation?

- Requires a fair judicial process: a hearing, before an independent and impartial judge, who makes a decision based on facts and law, and the right to know the case against you, and the right to answer that case.* Hearing req: Met.
* Impartial: Met. Not impaired by the fact they only see one side of the evidence.
* Decision based on facts and law: Met.
* Case to meet: National security considerations can limit the extent of disclosure of info to the indv – substitutes for full disclosure may permit compliance w. s.7. No appropriate substitutes here, violated.

 - Not saved by s.1: Alternatives available so doesn’t minimally impair rights.- S.9&10(c):* Detention not arbitrary – public safety, etc.
* Length of detention before review for FNs (120 days), however, is a violation. Diff btwn FN and PR is arbitrary – both need expedious review.

- S.12: Detentions may be lengthy but there is a review process that stops it from being “indefinite”. Guidelines for good review process:* Reasons for detention, length of detention, reasons for delay in deportation, anticipated future length of detention, and the availability of alternatives.
* No violation as long as those guidelines are met.

- S.15: No breach, s.6 of Charter specifically allows for differential treatment of citizens and non-citizens.- No constitutional right to appeal. |

- CHANGES AFTER THIS CASE:

* Removal of distinctions btwn FN and PR.
* Detention no longer mandatory.
* Special advocate system introduced.
	+ This procedure can be mirrored in other proceedings (admissibility hearings, detention reviews, IAD appeal, etc.) or during JR, which may attract the special advocate role.

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| Canada v Agraira FCA 2011 | - Citizen of Libya who was a member of the Libyan National Salvation Front (LNSF). Claimed refugee status, was denied based on lack of credibility. This case out of spousal sponsorship claim. Found inad on security grounds based on membership in LNSF, sought ministerial relief (provisions changed a lot throughout his application), denied, JR successful, appealed by Min.* Issue = s.34(2) (no longer exists): exceptions to security inad, whether Min can be compelled to grant relief, how determination of relief is framed by the leg.

- Imm Off made recommendation he be granted ministerial relief. Min refused on basis that he would be detrimental to national interest.* “National interest” is a Q of law, reviewable on standard of correctness.
* Q of “detriment” reviewable on standard of reasonableness.

- Change in Min responsible for assessment important here:* Separation of national interest from H&C factors.
* National interest linked to national security and public safety.

- Departmental guidelines can’t alter the law, and are not the only relevant factors (*Baker*). Diff from *Baker* though b/c function of manual diff here, less helpful, non-exhaustive list.* Min doesn’t have to consider specific factors, even though included in a guideline – only has to consider public safety and national security as set out in the law.

- S.34(2) clearly intended to refer to exceptional circumstances only.- Min decision rsbl b/c based on lack of credibility – too many versions offered. |

IMMIGRATION DETENTIONS **Ss.54-61, Rs.244-249**

- Responsibility for detention is w CBSA.

* Authorized to arrest and detain PRs and FNs at ports-of-entry and w/in Canada who have, or who may have, breached the Act.
* Decision to detain is based on the law, policies, and guidelines as applied by Offs.

- 3 detention facilities in Canada: Montreal, Toronto, YVR (Richmond).

* If no room, ppl kept in general prison facilities – problematic to keep criminal detainees and administrative detainees under the same conditions.

- Less than 5% of ppl in imm detention are there b/c of security concern.

* Primary reason for detention is lack of identity docs, or concern about non-attendance at imm proceeding. Main reasons for detention come from **s.58**, will release *unless* (see below).

- Detention of refugee claimants not authorized by intnl law (*Refugee Convention* s.31).

- Mass arrivals and ppl found to be un-removable pose challenges to the current system.

- Be aware of DFNs: Min can “designate” certain FNs on the basis of irregular mode of arrival (**S.20.1**).

* Detention mandatory on arrival or designation (S.55(3.1)), different review schedule, Min has additional powers, may be released if found to have protected status.
* Age of majority is lower for DFNs (16).

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| **R.244** Reasons for detention | - 3 reasons a person will be detained:* a) Flight risk.
* b) Danger to the public.
* c) Identity not established.
 |
| **R.245** Flight Risk | - Factors to be considered: Fugitive from other jurisdiction? Previous record of compliance? Involvement w smuggling or human trafficking, on either end? Strong community ties in Canada? |
| **R.246** Danger to the Public | - Factors to consider: Previous “danger opinion”? Organized crime? Smuggling or trafficking? Conviction in or out of Canada for certain offences or acts? |
| **R.247** Identity not Established | - Factors to consider: Cooperation? Possibility of forthcoming docs? Destruction of docs? Contradictory info/docs? |
| **R.248** Other factors | - If there are grounds for detention, factors to consider before further detention or release: Reason for detention? Length of time detained? Likely end time? Time attributed to person’s own actions? Alternatives? |
| **R.249** Factors for Children | - Before detaining children as last resort, consider: Alternatives? Anticipated length of detention? Rick of continued control w traffickers? Type of detention facility (incl separation of kids from adults, services like education)? |
| **S.55** Arrest | - **(1)** Off may issue warrant for arrest and detention of PR or FN who the off has rsbl grounds to believe is inad and is a danger to the public or is unlikely to appear for an examination, for an admissibility hearing, for removal from Canada, or at a proceeding that could lead to the making of a removal order under s.44(2).- **(2)** W/out a warrant may arrest, for the reasons above, or if off not satisfied of the identity of the FN (except protected person).- **(3)** Off can detain PR or FN on entry to Canada if off considers it necessary in order for examination to be completed, or has rsbl grounds to suspect they are inad on grounds of security, violating human rights, serious criminality, criminality, or organized criminality.- **(3.1)** If a designated FN under **s.20.1**, off must detain on entry.**S.20.1**: Min can, w regard to public interest, designate ppl as irregular arrival if they think that examinations (particularly for the purpose of establishing identity or determining inadmissibility), and any investigations cannot be conducted in a timely manner. |
| **S.56** Release | - **(1)** Off can order release before first detention review if they think the reasons for detention no longer exist, but can impose any conditions they think necessary, EXCEPT **(2)** for designated FNs, who can only be released according to this section (can be ordered released by Min under s.58.1, or by ID under s.58).* Conscious reversal of usual approach to release unless there is a reason to keep them – for DFNs, keep unless a reason to release.
 |
| **S.57** Review | - **(1)** W/in 48 hrs of detention, ID must review reasons for continued detention.- **(2)** After first review, w/in 7 days, and then once ever 30 days after that.* Can’t review in advance of that period.

- **(3)** Must be brought before the ID (*habeas corpus* provision). |
| **S.57.1** Review for DFN | - **(1)** W/14 days of detention, ID must review reasons for detention.- **(2)** After first review, every 6 months/* Can’t review in advance of that period.

- **(3)** Must be brought before the ID (*habeas corpus* provision). |
| **S.58** Release | - **(1)** ID must order release of PR or FN *unless* it is satisfied that:- (a) They are a danger to the public.- (b) Unlikely to appear for examination, admissibility hearing, or removal proceeding.- (c) Min is taking steps to inquire into rsbl suspicious on inad on grounds of security, violating human or intnl rights, serious, organized, or regular criminality.- (d) Min thinks their identity may be established but hasn’t been and they are not cooperating.- **(3)** ID can impose conditions on release. |
| **S.58.1** Release of DFNs | - **(1)** Min may, on req of DFN, release that person if Min believes exceptional circumstances exist to warrant the release.- **(2)** Min may, on own initiative, release DFN if Min believes reasons for detention no longer exist.- **(3)** Can impose conditions on release.- **S.58(1.1)** ID can’t release DFN if **s.58(1)(a), (c), or (e)** apply. |
| **S.59** Ppl already in jail | - If imm warrant is issued for a PR or FN already in jail for an offence under another Act, they must be delivered to imm off at end of their detention where they are. |
| **S.60** Children | - A minor child (who is not DFN) shall be detained only as a measure of last resort, taking into account other applicable grounds and criteria, including BIC.* May be detained w their parents.
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| Canada v Thanabalasingham FCA 2004 | - Arrested on imm warrant on grounds of danger to the public b/c he was a leader of the VVT, a Tamil gang operating in Toronto.- Appeal of a decision on a certified question – JR of detention review after ~2 yrs in custody. * Issues = Are detention reviews hearings *de novo*? Who bears burden of proof?

- *De novo*? Almost a *sui generis* proceeding – not starting totally afresh, but doesn’t give earlier conclusion deference either.* Must consider previous decision, but fresh conclusion each time. Previous decisions almost treated just as a factor – just need to consider them.

- Burden of proof: It’s on the Min to show, on BoP, that the person is a danger to the public if he wants detention to continue.* This is in keeping w *Charter* s.7, which is engaged due to the possibility of indefinite detention.
* Also “shall release unless” indicates burden on Min.
* Once a *prima facie* case has been made out, burden shifts and the person in question must then lead evidence, or risk continued detention.
 |
| Re Mr. X ID 2009 | - ID ordered X deported for inad on security grounds, for being a member of an organization there are rsbl grounds to believe engages, has engaged or will engage in terrorism (S.34(1)(f)).- “Danger to the public”: This means, on BoP, the person is a present or future risk of danger to the Canadian public.* Doesn’t have to be for same acts already committed.
* Court found him, more likely than not, willing to resort to illegitimate violence if he thinks his goals justify it.

- Found meth recipe on him – only useful to consider in credibility analysis.- Also found him unlikely to appear, based on past history and fear of being returned.* Used his refugee claim as evidence of being a flight risk, but this doesn’t fit in the Reg.245 factors that can be considered.

- Considered factors in R.248. No alternatives. Lengthy detention that is likely to be longer, but possibility of getting travel docs mitigates it, plus the delay in his removal is his own fault for not cooperating.- Detention continued. |

REMOVALS, ENFORCEMENT, OFFENCES

Paoletti Article:

- In liberal states, the capacity for “**closure**” defines the, but deportation is difficult.

* In closure, citizenship is premised on difference and on the distinction btwn those who are included and excluded from the demos.
* Deportation mechanics are a key aspect of state power.
	+ Deportation decision-making is marked by high levels of discretion.

- In contrast to closure is the idea of “**universal citizenship**”.

* This idea uncouples the citizenship/nationality link and views citizenship in terms of homogeneity, universality and egalitarianism. The idea that rights are not connected to a particular nation-state, but to the human being.
* National borders are seen as arbitrary, and the only ethical way is to open borders.

- The “**deportation turn**”: There are more and more deportations, and it’s being used differently.

* Deportation used to be fairly strictly limited to criminal matters.
* Now, deportation has been seen as a main device to enforce modern migration policies, which seem to be against ppl who can’t make a living, are disturbing public order, failed refugee claimants, minor criminality, etc.
	+ Being used for enforcement.

- “**Non-deportability**”: Someone has been listed for deportation but is physically not able to be removed – may be for administrative reasons (backlog), lack of resources, prioritization of high-risk cases, lack of a will to deport for symbolic reasons, human rights considerations, lack of coordination btwn countries, etc.

* If someone is non-deportable, the laws and benefits here still apply to them, but they aren’t considered full members of the state. Somewhere in between.
* However, the fact that the state doesn’t deport them indicates some level of recognition. Upholds that person’s rights (against torture, for ex.), and doesn’t exploit it’s full power by getting rid of unwanted individuals.

- It’s all about the symbolic power of enforcement.

Deportation and the Charter

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| Canada v Chiarelli SCC 1992 | - \*\*All of the underlying law has changed, only relevant for the Charter challenge.\*\*- Issue = Does the fact that the court doesn’t need to take particular circumstances of the case into account in ordering deportation based on certain mandatory provisions violate s.12 (b/c a deportation order could be grossly disproportionate to the circumstances of the offender or the offence)?- “The most fundamental principle of imm law is that non-citizens do not have an unqualified right to enter or remain in the country.” Distinction recognized in Charter.- S.7: Mandatory provision based on the idea that all person who fall w/in it have deliberately violated an essential condition under which they were permitted to remain in Canada.* No breach of fundamental justice in removing them so S.7 not a problem.

- S.12: Deportation is not “punishment” – removal of ppl mentioned above does not outrage standards of decency. No breach.- S.15: No claim b/c s.6 specifically provides for differential treatment of CZNs and PRs.- Differential appeal rights and s.7: * The right to appeal decisions is not a substantial right, simply discretionary. It comes from Parl – the req of a fair hearing is enough.

 - But once an appeal is going, it must be done right.* Also, H&C considerations are beyond a “true” appeal, even more discretionary.
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| **S.44** Report on inadmissibility | - **(1)** Off who thinks someone is inad sends report to Min.- **(2)** If Min thinks report well founded, may refer it to ID for admissibility hearing, Or make RO if for PR inad solely on failure to comply w residency obgs under s.28 (exceptions in **R.228**), or FNs in circumstances of **R.228**.* PR always to ID except in failure of residency obgs.
* FN don’t usually get to ID, see list under R.228.
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| **S.45** Admissibility Hearing | - ID holds hearing, will grant PR or TR to FN, authorize PR or FN to enter Canada w/out further examination, or make applicable removal order. |
| **S.48** Enforcement | - **(1)** RO is enforceable if it has come into force and is not stayed.- **(2)** If enforceable, FN must leave immediately and order enforced ASAP. |
| **S.49** Order into force | - **(1)** RO comes into force on latest of: day order made if no right to appeal, day appeal period expires if no appeal made, or day of final determination of appeal.* Rights to appeal under IAD **ss.63-71**
 |
| **S.50** Stays | - Order stayed if: (a) Decision at judicial proceeding would be directly contravened by removal. (b) FN is in jail. (c) Stay imposed by IAD. (e) Stay imposed by Min. |
| **S.51** Void | - Order becomes void if FN becomes PR. |
| **S.52** | - **(1)** If order enforced, FN can’t return to Canada w/out authorization of off.- **(2)** If order w no right of appeal is enforced, and set aside in JR, FN entitled to return to Canada at Min’s expense. |

Types of Orders

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| **R.223** Types | - 3 types of order: Departure, Exclusion, Deportation. |
| **R.224** Departure | - **(1)** Don’t need authorization to return.- **(2)** If don’t meet req of **R.240(1)** w/in 30 days, becomes deportation order (Go et certificate of departure and leave). |
| **R.225** Exclusion | - **(1)** For 1 yr need written authorization to return, or **(3)** 2 yrs if under **s.40(2)(a)** (inad for misrep), but exempt under **s.42(b)** (FN accompanying FM of inad person).- Used for health inad, financial inad, most misreps, most IRPA breaches (**R.229**). |
| **R.226** Deportation | - **(1)** Need written authorization to return at any time.- **(2)** Exception under **s.42(b)** (FN accompanying FM of inad person).- Used for all criminal inad, misrep that led to loss of citizenship (**Reg.229**). |
| **R.227** FM | - Reports and ROs usually extend to family members. |

Role of IAD

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| **S.63** Who can appeal | - **(2)** FN w PR visa may appeal against RO decision (at examination or ID hearing).- **(3)** PR or protected person may appeal against RO decision (at exam or ID hearing).* Diff btwn PR and person w PR visa is whether or not they have landed in Can.

- **(4)** PR may appeal against decision on **s.28** (residency obgs).* Can go directly to IAD for these.

- **(5)** Min may also appeal. |
| **S.64** No appeal | - No appeal for PRs inad under **s.34, 35, 36, 37**.- Serious crim punished by 6 mo or more includes pre-trial detention/time served (*Jamil v Canada* 2005) – works against the applicant. |
| **S.67** H&C | - **(1)(c)** Can consider H&C (note exemption in **s.65** – family class). |
| **S.68** Stays | - **(1)** To stay a RO, IAD must be satisfied H&C warrants special relief BUT **(4)** If convicted of subsequent offence under **s.36(1)**, stay is cancelled. |

Role of FC

- Has the power to order a stay.

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| **S.50** | - RO stayed based on judicial proceeding where enforcement would contravene the judicial order. |
| **S.72** | - JR possible for any matter under the Act, w leave, but appeal options must be exhausted first.- Must file JR application w/in 15 days of notice of decision if inside Canada, w/in 60 if outside Canada. |

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| Idahosa v Canada FCA 2009 | - Applicant had RO against her. Took out custody order for kids, prohibited of their removal from prov. Claiming enforcement would contravene that order (**s.50(a)**).- No deference needs to be shown to off’s interp of the section even though home statute b/c no expertise, so reviewable on standard of correctness.- Narrowed certified Q on s.50(a) to be relevant only to facts of this case.* Focused on fact she took out the order specifically to get a stay.

- Rejected applicant for 4 reasons:* 1) Order doesn’t say she has to stay w the kids – so her RO doesn’t conflict.
* 2) Would be inconsistent w Min’s duty to deal w ROs – can’t do indirectly what you can’t do directly, can’t subvert intended process.
* 3) BIC already considered in her H&C application.
* 4) Could have applied for a stay pending outcome of her 2nd H&C application.

- *Langer v Canada* held that the deportation of parents of Canadian-born children doesn’t violate s.7 rights of either parents or children. |
| Fox v Canada FCA 2009 | - Applicant seeking to have admissibility hearing delayed until their full parole day, b/c if RO made before that, he would lose his day parole and be incarcerated until removal.- Court will take a “hard look” at underlying facts for stay if delay is likely to determine the outcome – in this case, going forward now would render the point moot, but allowing the delay would conclusively decide the appeal in his favour.- ID is statute bound to hear proceedings “w/out delay”.* Technical wording made this case. Nothing in s.43(2) allows court to consider whether the *outcome* of a hearing stay would create an injustice, only if injustice would be caused by the delay itself.
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| Abdallah v Canada FC 2010 | - Application for JR of decision of IAD that reconsidered it’s own direction staying RO and overturned it (IAD can reconsider own decisions on application or own initiative).- Applicant inad for serious criminality based on B&E conviction. Appealed RO to IAD on H&C, stay granted for 3 yrs, conditional on compliance w terms, including no more criminality.* 1 yrs in IAD decided stay should be continued, added condition.
* 3 yrs later, reviewed again.

- IAD considered *Ribic* factors (as in *Khosa*). Found him non-compliant and despite some positive factors, found him minimally established in Canada. Found H&C factors didn’t override his inability to rehabilitate. Appealed.- IAD made 7 key findings of fact that were blatantly wrong.* Good example of what is sufficient to trigger judicial intervention.

- FC can’t substitute own decision, so remitted to IAD. |
| R v Alzehrani ON Superior Court of Justice 2009 | - 2 guys convicted on several counts of human smuggling, serious criminality.- Most significant factors in sentencing here are general deterrence and denunciation.* 1 would be deported to Albania after sentence – no specific deterrence.

- Looked at aggravating factors (ex. bodily harm or death occurring during offence, previous crim record, done for/w criminal organization, for profit, etc.).- Looked for mitigating factors (rehab, remorse, etc.).- Lots of aggravating factors, little in the way of mitigation.- Didn’t get full credit for time served, b/c it was time under IRPA, not Criminal Code.- Good example of sentencing on ppl convicted of human smuggling. |

NON-STATUS RESIDENTS

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| Toussaint v Canada FCA 2011 | - Issue = Under s.25(1), is Min obliged to consider a req for exemption to pay fee?* If not, does failure to accommodate FNs living in poverty breach Charter?

- Under s.25(1) he has to consider reqs for exemption based on any applicable criteria or obgs of the Act. Nothing in policy is against this, in fact it’s for it.* Has to consider it.

- \*\*The law has changed since this case\*\* - s.25(1.1): Specifically says he is only obliged to consider H&C if fees have been paid.* NOW DOESN’T have to consider it.
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