

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA)

Between:

HOANG ANH PHAM

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

- and -

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PART I – STATEMENT OF FACTS

1. By the Order of Cromwell J. dated 27 December 2012, the Canadian Council for Refugees (“the CCR”) was granted leave to intervene in the within appeal.

2. As a key advocate on refugee and immigration issues in Canada, whose members work closely with non-citizens, the CCR is well aware of the serious consequences for refugees, permanent residents and foreign nationals that can flow from a criminal conviction. It is from the perspective of assisting non-citizens to come into, remain and settle in Canada that the CCR makes the submissions below.

3. The CCR takes no position on the facts before the Court.

PART II – POINTS IN ISSUE

4. Given that a non-citizen who has been convicted of a criminal offence may face removal from Canada, it is the CCR’s submission that the judge imposing the sentence must take into account the impact that the sentence will have on the availability of remedies for the retention of status in Canada. This is based on the following reasoning:

i. Removal can have a severe impact on the person and those close to her, so severe that in addition to the trauma it causes, it can result in a human rights infringement.

ii. Canadian immigration legislation provides for a scheme to balance and assess the impact on the human rights of the person and those close to her, as well as other personal and public interests engaged by the removal process. While it may not provide a remedy, which meets the requirements of fundamental justice for all non-citizens facing removal, it does provide one for permanent residents and refugees, convicted but sentenced to less than two years of imprisonment. They are entitled to an equitable appeal before a statutory court with the jurisdiction to take into account the impact that removal will have on the person and those close to him, including their human rights.

iii. Principles of sentencing permit a judge to take into account the personal circumstances of the individual in determining an appropriate sentence. The judge does not conduct the balancing relating to the retention of status in Canada, but is required by virtue of constitutional principles of interpretation to take into account the impact that the sentence

will have on the availability of a full appeal for a permanent resident and/or Convention refugee.

PART III – ARGUMENT

(i) Impact of Removal:

5. While this Court has noted that a "fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in the country,"¹ removal procedures are not exempt from Charter scrutiny and broader human rights considerations. Canadian values inform the exercise of discretion which so intimately affects the lives and well being of the person being removed and the many others who form part of that person's community.²

6. The vulnerability of individuals, in a state not their own, is well recognized,³ as are the particular vulnerabilities of refugees who "are by definition persons in flight from the threat of serious human rights abuse."⁴ Non-citizens, who may face deportation because of criminal activity, come from a variety of backgrounds and experiences. Permanent residents often have lived virtually all their lives in Canada. Many came as children and do not know, until facing removal, that they are not citizens. Refugees may have escaped violence - many grew up in the midst of it, knowing nothing else until they came to Canada - and face more of the same if deported. More often than not, non-citizens have their families and friends in Canada: it is their

¹*Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711; [1992] S.C.J. No. 27, at para. 24 citing *R. v. Governor of Pentonville Prison*, [1973] 2 All E.R. 741; *Prata v. Minister of Manpower and Immigration*, [1976] 1 S.C.R. 376.

²*Baker v. M.C.I.*, [1999] S.C.J. No. 39.

³*Law Society British Columbia v. Andrews*, [1989] 1 S.C.R. 143; [1989] S.C.J. No. 6 at para. 68, citing "The Stranger in Our Midst: A Sketch of the Legal Status of the Alien in Canada", [1964] Can. Yearbook of International Law 107.

⁴*Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others*, [2006] ZACC 23; 2007 (4) SA 395 (CC); 2007 (4) BCLR 339 (CC) at para 29. The Court also noted at para. 28: "Refugees are unquestionably a vulnerable group in our society and their plight calls for compassion....They have been forced to flee their homes as a result of persecution, human rights violations and conflict. Very often they, or those close to them, have been victims of violence on the basis of very personal attributes such as ethnicity or religion. Added to these experiences is the further trauma associated with displacement to a foreign country." See also: *Koyabe v. Minister for Home Affairs*, [2009] ZACC 23.

only home and community. Although not technically a punishment,⁵ the consequences of deportation, even if justified in law, can be far more serious for non-citizens than a lengthy term of imprisonment. This was recognized many years ago by the U.S. Supreme Court and continues to hold true today:

Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. That deportation is a penalty - at times a most serious one - cannot be doubted. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.⁶

7. In the face of this reality, there has been a growing recognition,⁷ including by Canadian courts, that deportation can engage human rights, as entrenched in Canada's domestic constitution⁸ and recognized in international covenants which Canada has ratified or to which it is bound as a matter of customary international law.^{9, 10} The General Comments published by the United Nations Human Rights Committee as a means of clarifying the scope and meaning of the rights set out in the *International Covenant on Civil and Political Rights (ICCPR)* provide a

⁵Reference Re: *Royal Prerogative of Mercy upon Deportation Proceedings*, [1933] S.C.J. No. 18; [1933] S.C.R. 269; *Hurd v. Minister of Employment & Immigration*, [1989] 2 F.C. 594.

⁶*Bridges v. Wixon*, 326 U.S. 135 (1945), at pp. 153-156.

⁷The development of limits on a state's jurisdiction to fully control its borders as a result of the growing primacy of human rights was described in 1975 by Guy Goodwin-Gill in "The Limits on the Power of Expulsion in International Law," 47 *British Yearbook of Int'l Law* 55 (1974-75).

⁸*Singh v. Canada (M.E.I.)*, [1985] S.C.J. No. 11; (1985), 58 N.R. 1; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3; [2002] S.C.J. No. 3; 2002 SCC 1, at para. 55-58, 75-76; *Canepa v M.E.I.*, [1992] 3 F.C. 270 (F.C.A.) at p. 278, 281-282; *Grewal v. M.E.I.*, [1992] 1 F.C. 581 (C.A.) at p. 588

⁹There is also regional recognition of the same rights. See for eg. *Chahal v. United Kingdom* (1996), 23 EHRR 413; *Maslov v. Austria*, [2008] ECHR [GC] 1638/03, which relies on Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. This kind of directive arose directly from the ECHR's conclusions that removal of long-term residents who arrived in Europe as children was an unacceptable breach of family rights.

¹⁰Rights engaged by removal include those set out a number of International Covenants. Eg. *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, preamble, Arts. 3(1), (2), 9, 12; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39; [1999] 2 S.C.R. 817; [1999] 2 R.C.S. 817, at paras. 69-71, 73; *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), Art. 14.1; *Convention Relating to the Status of Refugees*, Can. T.S. 1969 No. 6, Art.33; *Singh v. MEI*, [1985] 1 S.C.R. 177; *Convention Against Torture*, Can. T.S. 1987 No. 36, Art.3; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3; [2002] S.C.J. No. 3; 2002 SCC 1 at paras. 62-65, 72-73, 76; *De Guzman v. M.C.I.*, [2005] F.C.J. No. 2119 (C.A.) at paras. 71-90, 98; *IRPA*, s. 3(3)(f).

good summary of a number of the rights which may be engaged by status determination and removals processes:

Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Aliens may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at marriageable age. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights. These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant.¹¹

8. In fact, in the recent decision of *Jama Warsame v. Canada*,¹² the UN Human Rights Committee found Canada to be in violation of articles 6 (right to life); 7 (right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment); 12(4) (right to enter his own country); 17 (right to privacy, family, home) and 23 (right to family) of the *ICCPR* for deporting a long term resident of Canada who had been convicted of criminal offences.

9. Non-citizens whose human rights will be infringed by removal are entitled to have their interests considered by a competent, independent and impartial decision maker prior to

¹¹ Human Rights Committee, *General Comment 15, The position of Aliens under the Covenant* (27th session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994).

¹² *Jama Warsame v. Canada*, CCPR/C/102/D/1959/2010, UN Human Rights Committee (HRC), 1 September 2011.

removal.¹³ A scheme was created for consideration of such interests under the *Immigration and Refugee Protection Act (IRPA)*. Relevant to this appeal, this obligation is met in the equitable appeal which is available to permanent residents and Convention refugees who face removal because of a criminal conviction but who have received a sentence of less than two years.

(ii) Statutory Scheme:

10. Under IRPA, non-citizens with criminal convictions are removable from Canada if the offences come within s. 36 of the Act.¹⁴ Not every non-citizen convicted of an offence will be removed from Canada. There are remedies available - some more effective than others:

a. **Pre-Report Review:** At the time that the Canada Border Services Agency officer writes a report to initiate the deportation process because a non-citizen has a conviction, the officer will review the person's circumstances, with or without an interview. The officer is not independent or impartial, his or her role being to initiate the deportation process. The level of fairness is at the low end of the spectrum. Whether the officer may take into account humanitarian and compassionate factors at this stage is an issue which the Courts have not resolved.¹⁵

¹³ This has been most clearly articulated in the context of removal to a country where the person claims a risk of persecution, torture or other forms of cruel treatment. See eg. *Farhadi v. MCI*, [2000] F.C.J. No. 646 (FCA) at para.3; *Chieu v. MCI*, [2002] 1 S.C.R. 84; 2002 SCC 3; [2002] S.C.J. No. 1 at para.70, citing Cory J. in *Pushpanathan v. MEI*, at para. 157 “.... it would be unthinkable if there were not a fair hearing before an impartial arbiter to determine whether there are “substantial grounds for believing” that the individual to be deported would face a risk of torture, arbitrary execution, disappearance or other such serious violation of human rights. In light of the grave consequences of deportation in such a case, there must be an opportunity for a hearing before the individual is deported, and the hearing must comply with all of the principles of natural justice....” Even in the context of other rights, fair hearing norms have been recognized as in *Baker v MCI*, *supra*.

¹⁴ *Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd, s. 36

¹⁵ The scope of the discretion is not settled. See *Hernandez v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 533; 2005 FC 429, at para. 42, which opted for a broad discretion including H&C factors in deciding whether to initiate the removal process; and *Correia v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 964; *Leong v Canada (Solicitor General)*, [2004] F.C.J. No. 1369. The Court of Appeal did not resolve the divergence of opinions in the Federal Court: *Cha v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 491; 2006 FCA 126 at para. 13.

b. **IAD Appeal:** For those who are eligible under s. 64 of the Act¹⁶ - some permanent residents, sponsors, and Convention refugees - there is a full hearing before the Immigration Appeal Division of the Immigration and Refugee Board, a statutory court¹⁷ generally recognized as being independent and impartial. It has the jurisdiction to grant equitable relief on the factors set out by this Court in *Chieu v MCI*.¹⁸ Permanent residents with a sentence of two years or more do not have a right to appeal to the Immigration Appeal Division.¹⁹

c. **H&C and/or TRP Applications:** Foreign nationals,²⁰ who are not entitled to an appeal before the Immigration Appeal Division, may make an application on humanitarian and compassionate (H&C) grounds to remain in Canada pursuant to s. 25(1) of the IRPA for an exemption to overcome the criminal bar to being landed²¹ or pursuant to s. 24 of the Act for a temporary resident permit (TRP) to provide status to remain until the foreign national is eligible to become a permanent resident.²² In addition to the classes of foreign nationals now excluded from these remedies, it is expected that the exclusions will soon be broadened.²³ Immigration officers, who are neither independent nor impartial, make H&C and TRP determinations,

¹⁶ *Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 63 provides for an appeal for Canadian or permanent resident sponsors of family class members; permanent resident visa holders, permanent residents and protected persons, and the Minister. But for the Minister there are specific exclusions for each class of appellant. So for example, under s. 64 of the Act, no appeal is available where the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality. Serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years. And misrepresentation is a bar to an appeal unless the person who misrepresented is the sponsor's spouse, common law partner or child.

¹⁷ *Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 63

¹⁸ *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1; 2002 SCC 3

¹⁹ Bill C-43, if passed as expected, will deny an appeal to permanent residents sentenced to more than 6 months.

²⁰ Once under a valid removal order, a permanent resident loses that status and becomes a foreign national. At this point the non-citizen is eligible to apply on H&C grounds or for a TRP. *Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 46(1)(c).

²¹ *Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 25, 25.1, 25.2. The discretion used to be a general one available to any foreign national. It is now subject to a number of exclusions, and with pending legislation now before the House of Commons, Bill C-43, further exclusions will be added, including exclusion of those described in s. 34, 35, and 37 of the IRPA.

²² *Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 24.

²³ Bill C-43, "Faster Removal of Foreign Criminals Act."

normally without an interview on the basis of the written application.²⁴

d. **RPD Hearing:** Non-citizens who claim a well founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group²⁵ or who claim a likelihood of being at risk of torture or other forms of cruel and unusual treatment²⁶ may apply for protection. They are entitled to a hearing before the Refugee Protection Division (RPD) of the Immigration and Refugee Board, generally a tribunal seen to be independent and impartial. However, those found inadmissible on security or criminality grounds may be denied a hearing before the RPD.²⁷ Non-citizens who come within the serious criminality bar in s. 36 of the Act may still be eligible to have a hearing before the RPD where their sentence is less than two years.²⁸

e. **PRRA Application:** Those who are excluded from the refugee determination process are entitled to have their need for protection considered by an immigration officer, normally on a paper review.²⁹ There is provision for an oral interview with the officer where credibility is at issue.³⁰ Refugee protection under s. 96 of the Act is not available to persons who are inadmissible on security and criminality grounds.³¹ While excluded from Convention refugee protection, these applicants can still be considered under s. 97 of the Act by the officer.³²

11. Based on the above, it is evident that access to a full appeal for a permanent resident before the Immigration Appeal Division and/or access to a full hearing before the Refugee Protection

²⁴*Baker v. MCI, supra.*

²⁵*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 96.

²⁶*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 97.

²⁷*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 100,101.

²⁸*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s.101(2)(a).

²⁹*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s.113.

³⁰*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 113(b).

³¹*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 113(c).

³²*Immigration & Refugee Protection Act*, S.C. 2001, c. 27, as amd'd., s. 113(c).

Division is denied where the person has a conviction for which a sentence of two years or more has been imposed. Further, those with a sentence of two years or more are not eligible to have a determination made as to whether they have a well founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. The consequences for a non-citizen of having a sentence of two years or more imposed on conviction are profound and may in fact leave the non-citizen with a remedy that does not comply with the principles of fundamental justice under s. 7 of the *Charter*.

12. This Court has already recognized that the IAD appeal complies with fairness requirements, while the administrative decision making process may not in all instances. In *Chieu* this Court noted in reference to the requirements of fundamental justice under s. 7 of the *Charter* where risk upon removal to another country was being asserted:

The protections provided in relation to a s. 70(1)(b) appeal to the I.A.D. satisfy these requirements. While the Minister's decisions under ss. 52 and 114(2) may well accord with the requirements of natural justice in most cases, I am concerned that this will not always be the case. *Baker, supra*, is one example of an instance where the Minister's decision was procedurally deficient. It fell to this Court to clarify that the principles of natural justice guarantee certain rights to individuals who make a s. 114(2) application, including a right to make written submissions to the Minister's delegate who actually makes the decision, a right to receive brief reasons for the decision, and a right to an unbiased decision maker. However, it is clear that the procedural protections required may vary with the context of the case....³³

(iii) Obligation to Consider the Availability of a Remedy:

13. Judges do not presently possess jurisdiction to decide whether an individual ought to be deported on account of a criminal conviction. Rather the obligation lies with the immigration decision makers already obliged by statute to take such matters into account. The issue therefore, is whether the sentencing judge ought to take into account the fact that the kind of sentence imposed will impact on the nature of the remedy available to the non-citizen under the

³³*Chieu v. MCI*, [2002] 1 S.C.R. 84; 2002 SCC 3; [2002] S.C.J. No. 1, at para. 70

immigration scheme to have her personal interests, including human rights interests, considered. It is the CCR's submission that this is an appropriate consideration for a sentencing judge.

14. Parliament has the right to choose the process it uses to ensure compliance with Charter obligations.³⁴ As noted above, the appeal before the IAD and the hearing before the RPD are remedies, of the ones presently available, which clearly comply with the principles of fundamental justice under s.7 of the Charter. The availability of the appellate remedy has historically been seen as a recognition that there are some classes of non-citizens who are likely to have very strong ties to Canada, such as permanent residents - many who have come as very young children - just as there are other classes of non-citizens towards whom Canada has special protection obligations, such as refugees and other persons in need of protection. The Board's discretion is a broad one, as this Court has recognized.³⁵ The full refugee hearing came about as a result of this Court's judgment in *Singh*, recognizing that a hearing which complied with the principles of fundamental justice was required for refugee claimants.³⁶

15. The administrative exercise of discretion by officers – the pre-report review, the H&C review, and the PRRA – may not, in all instances, meet the requirements of s. 7 of the Charter given the rights which may be engaged by the removals process. As noted above, this Court has recognized that the benefit of a full hearing before an independent tribunal cannot be equated to a paper review by a government functionary. As such, where a decision is made that will have the effect of denying a permanent resident or refugee access to the full appeal this ought to be - indeed must be - a relevant factor under consideration at the time of sentencing.

³⁴ *Lyons v. The Queen*, (1987), 32 C.R. 41 (S.C.C.)

³⁵ *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1; 2002 SCC 3

³⁶ *Singh v. Canada (M.E.I.)*, [1985] S.C.J. No. 11; (1985), 58 N.R. 1

16. This Court has taken a broad approach to sentencing, recognizing that personal circumstances are to be taken into account.³⁷ The potential loss of lawful status in Canada is clearly relevant to the person's future. The availability of a remedy which would enable the person to have the issue, of whether status should be revoked, considered in a manner which complies with the principles of fundamental justice is part of this consideration. This is consistent with this Court's approach to the exercise of discretion. It should be exercised in a manner which best protects the human rights of the individual subject to the decision and those affected by it.³⁸

17. It is submitted therefore that a judge, exercising a judicial discretion in relation to the imposition of an appropriate sentence for a crime committed, ought to take into account the impact that the sentence will have on the availability to a non-citizen of a hearing which is fully in compliance with the principles of fundamental justice under s. 7 of the Charter in relation to that person's status in Canada.

PART IV, V– COSTS AND ORDER REQUESTED

18. The Intervener seeks no costs and respectfully request that none be awarded against them. The CCR seeks leave to make oral submissions at the hearing of this appeal, and makes no submissions as to the outcome of the appeal.

³⁷*R. v. Nasogaluak*, [2010] S.C.J. No. 6; 2010 SCC 6, at para. 43-47; The broad discretion to consider personal circumstances of the offender, is mirrored in the broad discretion of the IAD to consider the personal circumstances of a non-citizen who comes before it as a result of a criminal conviction or other such breach of the IRPA. See *Chieu v. MCI*, [2002] 1 S.C.R. 84; 2002 SCC 3; [2002] S.C.J. No. 1.

³⁸*R. v. Sharp*, [2001] S.C.J. No. 3, [2001] SCC 2, at para.33; *R. v. Wust*, [2000] S.C.J. No. 19; 2000 SCC 18, at para. 34; *R. v. Nasogaluak*, [2010] S.C.J. No. 6; 2010 SCC 6, at para. 43-47; see also *Davidson v. Slaight Communications*, [1989] 1 S.C.R. 1038; [1989] S.C.J. No. 45, at paras. 87-94; *Baker, supra.* at paras. 53-56. In *Chieu v. MCI*, [2002] 1 S.C.R. 84; 2002 SCC 3; [2002] S.C.J. No. 1, at para. 71 this court noted that where there was a choice of interpretation, "this Court has consistently adopted the interpretation that favours a fuller assurance that the requirements of natural justice will be met..."

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 11th day of January, 2013.

BARBARA JACKMAN

CAROLE SIMONE DAHAN

Counsel for the Intervener
Canadian Council for Refugees

PART VI – TABLE OF AUTHORITIES

CANADIAN JUDGMENTS	CITED AT PARAGRAPH(S)
<i>Baker v. Canada (M.C.I.)</i> , [1999] S.C.J. No. 39	5, 7, 10, 11, 17
<i>Canada (Minister of Employment and Immigration) v. Chiarelli</i> , [1992] 1 S.C.R. 711	5
<i>Canepa v. Canada (M.E.I.)</i> , [1992] 3 F.C. 270 (C.A.)	7
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<i>Chieu v. Canada (M.C.I.)</i> , [2002] 1 S.C.R. 84	9, 10, 12
<i>Correia v. Canada (M.C.I.)</i> , [2004] F.C.J. No. 964	10
<i>Davidson v. Slight Communications</i> , [1989] 1 S.C.R. 1038	16
<i>De Guzman v. M.C.I.</i> , [2005] F.C.J. No. 2119 (C.A.)	7
<i>Farhadi v. Canada (M.C.I.)</i> , [2000] F.C.J. No. 646 (C.A.)	9
<i>Grewal v. Canada (M.E.I.)</i> , [1992] 1 F.C. 581 (C.A.)	7
<i>Hernandez v. Canada (M.C.I.)</i> , [2005] F.C.J. No. 533	10
<i>Hurd v. Minister of Employment & Immigration</i> , [1989] 2 F.C. 594	6
<i>Law Society British Columbia v. Andrews</i> , [1989] 1 S.C.R. 143	6
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<i>Reference Re: Royal Prerogative of Mercy upon Deportation Proceedings</i> , [1933] S.C.J. No. 18	6

<i>R. v. Sharp</i> , [2001] S.C.J. No. 3	16
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<i>R. v. Wust</i> , [2000] S.C.J. No. 19	16

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<i>Bridges v. Wixon</i> , 326 U.S. 135 (1945)	6
<i>Chahal v. United Kingdom</i> (1996), 23 EHRR 413	7
<i>Jama Warsame v. Canada</i> , CCPR/C/102/D/1959/2010, UN Human Rights Committee (HRC), 1 September 2011	8
<i>Maslov v. Austria</i> , [2008] ECHR [GC] 1638/03	7
<i>Union of Refugee Women and Others v Director, Private Security Industry Regulatory Authority and Others</i> , [2006] ZACC 23	6

SECONDARY SOURCES	CITED AT PARAGRAPH(S)
Human Rights Committee, <i>General Comment 15, The position of aliens under the Covenant</i> (27th session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994)	7
The Limits on the Power of Expulsion in International Law, 47 British Yearbook of Int'l Law 55 (1974-75)	7

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<i>Convention Against Torture</i> , Can. T.S. 1987 No. 36	7

<i>Convention on the Rights of the Child</i> , Can. T.S. 1992 No. 3	7
<i>Convention Relating to the Status of Refugees</i> , Can. T.S. 1969 No. 6	7
<i>Universal Declaration of Human Rights</i> , G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948)	7

PART VII – STATUTES

Immigration and Refugee Protection Act (S.C. 2001, c.27)	Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch.27)
Part 2 Immigration to Canada Division 3 Entering and Remaining in Canada 24. (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time. (2) A foreign national referred to in subsection (1) to whom an officer issues a temporary resident permit outside Canada does not become a temporary resident until they have been examined upon arrival in Canada. (3) In applying subsection (1), the officer shall act in accordance with any instructions that the Minister may make. (4) A foreign national whose claim for refugee protection has been rejected or determined to be withdrawn or abandoned by the Refugee Protection Division or the Refugee Appeal Division may not request a temporary resident permit if less than 12 months have passed since their claim was last	Partie 2 Immigration au Canada Section 3 Entrée et Séjour au Canada 24.(1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps. 2) L'étranger visé au paragraphe (1) à qui l'agent délivre hors du Canada un permis de séjour temporaire ne devient résident temporaire qu'après s'être soumis au contrôle à son arrive au Canada. (3) L'agent est tenu de se conformer aux instructions que le ministre peut donner pour l'application du paragraphe (1). (4) L'étranger dont la Section de la protection des réfugiés ou la Section d'appel des réfugiés a rejeté la demande d'asile ou dont elle a prononcé le désistement ou le retrait de la demande ne peut demander de permis de séjour temporaire que si douze mois se sont écoulés depuis le

rejected or determined to be withdrawn or abandoned.	dernier rejet de la demande d'asile ou le dernier prononcé du désistement ou du retrait de celle-ci.
(5) A designated foreign national may not request a temporary resident permit	(5) L'étranger désigné ne peut demander de permis de séjour temporaire que si cinq années se sont écoulées depuis l'un ou l'autre des jours suivants :
(a) if they have made a claim for refugee protection but have not made an application for protection, until five years after the day on which a final determination in respect of the claim is made;	a) s'il a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur la demande d'asile;
(b) if they have made an application for protection, until five years after the day on which a final determination in respect of the application is made; or	b) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande;
(c) in any other case, until five years after the day on which the foreign national becomes a designated foreign national.	c) dans les autres cas, le jour où il deviant un étranger désigné.
(6) The processing of a request for a temporary resident permit of a foreign national who, after the request is made, becomes a designated foreign national is suspended	(6) La procédure d'examen de la demande de permis de séjour temporaire de l'étranger qui devient, à la suite de cette demande, un étranger désigné est suspendue jusqu'à ce que cinq années se soient écoulées depuis l'un ou l'autre des jours suivants :
(a) if the foreign national has made a claim for refugee protection but has not made an application for protection, until five years after the day on which a final determination in respect of the claim is made;	a) si l'étranger a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur la demande d'asile;
(b) if the foreign national has made an application for protection, until five years after the day on which a final determination in respect of the application is made; or	b) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande;

(c) in any other case, until five years after the day on which the foreign national becomes a designated foreign national. (7) The officer may refuse to consider a request for a temporary resident permit if (a) the designated foreign national fails, without reasonable excuse, to comply with any condition imposed on them under subsection 58(4) or section 58.1 or any requirement imposed on them under section 98.1; and (b) less than 12 months have passed since the end of the applicable period referred to in subsection (5) or (6). 2001, c. 27, s. 24; 2010, c. 8, s. 3; 2012, c. 17, s. 12.	c) dans les autres cas, le jour où il deviant un étranger désigné. (7) L'agent peut refuser d'examiner la demande de permis de séjour temporaire présentée par l'étranger désigné si : a) d'une part, celui-ci a omis de se conformer, sans excuse valable, à toute condition qui lui a été imposée en vertu du paragraphe 58(4) ou de l'article 58.1 ou à toute obligation qui lui a été imposée en vertu de l'article 98.1; b) d'autre part, moins d'une année s'est écoulée depuis la fin de la période applicable visée aux paragraphes (5) ou (6). 2001, ch. 27, art. 24; 2010, ch. 8, art. 3; 2012, ch. 17, art. 12.
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child	25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

directly affected. (1.01) A designated foreign national may not make a request under subsection (1) (a) if they have made a claim for refugee protection but have not made an application for protection, until five years after the day on which a final determination in respect of the claim is made; (b) if they have made an application for protection, until five years after the day on which a final determination in respect of the application is made; or (c) in any other case, until five years after the day on which they become a designated foreign national. (1.02) The processing of a request under subsection (1) of a foreign national who, after the request is made, becomes a designated foreign national is suspended (a) if the foreign national has made a claim for refugee protection but has not made an application for protection, until five years after the day on which a final determination in respect of the claim is made; (b) if the foreign national has made an application for protection, until five years after the day on which a final determination in respect of the application is made; or (c) in any other case, until five years	(1.01) L'étranger désigné ne peut demander l'étude de son cas en vertu du paragraphe (1) que si cinq années se sont écoulées depuis l'un ou l'autre des jours suivants : a) s'il a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur la demande d'asile; b) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande; c) dans les autres cas, le jour où il deviant un étranger désigné. (1.02) La procédure d'examen de la demande visée au paragraphe (1) présentée par l'étranger qui devient, à la suite de cette demande, un étranger désigné est suspendue jusqu'à ce que cinq années se soient écoulées depuis l'un ou l'autre des jours suivants : a) si l'étranger désigné a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier resort sur la demande d'asile; b) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande; c) dans les autres cas, le jour où il
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after the day on which they become a designated foreign national. (1.03) The Minister may refuse to consider a request under subsection (1) if (a) the designated foreign national fails, without reasonable excuse, to comply with any condition imposed on them under subsection 58(4) or section 58.1 or any requirement imposed on them under section 98.1; and (b) less than 12 months have passed since the end of the applicable period referred to in subsection (1.01) or (1.02). (1.1) The Minister is seized of a request referred to in subsection (1) only if the applicable fees in respect of that request have been paid. (1.2) The Minister may not examine the request If (a) the foreign national has already made such a request and the request is pending; (b) the foreign national has made a claim for refugee protection that is pending before the Refugee Protection Division or the Refugee Appeal Division; or (c) subject to subsection (1.21), less than 12 months have passed since the foreign national's claim for refugee protection was last rejected, determined to be withdrawn after substantive evidence was heard or determined to be abandoned by the	deviant un étranger désigné. (1.03) Le ministre peut refuser d'examiner la demande visée au paragraphe (1) présentée par l'étranger désigné si : a) d'une part, celui-ci a omis de se conformer, sans excuse valable, à toute condition qui lui a été imposée en vertu du paragraphe 58(4) ou de l'article 58.1 ou à toute obligation qui lui a été imposée en vertu de l'article 98.1; b) d'autre part, moins d'une année s'est écoulée depuis la fin de la période applicable visée aux paragraphes (1.01) ou (1.02). (1.1) Le ministre n'est saisi de la demande faite au titre du paragraphe (1) que si les frais afférents ont été payés au préalable. (1.2) Le ministre ne peut étudier la demande de l'étranger faite au titre du paragraphe (1) dans les cas suivants : a) l'étranger a déjà présenté une telle demande et celle-ci est toujours pendante; b) il a présenté une demande d'asile qui est pendante devant la Section de la protection des réfugiés ou de la Section d'appel des réfugiés; c) sous réserve du paragraphe (1.21), moins de douze mois se sont écoulés depuis le dernier rejet de la demande d'asile, le dernier prononcé de son retrait après que des éléments de preuve testimoniale de fond aient été entendus ou le dernier prononcé de
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Refugee Protection Division or the Refugee Appeal Division.	son désistement par la Section de la protection des réfugiés ou la Section d'appel des réfugiés.
(1.21) Paragraph (1.2)(c) does not apply in respect of a foreign national	(1.21) L'alinéa (1.2)c) ne s'applique pas à l'étranger si l'une ou l'autre des conditions suivantes est remplie:
(a) who, in the case of removal, would be subjected to a risk to their life, caused by the inability of each of their countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, to provide adequate health or medical care; or	a) pour chaque pays dont l'étranger a la nationalité — ou, s'il n'a pas de nationalité, pour le pays dans lequel il avait sa résidence habituelle —, il y serait, en cas de renvoi, exposé à des menaces à sa vie résultant de l'incapacité du pays en cause de fournir des soins médicaux ou de santé adéquats;
(b) whose removal would have an adverse effect on the best interests of a child directly affected.	b) le renvoi de l'étranger porterait atteinte à l'intérêt supérieur d'un enfant directement touché.
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.
(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.	(2) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.
2001, c. 27, s. 25; 2008, c. 28, s. 117; 2010, c. 8, s. 4; 2012, c. 17, s. 13.	2001, ch. 27, art. 25; 2008, ch. 28, art. 117; 2010, ch. 8, art. 4; 2012, ch. 17, art. 13.

25.1 (1) The Minister may, on the Minister's own initiative, examine the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected. (2) The Minister may exempt the foreign national from the payment of any applicable fees in respect of the examination of their circumstances under subsection (1). (3) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national. 2010, c. 8, s. 5. 25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations. (2) The Minister may exempt the foreign national from the payment of	25.1 (1) Le ministre peut, de sa propre initiative, étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché. (2) Il peut dispenser l'étranger du paiement des frais afférents à l'étude de son cas au titre du paragraphe (1). (3) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables. 2010, ch. 8, art. 5. 25.2 (1) Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie. (2) Il peut dispenser l'étranger du paiement des frais afférents à l'étude
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any applicable fees in respect of the examination of their circumstances under subsection (1). (3) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national. (4) The conditions referred to in subsection (1) may include a requirement for the foreign national to obtain an undertaking or to obtain a determination of their eligibility from a third party that meets any criteria specified by the Minister. 2010, c. 8, s. 5; 2012, c. 17, s. 14.	de son cas au titre du paragraphe (1). (3) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables. (4) Les conditions mentionnées au paragraphe (1) peuvent notamment inclure l'obligation pour l'étranger en cause d'obtenir d'une tierce partie une détermination de recevabilité qui répond aux critères précisés par le ministre ou d'obtenir un engagement. 2010, ch. 8, art. 5; 2012, ch. 17, art. 14.
Division 4 Inadmissibility 36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed; (b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or	Section 4 Interdictions de Territoire 36. (1) Emportent interdiction de territoire pour grande criminalité les faits suivants : a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé; b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. (2) A foreign national is inadmissible on grounds of criminality for (a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence; (b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament; (c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or (d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations. (3) The following provisions govern subsections (1) and (2): (a) an offence that may be prosecuted either summarily or by way of	c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans. (2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants : a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits; b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions qui ne découlent pas des mêmes faits et qui, commises au Canada, constitueraient des infractions à des lois fédérales; c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation; d) commettre, à son entrée au Canada, une infraction qui constitue une infraction à une loi fédérale précisée par règlement. (3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2): a) l'infraction punissable par mise en accusation ou par procédure sommaire
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indictment is deemed to be an indictable offence, even if it has been prosecuted summarily; (b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a record suspension has been ordered and has not been revoked or ceased to have effect under the <i>Criminal Records Act</i>, or in respect of which there has been a final determination of an acquittal; (c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated; (d) a determination of whether a permanent resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and (e) inadmissibility under subsections (1) and (2) may not be based on an offence designated as a contravention under the <i>Contraventions Act</i> or an offence for which the permanent resident or foreign national is found guilty under the <i>Young Offenders Act</i>, chapter Y-1 of the Revised Statutes of Canada, 1985 or the <i>Youth Criminal Justice Act</i>. 2001, c. 27, s. 36; 2008, c. 3, s. 3; 2012, c. 1, s. 149.	est assimilée à l'infraction punissable par mise en accusation, indépendamment du mode de poursuite effectivement retenu; b) la déclaration de culpabilité n'emporte pas interdiction de territoire en cas de verdict d'acquittement rendu en dernier ressort ou en cas de suspension du casier — sauf cas de révocation ou de nullité — au titre de la <i>Loi sur le casier judiciaire</i>; c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées; d) la preuve du fait visé à l'alinéa (1)c) est, s'agissant du résident permanent, fondée sur la prépondérance des probabilités; e) l'interdiction de territoire ne peut être fondée sur une infraction qualifiée de contravention en vertu de la <i>Loi sur les contraventions</i> ni sur une infraction dont le résident permanent ou l'étranger est déclaré coupable sous le régime de la <i>Loi sur les jeunes contrevenants</i>, chapitre Y-1 des Lois révisées du Canada (1985), ou de la <i>Loi sur le système de justice pénale pour les adolescents</i>. 2001, ch. 27, art. 36; 2008, ch. 3, art. 3; 2012, ch. 1, art. 149.
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Division 7 Right of Appeal	Section 7 Droit D'appel
63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa. (2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them. (3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them. (4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28. (5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing. 64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.	63. (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent. (2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête. (3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête. (4) Le résident permanent peut interjeter appel de la décision rendue hors du Canada sur l'obligation de résidence. (5) Le ministre peut interjeter appel de la décision de la Section de l'immigration rendue dans le cadre de l'enquête. 64. (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.

(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years. (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.	(2) L'interdiction de territoire pour grande criminalité vise l'infraction punie au Canada par un emprisonnement d'au moins deux ans. (3) N'est pas susceptible d'appel au titre du paragraphe 63(1) le refus fondé sur l'interdiction de territoire pour fausses déclarations, sauf si l'étranger en cause est l'époux ou le conjoint de fait du répondant ou son enfant.
Part 2 Refugee Protection Division 1 Refugee Protection, Convention Refugees and Persons in Need of Protection 96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country. 97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former	Partie 2 Protection des Réfugiés Section 1 Notions d'asile, de réfugiés et de personne à protéger 96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques: a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner. 97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de

habitual residence, would subject them personally (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. (2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	nationalité, dans lequel elle avait sa résidence habituelle, exposée : a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. (2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.
100. (1) An officer shall, within three working days after receipt of a claim referred to in subsection 99(3), determine whether the claim is eligible to be referred to the Refugee Protection Division and, if it is eligible, shall refer the claim in accordance with the rules of the Board.	100. (1) Dans les trois jours ouvrables suivant la réception de la demande, l'agent statue sur sa recevabilité et défère, conformément aux règles de la Commission, celle jugée recevable à la Section de la protection des réfugiés.

(2) The officer shall suspend consideration of the eligibility of the person's claim if (a) a report has been referred for a determination, at an admissibility hearing, of whether the person is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or (b) the officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years. (3) The Refugee Protection Division may not consider a claim until it is referred by the officer. If the claim is not referred within the three-day period referred to in subsection (1), it is deemed to be referred, unless there is a suspension or it is determined to be ineligible. (4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board. (5) If a traveller is detained or isolated under the <i>Quarantine Act</i>, the period referred to in subsections (1) and (3) does not begin to run until the day on which the detention or isolation ends. 2001, c. 27, s. 100; 2005, c. 20, s. 81.	(2) L'agent sursoit à l'étude de la recevabilité dans les cas suivants : a) le cas a déjà été déféré à la Section de l'immigration pour constat d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée; b) il l'estime nécessaire, afin qu'il soit statue sur une accusation pour infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans. (3) La saisine de la section survient sur déféré de la demande; sauf sursis ou constat d'irrecevabilité, elle est réputée survenue à l'expiration des trois jours. (4) La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées et fournir à la section, si le cas lui est déféré, les renseignements et documents prévus par les règles de la Commission. (5) Le délai prévu aux paragraphes (1) et (3) ne court pas durant une période d'isolement ou de détention ordonnée en application de la <i>Loi sur la mise en quarantaine</i>. 2001, ch. 27, art. 100; 2005, ch. 20, art. 81.
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101. (1) A claim is ineligible to be referred to the Refugee Protection Division if (a) refugee protection has been conferred on the claimant under this Act; (b) a claim for refugee protection by the claimant has been rejected by the Board; (c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned; (d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country; (e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or (f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c). (2) A claim is not ineligible by reason of serious criminality under paragraph (1)(f) unless (a) in the case of inadmissibility by reason of a conviction in Canada, the	101. (1) La demande est irrecevable dans les cas suivants: a) l'asile a été conféré au demandeur au titre de la présente loi; b) rejet antérieur de la demande d'asile par la Commission; c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure; d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé; e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle; f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)c) — , grande criminalité ou criminalité organisée. (2) L'interdiction de territoire pour grande criminalité visée à l'alinéa (1)f) n'emporte irrecevabilité de la demande que si elle a pour objet : a) une déclaration de culpabilité au Canada pour une infraction à une loi
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conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed; or (b) in the case of inadmissibility by reason of a conviction outside Canada, the Minister is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.	fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle un emprisonnement d'au moins deux ans a été infligé; b) une déclaration de culpabilité à l'extérieur du Canada, pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans, le ministre estimant que le demandeur constitue un danger pour le public au Canada.
113. Consideration of an application for protection shall be as follows: (a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection; (b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required; (c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98; (d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and	113. Il est disposé de la demande comme il suit : a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet; b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires; c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98; d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or (ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada, (ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.
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