

Canadian Immigration: A Historical and Legal Perspective

ILCO Conference - May 18, 2017



EY Law LLP

Acknowledgments

The following summary of Canada's immigration policy (from 1967-1993) has been prepared from the following sources:

- ▶ *Canadian Immigration Acts and Legislation* by Lindsay Van Dyk published online by the Canadian Museum of Immigration at Pier 21: <https://www.pier21.ca/research/immigration-history/canadian-immigration-acts-and-legislation>
- ▶ A chronology prepared by Janet Dench, Executive Director of the Canadian Council for Refugees called: *A hundred years of immigration to Canada 1900-1999*
- ▶ *The Canadian Immigration System: An Overview*, slides from a presentation by Geneviève Bouchard, Research Director, Governance at the Institute for Research on Public Policy

Canadian Immigration Policy 1967-1973

▶ 1967

- ▶ Following the *White Paper on Immigration* published in 1966, the Pearson government enacted new immigration regulations that established a points systems for skilled immigrants.
- ▶ The last overt elements of racial discrimination were eliminated

▶ 1970

- ▶ Canadian visa offices were opened in more countries which led to more immigrants from Asia and the Caribbean by this point.

▶ 1971

- ▶ Canada introduces a multiculturalism policy
- ▶ US is the largest source country because of draft dodgers and deserters (possibly 30,000 - 40,000)

The Immigration Act, 1976

- ▶ A new Immigration Act came into effect in 1978. It identified three priorities which remain part of today's immigration policy:
 - ▶ Family reunification
 - ▶ Humanitarian concerns
 - ▶ Promotion of Canada's economic, social, demographic and cultural goals.
- ▶ Prohibited categories were replaced with the concept of inadmissibility
- ▶ The 1976 Act identified objectives for immigration; mandated the government to plan for the future and to consult with the provinces
- ▶ A revised points system was included in the regulations and created an identifiable class of refugees administered separately from immigrants

Canadian Immigration Policy 1986-1993

1985

- ▶ A report to Parliament on immigration levels warned that fertility had fallen below replacement levels; that economic categories of immigration should increase, but not at the expense of family and humanitarian streams

1992

- ▶ Family class numbers were reduced making it more difficult to sponsor someone not part of the nuclear family; a commitment was made to stable inflows at about 1% of the population

1993

- ▶ In spite of recession and high unemployment, permanent immigration was increased to 250,000 (200,000 in 1990; 220,000 in 1991); this was controversial

Immigration and Refugee Protection Act, 2002

2002 – the 1978 Immigration Act was replaced by the current legislation, the *Immigration and Refugee Protection Act* (“IRPA”)

- ▶ Changes to Federal Skilled Worker streams: General Occupation List eliminated; point system changed to attract younger, bilingual and educated workers with general skills
- ▶ Common-law and conjugal partner category created
- ▶ More powers of detention (post 911)
- ▶ Focus on agreements with provinces

Canadian Immigration Policy 2002 to date

- ▶ 2008 – “Ministerial Instructions” were introduced. These make it possible for the Immigration minister to issues written instructions directly to immigration officers, instead of going through the parliamentary process to amend regulations. Ministerial Instructions have been used repeatedly since 2008 to make significant changes to Canada’s immigration policies:
 - ▶ For the Express Entry Application Management System
 - ▶ Respecting invitations to apply for PR under the Express Entry System (64 between Jan. 1, 2015 - May 4, 2017)
 - ▶ To establish permanent resident programs
 - ▶ For attaining immigration goals

Immigration v. Refugee Law

- ▶ The *Immigration and Refugee Protection Act (IRPA)* applies to both immigrants and refugees; however, they are very distinct areas of law.

2017 Immigration Target for Canada

280,000 - 320,000 (Target 300,000) Permanent Residents

172,500 - Economic Categories

- ▶ Federal Skilled Workers, Federal Skilled Trades Program, Canadian Experiences Class Atlantic Immigration Pilot Program, Caregivers, Business, Provincial Nominee Program, Quebec Skilled workers and Business

84,000 - Family Class

- ▶ Spouses, partners & children, parents and grandparents

46,000 - Refugees and Protected Persons

- ▶ Protected Persons in Canada and dependents abroad and resettled refugees.

3,400 Humanitarians and other

- ▶ Humanitarian & compassionate grounds, public policy cases and permit holder class.

Past Immigration Levels

2016

- ▶ Overall target was the same as 2017 (300,000) but range was not as high (280,000 – 305,000)

2015 - 271,847 PRs admitted

2014 - 260,282 PRs admitted

2013 - 259,039 PRs admitted

What Does an Immigration Lawyer Do?

- ▶ Provides assistance to foreign nationals who want to come to Canada for a temporary purpose (to visit, study or work) or a permanent purpose (to live permanently and perhaps become a citizen)
- ▶ Help people who encounter difficulties with the immigration process, or are refused entry to Canada
- ▶ Advises employers who wish to bring foreign talent to Canada to assume hard-to-fill vacancies or work as a short-term specialized service provider or consultants on strategy and compliance.

What does an Immigration Law Clerk Do?

Law Clerk, Canadian Business Immigration

- ▶ The law clerk will be a professional staff member of the EY law LLP Business Immigration Group. The primary role of the law clerk is to support the team of immigration lawyers by drafting immigration applications for individuals seeking permission to work or live in Canada and to coordinate tracking status expiration dates for ongoing clients.

Responsibilities

Client contact/communication:

- ▶ Speaking with HR representatives of corporate clients and employees (applicants) to obtain information to assist in drafting applications
- ▶ Follow up with applicants and HR contacts to obtain copies of visas/documents

Drafting applications:

- ▶ Learn basic immigration processing categories and requirements for each category
- ▶ On instruction from the lawyer, research current processing requirements at service centres/consulates
- ▶ Collect information from HR contact and applicant
- ▶ Using available resources, draft complete application packages for review by supervising lawyer
- ▶ Make revisions to drafts

What does an Immigration Law Clerk Do?

Continued...

- ▶ Draft emails in response to queries by clients
- ▶ Ensure that applications are filed in a timely manner
- ▶ Meet with lawyers to discuss questions raised by the client and then relate information back to the HR contact/applicant
- ▶ Typing of forms, copying of documents, and sending out packages
- ▶ Follow up with immigration authorities on pending applications
- ▶ Enter expiration dates for applicants' status in tracking system
- ▶ Notify clients of upcoming extensions
- ▶ Keep individual client status charts updated (where required)
- ▶ Ensure lawyers are at all times advised of client related issues that come to the attention of law clerk
- ▶ Participate actively in meetings of the professional staff of EY Law LLP
- ▶ May be required to attend seminars and professional development courses that are relevant

Who May Practice Immigration Law?

Under Section 91 of IRPA, it is illegal to represent or advise, directly or indirectly, for consideration, someone in relation to a proceeding or application under the IRPA, unless:

- ▶ A lawyer in good standing with a provincial law society or the Chambre des notaires du Quebec
- ▶ Any other member in good standing of a provincial law society of the Chambre des notaires du Quebec
- ▶ A member in good standing of the Immigration Consultants of Canada Regulatory Council

Who do Immigration Lawyers Represent?

- ▶ Visitors (personal & business)
- ▶ Students
- ▶ Workers
- ▶ Employers
- ▶ Canadian citizens and permanent residents (and their relatives who want to come to Canada)
- ▶ Permanent Residents wanting to maintain their PR status or apply for citizenship
- ▶ Foreign nationals who have been refused entry to Canada
- ▶ Individuals and employers when admissibility issues arise

Immigration v. Refugee Law

- ▶ The *Immigration and Refugee Protection Act* (IRPA) applies to both immigrants and refugees; however, they are very distinct areas of law.

Categories of Immigration Applications

- ▶ 1. Permanent Residents
- ▶ 2. Temporary Residents

Permanent Residents

- ▶ Family Class Sponsorship
- ▶ Express entry intake system (FSW, CEC, PNs, FSTP)
- ▶ Quebec's programs (Skilled Worker and Business)
- ▶ Provincial Nominees (Non-Express Entry applications)
- ▶ Caregivers
- ▶ H&C applications
- ▶ Refugees

Temporary Resident Applications

1. Visitors

- ▶ Visas / Electronic Travel Authorization
- ▶ Extension applications
- ▶ Visitor records (business visitors)

2. Students

- ▶ Study Permits
- ▶ Students & Post-Graduation work permits

3. Workers

- ▶ Work Permits
- ▶ Labour Market Impact Statements

4. Employer compliance submissions for employers (through Employee Portal).

5. Temporary resident permits & Criminal rehabilitation.

- ▶ To overcome certain inadmissibility

Tools of an Immigration Lawyer/Clerk

- ▶ *Immigration and Refugee Protection Act (IRPA)*
- ▶ *Immigration and Refugee Protection Regulations (IRPR)*
- ▶ Other legislation such as *The Federal Courts Act*, *the Immigration Division Rules*, *The Immigration Appeal Division Rules* and *The Citizenship Act*
- ▶ Immigration, Refugees and Citizen Canada's website (application forms and guides, operation manuals and operations bulletins) - <http://www.cic.gc.ca/english/index.asp>
- ▶ Service Canada/ESDC's website (*Temporary foreign worker program for LMI applications*) <https://www.canada.ca/en/employment-social-development/services/foreign-workers.html>
- ▶ Other lawyers and immigration officers

EY Law LLP: Business Immigration Law

Andrea Baldwin

Associate Partner, Atlantic

902.421.6230

andrea.baldwin@ca.ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

For more information, please visit ey.com/ca.

Follow us on Twitter [@EYCanada](https://twitter.com/EYCanada).

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. For more information, please visit EYLaw.ca.

© 2016 Ernst & Young LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.

ey.com/ca