Bill C-11

SHORT TITLE

Clause 1

What the provision does

- Provides a short title for the Act.

Explanation

The short title reflects the two primary focuses of the proposed Bill.

INTERPRETATION

Clause 2

What the provision does

- Defines the following terms used in the Act:
  - “Board”
  - “Convention Against Torture”
  - “foreign national”
  - “permanent resident”
  - “Refugee Convention”
- Provides that references to “this Act” include any regulations made under the Act.

Explanation

The proposed Bill has fewer definitions than the current Act. Many of the current definitions have been eliminated because they contained substantive matters now incorporated into the text of the proposed Bill.

A definition of "permanent resident" is provided to highlight the distinction between permanent residents and foreign nationals. The term “foreign national” refers to a person who is not a Canadian citizen or a permanent resident.

The other definitions are self-explanatory.

OBJECTIVES AND APPLICATION

Clause 3

What the provision does

- Describes the objectives of the Act in relation to immigration.
- Describes the objectives of the Act in relation to refugees.
- Describes how the Act is to be interpreted and applied as it relates to
  - Canada's domestic and international interests;
  - respect for the federal, bilingual and multicultural character of Canada;
  - the need to support the development of minority official languages communities;
  - a commitment to work in co-operation with provinces and territories to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society;
  - transparency and public accountability;
  - the Government of Canada's relationship with provincial governments, international entities and non-government organizations;
  - treatment of people consistent with the *Canadian Charter of Rights and Freedoms* including the principles of equality and freedom from discrimination and of the equality of status of English and French as the official languages of Canada;
  - compliance with international human rights instruments to which Canada is signatory.

Explanation

This provision describes in detail the objectives of the proposed Bill, clearly separating objectives in relation to immigration matters and objectives in relation to refugee protection matters.

OBJECTIVES AND APPLICATION

Clause 3

What the provision does

- Describes the objectives of the Act in relation to immigration.
- Describes the objectives of the Act in relation to refugees.
- Describes how the Act is to be interpreted and applied as it relates to
  - Canada's domestic and international interests;
  - respect for the federal, bilingual and multicultural character of Canada;
  - the need to support the development of minority official languages communities;
  - a commitment to work in co-operation with provinces and territories to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society;
  - transparency and public accountability;
  - the Government of Canada's relationship with provincial governments, international entities and non-government organizations;
  - treatment of people consistent with the *Canadian Charter of Rights and Freedoms* including the principles of equality and freedom from discrimination and of the equality of status of English and French as the official languages of Canada;
  - compliance with international human rights instruments to which Canada is signatory.

Explanation

This provision describes in detail the objectives of the proposed Bill, clearly separating objectives in relation to immigration matters and objectives in relation to refugee protection matters.

ENABLING AUTHORITY

Clause 4

What the provision does

- Provides that the Minister responsible for the Act is the member of Cabinet designated for that purpose by the Governor in Council.

Explanation

This provision permits immigration and refugee protection functions to be assigned to the appropriate member of Cabinet.

Clause 5

What the provision does

- Authorizes the Governor in Council to make any regulations referred to in the Act.
- Authorizes the Governor in Council to prescribe certain matters by regulation.
- Requires the Minister to table any proposed regulations respecting examinations, rights and obligations of permanent and temporary residents, loss of status and removal, detention and release, refugee eligibility, the pre-removal risk assessment and transportation companies before each house of Parliament for referral to the appropriate Committee.

Explanation

This provision identifies in a separate section that it is the Governor in Council who has the authority to make the regulations authorized by the proposed Act. Because this authority applies to all regulation-making powers described in the proposed Act, the authority is not mentioned each time regulation-making authority is granted.

The Bill requires the Minister to table any proposed regulations respecting examinations, rights and obligations of permanent and temporary residents, loss of status and removal, detention and release, refugee eligibility, the pre-removal risk assessment and transportation companies before each House of Parliament for referral to the appropriate Committee of that House. This will allow the Standing Committees to provide input into regulations and will strengthen citizens' capacity to play an active role in shaping regulations through an open and transparent regulatory process.

Clause 6

What the provision does

- Authorizes the Minister to designate persons or classes of persons as officers to carry out any purpose of the provisions of the Act.
- Requires the Minister to specify the powers and duties of designated officers.
- Provides that anything that the Minister is authorized to do under the Act may be done by another person who the Minister delegates in writing.
- Prohibits the Minister from delegating the following powers under the Act:
  - to sign a certificate stating that a person is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and refer it to the Federal Court Trial Division {section 77(1)};
  - to decide that it would not be detrimental to the national interest to allow a person who would otherwise be inadmissible on grounds of security, violating human or international rights, or organized criminality to enter or remain in Canada {sections 34(2), 35(2), 37(2)(a)};

Explanation

The current Act names specific titles for the various officials who are required or authorized to carry out functions under the Act, titles such as “visa officer” or “senior immigration officer”. Because titles are administrative designations that change from time to time, authorizing the Minister to designate officers and name their functions provides greater administrative flexibility.

The authority to delegate certain Ministerial powers and functions is essential to ensure that Canada’s immigration and refugee protection programs can be delivered efficiently. However, specific exemptions from the authority to delegate ensure that it is the Minister, personally, who decides certain matters that may have serious implications for national security or the national interest.

AGREEMENTS

Clause 7

What the provision does

- Authorizes the Minister, with Cabinet's approval, to enter into agreements with foreign governments and international organizations for the purposes of the Act.

Explanation

The authority to enter into agreements with other governments exists in the current Act. The authority to enter into agreements with international organizations is new and is intended to facilitate international co-operation in recognition of the important role that international organizations such as the International Organization for Migration and the United Nations play with regard to migration issues.

Clause 8

What the provision does

- Authorizes the Minister, with Cabinet's approval, to enter into agreements with provincial governments for the purposes of the Act.
- Requires the Minister to publish annually a list of the federal-provincial agreements that are in force.
- Requires the selection and sponsorship of, and the acquisition of status by foreign nationals under the Act and any related regulations to be consistent with the federal-provincial agreements.
- Provides that the requirement for consistency with federal-provincial agreements is not to be interpreted as limiting the application of any provision of the Act concerning inadmissibility to Canada.

Explanation

The authority to enter into agreements with provinces and territories exists in the current Act and reflects the fact that immigration is an area of shared constitutional jurisdiction that requires harmonization.

A new requirement, to publish a list of federal-provincial agreements in force, has been introduced for greater transparency.

Provisions requiring consistency between federal decisions and federal-provincial agreements in certain matters exist under the current Act but have been consolidated under this provision for clarity and conciseness.

The provision dealing with the relationship between inadmissibility provisions and federal-provincial agreements ensures that the inadmissibility provisions of the Act, which involve matters of national security and public safety, are not compromised by federal-provincial agreements. This rule of interpretation exists under the current Act.

Clause 9

What the provision does

- Sets out rules that apply to a foreign national who intends to reside as a permanent resident in a province that, under a federal-provincial agreement, has sole responsibility for selection of the foreign national, unless the agreement says otherwise.
- Limits a sponsor who lives in a province that, under an agreement, has sole responsibility for financial criteria relating to sponsorship undertakings, to appealing to the Immigration Appeal Division of the Immigration and Refugee Board (IRB) on humanitarian and compassionate grounds only, if there exists under the law of the province a right to appeal the rejection of an undertaking for failure to meet financial criteria or to comply with a previous undertaking, unless the agreement provides otherwise.

Explanation

This provision mirrors the rules contained in the current Act regarding selection and sponsorship of foreign nationals destined, as permanent residents, to a province that has sole responsibility in those areas under a federal-provincial agreement but groups them all in a single provision for clarity and conciseness.

To date the only federal provincial agreement under which a province has exclusive responsibilities in matters of selection and sponsorship is the 1991 *Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens*. The phrase “unless the agreement provides otherwise” allows for the possibility that agreements providing for areas of sole provincial responsibility might stipulate different rules.

Clause 10

What the provision does

- Authorizes the Minister to consult with the provinces on immigration and refugee protection policies and programs.
- Requires the Minister to consult with the provinces about:
  - the planned number of foreign nationals in each class who will become permanent residents each year;
  - their distribution in Canada;
  - the measures to be taken to facilitate their integration into Canadian society.

Explanation

A provision requiring consultation on these three matters is found in the current Act. The broader reference to consultations on policies and programs is intended to facilitate federal-provincial co-operation in a manner that takes into consideration the effects of immigration on provinces. The broader commitment to consultation is worded so as to allow the Minister to take action when prior consultation would be inconsistent with her responsibilities, for instance when national security is at issue or operational emergencies arise.

PART 1
IMMIGRATION TO CANADA

DIVISION 1

REQUIREMENTS BEFORE ENTERING CANADA AND SELECTION

Requirements Before Entering Canada

Clause 11

What the provision does

- Requires a foreign national to apply to an officer for a visa or any other document required by the regulations before entering Canada.
- Requires an officer to issue the visa or other document if satisfied, after an examination, that the foreign national is not inadmissible and meets the requirements of the Act.
- Prohibits an officer from issuing the visa or other document if the foreign national's sponsor does not meet the sponsorship requirements of the Act.

Explanation

This provision mirrors sections of the current Act, including the issue of burden of proof: namely that it is the responsibility of the applicant to satisfy the officer that they meet the standards and requirements of the legislation.

This section expresses in the Bill the sponsorship rule currently found in the regulations concerning the prohibition from issuing a visa where the sponsor does not meet the requirements to be a sponsor.

Selection of Permanent Residents

Clause 12

What the provision does

- Provides that a foreign national may be selected as a member of the family class based on their relationship as the spouse, common-law partner, child, parent or other family member prescribed by the regulations of a Canadian citizen or permanent resident.
- Provides that a foreign national may be selected as a member of the economic class based on their ability to become economically established in Canada.
- Provides that a foreign national, inside or outside Canada, may be selected as a Convention refugee or as a person in similar circumstances, taking into account Canada's humanitarian tradition with respect to displaced and persecuted persons.

Explanation

This provision outlines the primary groups of immigrants who may apply for immigration to Canada. Other groups may be prescribed by regulations. The regulations will also provide details of class membership and the grounds of selection for the classes that are broadly described in this provision.

Sponsorship of Foreign Nationals

Clause 13

What the provision does

- Authorizes a Canadian citizen or a permanent resident to sponsor a foreign national who is a member of the family class, subject to the regulations.
- Authorizes specified groups or organizations to sponsor a Convention refugee or a person in similar circumstances, subject to the regulations.
- Provides that a sponsorship undertaking is binding on the person who gives it.
- Requires an officer to apply the regulations respecting sponsorships, undertakings and penalties for failure to comply with undertakings in accordance with any Ministerial instructions.

Explanation

The provision relating to sponsorships continues the present legislation but clarifies that sponsors are required to respect their obligations.

The inclusion of organizations or associations unincorporated under federal or provincial laws provides greater clarity in terms of the kinds of entities that could be permitted to sponsor refugees.

The authority for the Minister to give binding instructions to be followed by officers is new and can be used to ensure consistency in the application of the Act with respect to certain matters.

Regulations

Clause 14

What the provision does

- Authorizes the making of regulations to provide for any matter relating to the application of this Division of the Act dealing with requirements before entering Canada, selection of permanent residents and sponsorship of foreign nationals.
- Authorizes the making of regulations to define the terms used in this Division.
- Authorizes the making of regulations to prescribe or govern any matter relating to classes of foreign nationals (including the economic class, the family class, Convention refugees and persons in similar circumstances), including provisions respecting
  - selection criteria;
  - the weight to be given to all or some of the criteria;
  - the procedures to be followed in evaluating selection criteria;
  - the circumstances in which an officer may substitute their own evaluation in relation to a foreign national's ability to become economically established in Canada;
  - applications for visas and other documents;
  - issuing and refusing applications for visas and other documents;
  - the number of applications that may be processed or approved in a year;
  - the number of visas or other documents that may be issued in a year;
  - the measures to be taken when the limit on the number of applications, visas or documents is exceeded;
  - conditions on foreign nationals that may or must be imposed, varied or cancelled, either individually or by class;
  - sponsorships, undertakings and penalties for failure to comply with undertakings;
  - deposits or guarantees of the performance of obligations under this Act that are to be given by any person to the Minister;
  - any matter for which a recommendation to the Minister or a decision may or must be made by a designated person, institution or organization with respect to a foreign national or sponsor.

Explanation

Under the current legislation, details concerning how selection is carried out are spelled out in extensive regulations. Bill C-11 proposes to continue this approach.

Regulations

Clause 14 (continued)

Regulations under this clause will also outline the types of applications that may be made overseas and those that may be made in Canada. The current Act requires, as a general rule, for applications for permanent residence to be made outside Canada. Bill C-11, however, does not expressly require all such applications to be made at an overseas office. The regulations will outline circumstances where certain persons, such as spouses and dependent children may apply for permanent residence in Canada. Similar regulations may be made for certain skilled worker applicants, including recent graduates from Canadian post-secondary schools, who have on-going ties to the Canadian labour market.

Regulations made under the authority of this provision will include the detailed description and selection criteria for each major class of immigration. For example, the skilled worker class will be based upon a human capital model of selection which will award points for such factors as education, ability in one of the official languages, past work experience, existence of family in Canada and other similar factors. This class will replace the current independent class whose selection criteria are based upon an increasingly out-dated concept of "intended occupation." Canada's fast changing knowledge-based economy places a high premium on skilled worker immigrants who have a flexible range of attributes rather than narrow skills in one particular occupation which may not be in demand when an immigrant arrives in Canada. Regulations will continue to permit a degree of flexibility in the assessment of applicants in order to ensure that skilled workers who are likely to be able to successfully establish in Canada but who do not meet the minimum points can still be accepted.

The family class will include spouses, common-law partners (including same-sex partners), dependent children, parents and grandparents of Canadian citizens and permanent resident sponsors. Dependent children will be defined in regulations as unmarried sons and daughters under 22 years of age (up from the present 19) or over 22 who are full time students or mentally or physically disabled and dependent on the parents.

The business class will combine common elements of the current entrepreneur and investor definitions in order to assess business experience in a more consistent and objective manner. A new minimum net worth requirement for entrepreneurs will be established. Self-employed artists and farmers will continue to be processed under the business class regulations.

Regulations

Clause 14 (continued)

Part 2 of the Bill defines Convention refugees and persons in need of protection. The definition of Convention refugee respects the *Refugee Convention* and reflects present policy.

Foreign nationals outside Canada may apply for a visa as a Convention refugee or person in similar circumstances. The regulations governing these applications will ensure greater flexibility to address evolving situations and will include placing additional emphasis on the person's need for protection.

Foreign nationals inside Canada may apply to an officer for refugee protection or to the Minister for protection. A claim for protection made inside Canada is governed by Part 2 of the Bill which deals with Convention Refugees and persons in need of protection.

The authority to make regulations to control intake of applications or visas in the event of extraordinary demands is consistent with existing legislation. To date it has not been necessary to impose limits but maintenance of this regulatory power provides Canada with flexibility to respond to future changes.

The ability to create regulations to impose conditions on the granting of permanent resident status is consistent with current legislation. Regulations will continue to stipulate, for example, that persons who require medical surveillance for certain conditions must provide proof of having followed the appropriate health instructions, such as contacting provincial health authorities.

The provision contains authority to make regulations removing sponsorship privileges for sponsors who fail to fulfil their obligations towards family class members. Proposed regulations would also provide that defaulting sponsors, persons in default of court ordered spousal or child support payments, persons convicted of domestic violence, and persons on social assistance would lose the right to sponsor family members (with the possibility for flexibility, in certain cases, on humanitarian and compassionate grounds).

The authority to allow decisions or recommendations to the Minister by designated persons, institutions or organizations provides greater ability for NGO's to play a role. For example, it is proposed to increase the role of the UNHCR and other non-governmental agencies in the identification and preparation of applications from refugees overseas in need of resettlement.

DIVISION 2

EXAMINATION

Clause 15

What the provision does

- Authorizes an officer to conduct an examination of any person making an application in accordance with the Act.
- Requires, with respect to a foreign national who is subject to a province's sole selection responsibility, an examination of whether the foreign national complies with provincial selection criteria to be based solely on the written opinion of the competent provincial authority.
- Authorizes an officer
  - to board and inspect any vehicle bringing people to Canada;
  - to examine any person in the vehicle;
  - to examine any record or document relating to the person;
  - to seize and remove the record or document to obtain copies or extracts of it;
  - to hold the vehicle until the inspection and examination are done.
- Requires the officer to conduct the examination in accordance with any instructions of the Minister.

Explanation

Currently, there are a number of processes by which persons are examined at ports of entry, interviewed at visa offices abroad and evaluated with respect to applications for sponsorship or to extend or change the terms of status granted and sponsorship applications. This provision of Bill C-11 brings together these existing processes under a single concept of examination. The provision allows immigration officers to examine persons who make applications. This would include persons:

- applying for visas;
- seeking entry to Canada;
- applying to change or cancel conditions of their entry to Canada;
- sponsoring foreign nationals;
- making a refugee claim.

With respect to refugee claimants, the examination would be to determine eligibility for the claim to be referred to the Immigration and Refugee Board.

Clause 15 (continued)

Consistent with section 9, the provision clarifies, with respect to a foreign national who is subject to a province's sole selection responsibility under a federal-provincial agreement, that only a competent provincial authority is authorized to make a determination of whether the foreign national meets provincial selection criteria.

The authority for officers to board vehicles, examine persons inside, and seize and copy documents is the same as in the current Act. The provision gives authority for the Minister to give instructions for the carrying out of examinations in the interest of promoting consistency of approach.

Clause 16

What the provision does

- Requires a person who makes an application
  - to answer all questions truthfully;
  - to produce a visa and all relevant evidence and documents that are reasonably required by the officer;
  - with the exception of permanent residents, to provide photographic and fingerprint evidence that is reasonably required by the officer and to submit to a medical examination on request.
- Authorizes an officer to require or obtain from a permanent resident or foreign national who is arrested, detained or who is subject to a removal order, any photographic, fingerprint or other evidence that may be used to establish their identity or compliance with the Act.

Explanation

The current Act contains several provisions that require visa applicants, persons seeking entry to Canada and refugee claimants to answer questions truthfully and produce required documentation. A determination by a Senior Immigration Officer is another example of a procedure where the current Act requires persons to tell the truth. The provision in Bill C-11 brings together these obligations and creates one set of rules governing all persons making an application. The provision requires all persons making an application (whether it be to sponsor, to enter Canada, to obtain a visa, to obtain a status document, to vary conditions of entry or to make a refugee claim) to tell the truth on their application and provide any documents pertinent to their application.

In addition, foreign nationals making an application may be required to provide photographs and fingerprints. In recognition of their status in Canada, permanent residents would be required to provide photographs and fingerprints in more limited circumstances. The provision carries forward powers in the current Act and regulations for the taking of photographs and fingerprints.

Clause 17

What the provision does

- Authorizes the making of regulations to provide for any matter relating to the application of this Division, including provisions respecting the conduct of examinations.

Explanation

The regulations will describe the places and manner in which examinations may be carried out including the provision of alternate means of examination such as pre-authorized passes for frequent travellers and commuters. In keeping with the framework approach, certain procedures such as the deferral of examinations for people who cannot be properly examined at the moment of their arrival and the issuance of directives to such persons or the transporter concerning their later examination, which are in the current Act, will be set out in the regulations.

DIVISION 3

ENTERING AND REMAINING IN CANADA
Entering and Remaining

Clause 18

What the provision does
- Requires every person seeking to enter Canada to appear for an examination to determine whether they have a right to enter Canada or whether they are or may become authorized to enter and remain in Canada.
- Authorizes the examination of persons in transit who seek to leave the transit area of an airport.

Explanation
This provision is contained in the current Act.

Clause 19

What the provision does
- Entitles two specific classes of people to enter and remain in Canada in accordance with the Act:
  - Canadian citizens within the meaning of the *Citizenship Act;*
  - persons registered as Indians under the *Indian Act.*
- Requires an officer to allow a person to enter Canada if satisfied after conducting an examination that the person is a citizen or registered Indian.
- Requires an officer to allow a permanent resident to enter Canada if the officer is satisfied after conducting an examination that the person has permanent resident status.

Explanation
This provision mirrors rights and duties contained in the current Act.

Canadian citizens and persons who have been registered as Indians under the *Indian Act* have a right to enter Canada and a right to remain in Canada. On entering Canada, however, they cannot merely claim that they have that status; in order to enter, they must satisfy an officer of their status.

This provision gives permanent residents at a port of entry an unqualified right to enter Canada. Even if they are in a status determination or an enforcement process they will be allowed to enter Canada on the basis of their permanent resident status.

There will be no requirement to present a permanent resident card at a port of entry but persons who present a permanent resident card will be presumed to have that status, unless an officer determines otherwise.

Clause 20

What the provision does

- Sets out the following requirements for persons, other than Canadian citizens, registered Indians and permanent residents, who seek to enter or remain in Canada
  - persons who want to become permanent residents must establish that they hold the visa or any other document required by regulations and that they have come to Canada to establish permanent residence;
  - persons who want to become temporary residents must establish that they hold the visa or any document required by regulations and that they will leave Canada by the end of the period authorized for their stay;
  - persons who are subject to a province's sole selection responsibility under a federal-provincial agreement must establish that they hold a document issued by the province indicating that they comply with the province's selection criteria.

Explanation

This provision sets the obligations that foreign nationals must meet when they seek to enter Canada.

Consistent with section 9, the provision clarifies that persons who are subject to a province's sole selection responsibility under a federal-provincial agreement must meet the provincial selection criteria in order to become permanent residents.

Status and Authorization to Enter

Clause 21

What the provision does

- Provides that a foreign national becomes a permanent resident if an officer is satisfied they
  - have applied for that status;
  - hold the visa or other document required by regulations;
  - have come to Canada in order to establish permanent residence;
  - meet provincial selection criteria if applicable;
  - are not inadmissible.
- Provides that a person in Canada who is a member of a prescribed class or upon whom refugee protection has been conferred becomes a permanent resident, subject to any relevant federal-provincial agreement, if their application is in accordance with the regulations and they are not inadmissible on grounds of security, human or international rights violations, serious criminality, organized criminality or danger to public health or safety.

Explanation

Under the Bill, a foreign national will become a permanent resident, provided the individual has applied for the status, holds the required documentation and is not otherwise inadmissible.

The provision also highlights the principle that, if they meet the specified requirements, protected persons acquire permanent resident status. In all cases, determining who is a protected person (and, as a result, may not be removed from Canada) is the sole responsibility of federal authorities. However, consistent with section 9 and current legislation, the granting of permanent resident status to a protected person may be subject to prior provincial selection where a federal-provincial agreement so provides and the person wishes to reside in the relevant province.

The 1991 *Canada-Quebec Accord* provides for the provincial selection responsibility recognized at section 9. The Accord exempts from provincial selection most protected persons, i.e. refugees within the meaning of the UN refugee Convention whose status is determined in Canada. Other persons whom federal authorities, abroad or inland, determine to need Canada's protection must, to become permanent residents, meet provincial selection if they wish to reside in Quebec. Provincial legislation and practice provide for the selection of such protected persons.

Clause 22

What the provision does

- Provides that a foreign national becomes a temporary resident if an officer is satisfied that they
  - have applied for that status;
  - hold the visa or other document required by regulations;
  - will leave Canada by the end of the period authorized for their stay;
  - are not inadmissible.
- Provides that a foreign national who intends to become a permanent resident is not precluded, because of that intention, from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

Explanation

The provision dealing with temporary residents reflects the present policy on temporary residents (currently called visitors).

This provision also clarifies the policy on "dual intent". An individual may apply to enter Canada as a temporary resident, even if they intend to apply for permanent resident status at a later date or have already done so. While such a situation is possible under the present Act, the dual intent rule is not as clearly stated.

Clause 23

What the provision does

- Authorizes an officer to permit a person to enter Canada for the purpose of an examination or admissibility hearing.

Explanation

An officer may authorize a person to physically enter Canada in order for a deferred examination to be conducted at a later time or for the purpose of an admissibility hearing to determine whether the person will be given temporary or permanent resident status.

Clause 24

What the provision does

- Provides that a foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of the Act becomes a temporary resident if the officer believes it is justified in the circumstances and issues a temporary resident permit to them.
- Provides that the permit may be cancelled at any time.
- Provides that, where the permit is issued outside Canada, the individual only becomes a temporary resident once they have been examined at a port of entry.
- Requires an officer who issues a permit to act in accordance with any instructions of the Minister.

Explanation

This provision mirrors the current policies on what are now referred to as "Minister's Permits" and "discretionary entry".

Clause 25

What the provision does

- Requires the Minister to consider applications and allows the Minister, at her own initiative, to examine the circumstances concerning a case and, if humanitarian and compassionate or public policy considerations exist, to grant permanent resident status, or in the case of a foreign national who is inadmissible or who does not meet the requirements of the Act, to make an exemption from any criteria or obligation.
- Requires the Minister, in making a decision on humanitarian and compassionate considerations, to take into account the best interests of a child directly affected by the decision.
- Provides that the Minister may not exercise discretion to grant permanent resident status to a foreign national who is subject to a province's sole selection responsibility under a federal-provincial agreement and who does not meet the province's selection criteria.

Explanation

This provision is a continuation of similar humanitarian and compassionate powers provided for in the current Act. Public policy considerations have traditionally been an element of immigration policy and this provision ensures that such considerations are included in the consideration of exceptional cases. A new requirement is the obligation to take into consideration the best interests of a child directly affected by a decision based on humanitarian and compassionate grounds. Consistent with section 9 (and the current Act), the provision clarifies that a person who is subject to a province's sole selection responsibility under a federal-provincial agreement may not be admitted on humanitarian grounds in that province unless the province selects the immigrant.

Clause 26

What the provision does

- Authorizes the making of regulations to provide for any matter relating to the application of the provisions of the Act that deal with entering and remaining in Canada, including provisions respecting
  - entering, remaining in and re-entering Canada;
  - permanent resident status or temporary resident status, including acquisition of that status;
  - the issuance of temporary resident permits to foreign nationals who are inadmissible or do not meet the requirements of the Act;
  - conditions that may or must be imposed, varied or cancelled on permanent residents and foreign nationals;
  - deposits or guarantees of the performance of obligations under the Act that are to be given to the Minister.

Explanation

As with the present legislation, regulations will indicate which documents are required to be submitted when a foreign national applies to be admitted to Canada at a port of entry and will stipulate which foreign nationals must obtain visitor visas if they wish to enter Canada as a temporary resident.

Regulations made under this provision will outline the process by which a foreign national is granted permanent and temporary resident status at either a port of entry or an in-land office in Canada.

Regulations will outline the circumstances and process by which an officer may issue a temporary resident permit.

Regulations under the proposed Bill will mirror the current regulations which set out a list of conditions that may be imposed when a foreign national is authorized to enter and remain in Canada.

Regulations will stipulate the maximum period for which permits may be valid and the circumstances under which a permit allows a holder to leave Canada and re-enter without having to re-qualify.

Regulations under this provision would also set out the circumstances in which an individual would be permitted or required to furnish a monetary bond or performance guarantee. Under the present Act, immigration officers at ports of entry may take a monetary or performance bond from a person in order to ensure compliance with obligations or conditions imposed.

Rights and Obligations of Permanent and Temporary Residents

Clause 27

What the provision does

- Entitles a permanent resident to enter and remain in Canada subject to the provisions of the Act.
- Requires a permanent resident to comply with any conditions imposed under the regulations.

Explanation

This provision reiterates the right provided to permanent residents to enter Canada in clause 19. This provision also provides permanent residents with a qualified right to remain in Canada subject to the inadmissibility provisions of the Act and regulations. It also establishes the requirement to comply with any conditions imposed on them. This qualified right to remain in Canada is contained in the present Act.

Clause 28

What the provision does

- Requires a permanent resident to comply with a residency obligation with respect to the five-year period.
- Describes the various ways in which a permanent resident can fulfil the residency obligation which requires physical presence in Canada for a total of at least 730 days in the five-year period including exceptions, in certain circumstances, for extended sojourns outside Canada.
- Provides that a permanent resident demonstrates compliance at examination if
  - they have been a permanent resident for less than five years and show that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;
  - they have been a permanent resident for five years or more and show that they have met the residency obligation in respect of the five-year period immediately before the examination.
- Authorizes an officer to make a determination that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status and overcome any prior breach of the residency obligation.

Clause 28 (continued)

Explanation

Both the current Act and the proposed Bill require a permanent resident to spend a certain amount of time in Canada in order to maintain their permanent resident status. Under the current Act, however, permanent residents who leave Canada for 183 days in any 12-month period must, on re-entry, satisfy an immigration officer that they did not leave Canada with the "intention of abandoning Canada as their place of residence". This is a vague, highly subjective test that is difficult both to prove and to administer. Bill C-11 contains a more objective and flexible test: a permanent resident must be physically present in Canada for two years out of each five-year period to maintain status. Permanent residents will be allowed to count, as part of the required 730 days, time spent working abroad in certain circumstances such as working for a Canadian company or the Canadian government or accompanying their Canadian spouse or common-law partner. This allows permanent residents a degree of flexibility over their personal or business affairs, flexibility that is necessary in a world where routine international travel, work periods abroad and multinational business ties are becoming common place.

The first five-year period starts on the day the person becomes a permanent resident. After this, examinations relating to residency obligations cover the five years immediately preceding an examination. This provision is more transparent to permanent residents as it defines clearly the period that could be under examination.

To maintain flexibility, an officer would review any humanitarian and compassionate considerations that may justify the retention of permanent resident status and would take into account the best interests of a child directly affected by the determination.

Clause 29

What the provision does

- Authorizes a temporary resident, subject to other provisions of the Act, to enter and remain in Canada on a temporary basis as a visitor or as the holder of a temporary resident permit.
- Requires a temporary resident to comply with any conditions imposed under the regulations and with any requirements of the Act.
- Requires a temporary resident to leave Canada by the end of their authorized stay.
- Authorizes a temporary resident to re-enter Canada without re-qualifying only if their authorization provides for re-entry.

Explanation

This provision mirrors the current Act in relation to temporary residents, including visitors and permit holders.

Clause 30

What the provision does

- Prohibits a foreign national who is not a permanent resident from working or studying in Canada unless they are authorized to do so under the Act.
- Provides that a minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.

Explanation

This provision sets out the general rule that foreign nationals may not work or study in Canada unless they are authorized to do so. There is a similar rule in the present Act.

The provision dealing with minor children is new. It ensures that children in Canada are not prevented from accessing pre-school, primary or secondary school. The children of temporary residents who are not authorized to work or study in Canada would still require specific authority to attend school in Canada as they do under the current Act.

Status Document

Clause 31

What the provision does

- Provides that permanent residents and protected persons shall be provided with a document indicating their status.
- Provides that, unless an officer determines otherwise,
  - a person in possession of a status document indicating permanent resident or protected status is presumed to have that status;
  - a person who is outside Canada and does not present a document indicating permanent resident status is presumed not to be a permanent resident.
- Provides that a permanent resident outside Canada who is not in possession of a document indicating permanent resident status shall, following an examination, be issued a travel document if an officer is satisfied that
  - they comply with the residency obligation;
  - humanitarian and compassionate considerations overcome the breach of the residency obligation;
  - they were physically present in Canada at least once within the 365 days before the examination and they have filed an appeal of a determination that they did not meet the residency obligation or the period for making such an appeal has not yet expired.

Explanation

This provision requires that permanent residents and protected persons be provided with a document indicating their status.

The proposed Permanent Resident Card is being developed to provide permanent residents with a secure, durable document which will allow permanent residents to easily identify themselves to transportation companies outside of Canada for purposes of travel to Canada. The current documentation given to permanent residents upon landing, the Record of Landing, was never designed as a travel document and is vulnerable to forgery and misuse by impostors and people smugglers. It is intended that the card will facilitate boarding for both permanent residents and the transportation companies.

Bill C-11 does not require permanent residents in Canada to hold a permanent resident card nor to have one when they present themselves at a port of entry. Officers at ports of entry will continue to have full discretion to allow entry into Canada of permanent residents, even in the absence of a permanent resident card. In these circumstances, status may be established through a variety of factors. Since ports of entry are considered to be in Canada, the presumption of not being a permanent resident in the absence of a card does not apply at a port of entry.

Status Document

Clause 31 (continued)

However, permanent residents who present a valid permanent resident card at a port of entry will be presumed to have this status, unless an officer determines otherwise. This provision also provides flexibility for permanent residents who are outside Canada without a valid document showing permanent resident status. These individuals will be issued a document to facilitate their return to Canada if they comply with the residency obligation or if humanitarian and compassionate considerations apply. Additionally, they will be issued a travel document if they were physically present in Canada at least once in the year before the examination, and have filed an appeal of a determination that they did not meet the residency obligation or the period for making such an appeal has not yet expired. The intent is to ensure that permanent residents are not denied access to Canada until it is finally determined, after any appeals, that they no longer have that status.

The provision also provides that protected persons be provided with a document indicating status. Status documents for protected persons will ensure equality of access to various benefits associated with that status regardless of whether they are Convention refugees or persons in similar circumstances or whether they have become permanent residents. Upon receipt of the document, protected persons will be eligible to apply for Canadian refugee travel documents.

Regulations

Clause 32

What the provision does

- Authorizes the making of regulations to provide for any matter relating to the application of sections 27 to 31 (respecting rights and obligations of permanent and temporary residents, status and travel documents), including definitions of terms used and provisions respecting
  - classes of temporary residents (e.g. student class, worker class);
  - selection criteria for each class of foreign national and their family members and procedures for evaluating the criteria;
  - selection criteria or evaluation procedures for which a decision or recommendation may or must be made by a designated person, institution or organization;
  - conditions that may or must be imposed, varied or cancelled including conditions respecting work or study;
  - the residency obligation including rules for calculating applicable days and periods;
  - the circumstances in which a document indicating status or a travel document may or must be issued, renewed or revoked.

Explanation

The regulations made under the authority of this section that deal with the issuance of student authorizations and employment authorizations are expected to mirror the current regulations.

In relation to decisions or recommendations by designated persons, institutions or organizations, the regulations will streamline procedures for issuing employment authorizations for certain sectors of the economy where there is a net economic benefit to Canada from recruiting workers from abroad. Today, employment authorizations must be issued through a specific job offer which must be validated unless it is subject to an exception such as NAFTA or it is a job for which no Canadian is readily available. Regulations under this provision will set out the circumstances in which an individual, company or institution in a specific sector of the economy can be authorized to recommend to the Minister that a certain number of employment authorizations be issued.

The Regulations under Bill C-11 will mirror the current regulations which set out a list of conditions that may be imposed when a foreign national is authorized to enter and remain in Canada.

Regulations

Clause 32 (cont'd)

The Bill requires that a permanent resident be physically present for at least 730 days in every five-year period and describes the circumstances in which time abroad would be considered to be time spent in Canada. Regulations under this provision would clarify the residency obligation, such as defining the term "Canadian business" and include rules for calculating applicable days and periods.

The regulations will deal with circumstances in which documents indicating status and travel documents may be issued, renewed or revoked.

DIVISION 4

INADMISSIBILITY

Clause 33

What the provision does

- Clarifies that the facts that constitute inadmissibility for reasons of security, violating human or international rights, criminality, and organized criminality include
  - facts arising from omissions;
  - facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur, unless the Act provides otherwise.

Explanation

This provision sets out rules of interpretation for inadmissibility under sections 34 to 37 of the Bill on grounds related to security, human or international rights violations, criminality, and organized criminality. With the exception of permanent residents who have committed an act outside Canada that constitutes serious criminality, the standard of proof used for these provisions is "reasonable grounds to believe". Permanent residents who commit an act outside Canada that constitutes an offence that is punishable in Canada by a maximum term of imprisonment of at least 10 years will have their inadmissibility assessed using the higher standard of a balance of probabilities. This would apply when they may not yet have been convicted of the offence.

Clause 34

What the provision does

- Sets out the actions or circumstances that make a permanent resident or a foreign national inadmissible on security grounds.
- Provides that those actions or circumstances do not make a permanent resident or a foreign national inadmissible if the Minister is satisfied that the person's presence in Canada would not be detrimental to the national interest.

Explanation

This provision makes a person inadmissible to Canada for reasons of national security, including espionage, subversion, and terrorism. This provision clearly states that permanent residents and foreign nationals are inadmissible on security grounds for engaging in terrorism or for being a member of an organization that engages in terrorism. The facts that constitute inadmissibility under this provision include facts arising from omissions and those for which there are reasonable grounds to believe that they have

Clause 34 (continued)

occurred, are occurring or may occur. Other inadmissible grounds relating to security include being a danger to the security of Canada and engaging in acts of violence that would or might endanger the lives or safety of persons in Canada.

It maintains the current authority of the Minister to grant exemption from these grounds when a person's entry would not be detrimental to the national interest of Canada. This authority cannot be delegated by virtue of subsection 6(3).

Clause 35

What the provision does

- Sets out the actions or circumstances that make a permanent resident or a foreign national inadmissible on grounds of violating human or international rights, including persons:
  - who have committed outside Canada an offence under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;
  - who were prescribed senior officials in the service of a government that, in the opinion of the Minister, has engaged in terrorism, systematic or gross human rights violations, genocide, war crimes or crimes against humanity;
  - who, other than permanent residents, are subject to a travel sanction imposed by an international organization of states or association of states of which Canada is a member and has agreed to impose such sanctions.
- Provides that, except where war crimes or crimes against humanity have been committed, a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest is not inadmissible on grounds of violating human or international rights.

Explanation

This section comprises all sections of the current Act related to crimes against humanity, war crimes, human rights violations, and "senior members or senior officials in the service of a government engaged in terrorism, human rights violations, war crimes or crimes against humanity." The definition of "senior official in the service of a government" currently found in the Act will be found in the regulations under the proposed Act.

A new element has been included to support Canada's commitment to impose sanctions on certain governments in concert with international organizations or associations of states of which Canada is a member. This new inadmissibility would not apply to permanent residents of Canada.

The Minister will have discretion to exempt from this inadmissibility senior officials in the service of a government that has committed human rights violations and individuals affected by international sanctions where their presence would not be detrimental to the national interest. The Minister is not authorized to delegate the exercise of this discretion. This discretion is not available in relation to a person who has committed war crimes or crimes against humanity.

Clause 36

What the provision does

- Provides that a permanent resident or a foreign national is inadmissible on grounds of serious criminality if they have
  - been convicted in Canada of a federal offence punishable by a maximum prison term of at least ten years or sentenced to more than six months in prison for an offence under an Act of Parliament;
  - been convicted outside Canada of an offence that, if committed in Canada, would be a federal offence punishable by a maximum prison term of at least ten years;
  - committed an act outside Canada that is an offence where it was committed and that, if committed in Canada, would be a federal offence punishable by a maximum prison term of at least ten years.
- Provides that a foreign national is inadmissible on grounds of criminality if they have
  - been convicted in Canada of an indictable offence or of two federal offences that did not arise out of a single event;
  - been convicted outside Canada of an offence that would be an indictable offence if committed in Canada or of two offences that did not arise out of a single event and that would be federal offences if committed in Canada;
  - committed an act outside Canada that is an offence where it was committed and that would be an indictable offence if committed in Canada;
  - committed, on entering Canada, an offence under a prescribed Act of Parliament.
- Sets out the rules that apply for the purposes of interpreting this section dealing with inadmissibility on grounds of serious criminality and criminality, such as the effect of pardons, the granting of relief from the inadmissibility after the person has been rehabilitated and other such rules.

Explanation

This section consolidates all provisions respecting inadmissibility on grounds of criminality into one section. Offences that are under the purview of the *Contraventions Act* and the *Young Offenders Act* are not included in the inadmissibility grounds.

A new inadmissibility ground for persons committing certain illegal acts upon entering Canada (transborder crimes) has been created. The provision would enhance the ability of immigration officials to efficiently remove persons where the commission of the offence occurs at the border as the person is seeking to enter Canada. It is envisaged that offences covered by the provision would include offences under the *Criminal Code,* the *Controlled Drugs and Substances Act, the Firearms Act,* the *Customs Act and the Immigration and Refugee Protection Act.* For example, a person who is found to be trafficking narcotics on entry could be found inadmissible and become subject to removal even if no prosecution has been undertaken and therefore no conviction registered.

Clause 36 (continued)

As in the current Act, this section provides that there are different rules for taking enforcement action against temporary and permanent residents. Evidence of serious criminality is required to make a permanent resident subject to possible removal from Canada whereas temporary residents are subject to enforcement action for lesser criminality. This principle is similar to the provisions of the current Act but the rules have been consolidated in one section making it clearer which rule is applicable, depending on the status of the individual.

This section also clarifies that an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence.

Clause 37

What the provision does

- Sets out the actions or circumstances that make a permanent resident or a foreign national inadmissible on grounds of organized criminality.
- Provides that a person is not inadmissible on grounds of organized criminality if the Minister is satisfied that their presence in Canada would not be detrimental to the national interest.
- Provides that a person is not inadmissible on grounds of organized criminality simply because they entered Canada with the assistance of a person involved in organized criminal activity.

Explanation

This section retains the inadmissibility ground of the current Act for persons involved in organized crime.

This section also creates a new inadmissibility ground for persons engaging in transnational crime such as people smuggling, trafficking in persons or money laundering. This provision responds to Canada’s commitment to contribute, in concert with the international community, to the fight against criminals who seek to profit from human suffering. The Minister’s discretion to allow entry to a person inadmissible under this provision is not subject to delegation.

Persons whose involvement with such organizations is limited to having used their services to come to Canada to claim refugee protection will not be considered “members” of such an organization and will still have access to the refugee determination process.

Clause 38

What the provision does

- Describes the circumstances in which a foreign national is inadmissible on health grounds.
- Provides that inadmissibility on health grounds for persons who might be reasonably expected to cause excessive demand on health or social services does not apply to
  - family class members who are sponsored spouses, common-law partners or children, within the meaning of the regulations;
  - Convention refugees and persons in similar circumstances;
  - protected persons;
  - dependants of sponsored family class members or protected persons.

Explanation

This section maintains the existing inadmissibility grounds for medical reasons but provides new exemptions of inadmissibility for excessive demand on health or social services.

Presently, regulations provide that persons found to be refugees in Canada and their dependants are exempt from excessive demand criteria. Bill C-11 provides that refugees and protected persons in Canada as well as refugees selected abroad for resettlement in Canada and their dependants will be exempt from excessive demand criteria. The proposal seeks to create equality in the application of medical assessment criteria for Convention refugees and their dependants, whether they are in Canada or are being resettled from overseas, and to augment Canada's humanitarian stance towards refugees.

The Bill provides that family class members who are sponsored spouses, common-law partners and dependent children will also be exempt from the excessive demand component of medical inadmissibility. This enhances Canada's humanitarian commitments to family reunification and takes into account that, currently, a significant proportion of sponsored spouses and dependent children are eventually allowed into Canada on Minister's Permits or after a successful appeal.

Clause 39

What the provision does

- Describes the circumstances in which a foreign national is inadmissible for financial reasons.

Explanation

This section is consistent with the current Act with one exception. Under the current Act, permanent residents who wilfully fail to support themselves or any dependent member of their family in Canada may be ordered removed. Under Bill C-11, financial inadmissibility no longer applies to permanent residents.

Clause 40

What the provision does

- Sets out the actions or circumstances that make a permanent resident or a foreign national inadmissible for misrepresentation, including
  - misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the Act;
  - being sponsored by a person who is inadmissible for misrepresentation, if the Minister is satisfied that the facts of the case justify the inadmissibility;
  - vacation of refugee protection status;
  - ceasing to be a Canadian citizen on grounds of having obtained permanent resident status by misrepresentation.
- Provides that a person remains inadmissible for two years after being finally determined outside Canada to be inadmissible for misrepresentation or, if the person is in Canada, after the date the removal order is enforced.

Explanation

This section is similar to provisions of the current Act concerning misrepresentation by either permanent or temporary residents but modifies those provisions to enhance enforcement tools designed to eliminate abuse.

A new element of this inadmissibility ground makes it possible to determine that a person is inadmissible for misrepresentation if they were sponsored by someone who has been determined to be inadmissible for misrepresentation. The person would only be inadmissible, however, if the Minister is satisfied that the facts of the case justify the inadmissibility.

Clause 40 (continued)

Also new is the provision which makes persons inadmissible for misrepresentation if the IRB has made a decision to vacate their refugee protection on the grounds of misrepresentation. This measure will speed up the process for issuing a removal order by eliminating the need to re-establish the facts of the misrepresentation when the Refugee Protection Division has already established that there was fraud or misrepresentation that led to the granting of refugee status.

Bill C-11 provides that persons found to be inadmissible on grounds of misrepresentation would continue to be inadmissible for this reason for a period of two years following the final disposition of the determination or, if they are determined inadmissible in Canada, from the date their removal order is effected.

Clause 41

What the provision does

- Describes the circumstances in which a person is inadmissible for failing to comply with the Act.
- Clarifies that a permanent resident is inadmissible on this ground only for failing to comply with the residency obligations or conditions imposed under the regulations.

Explanation

This section is similar to the current Act with respect to refusing admission to or removing from Canada persons who have contravened the Act or have not respected their obligations under the legislation. An example of non-compliance with the Act is working in Canada without the required authorization.

The provision's application to permanent residents is limited to the obligations to reside in Canada 730 days in the five-year period under examination and to respect any conditions attached to their entry as a permanent resident.

Clause 42

What the provision does

- Provides that a foreign national, other than a protected person, is inadmissible in the following circumstances:
  - if their accompanying family member is inadmissible;
  - if, in prescribed circumstances, their non-accompanying family member is inadmissible;
  - if they are an accompanying family member of an inadmissible person.

Explanation

Foreign nationals would be inadmissible if their accompanying family member is inadmissible or if they are themselves a dependant who accompanies an inadmissible person. They would also be inadmissible, in circumstances prescribed by regulations, if a dependant who does not accompany them is inadmissible. This is similar to existing regulatory provisions. This provision does not apply to permanent residents or protected persons.

Clause 43

What the provision does

- Authorizes the making of regulations to provide for any matter relating to inadmissibility and to define terms used, including the circumstances in which a class of permanent residents or foreign nationals is exempted from any of the inadmissibility provisions.

Explanation

Regulatory definitions are expected to include terms such as *excessive demand* and *senior official in the service of a government* with respect to inadmissibility for violating human or international rights. The regulations will define *Acts of Parliament* that will give rise to transborder offences, and classes of persons who are deemed to be rehabilitated even if they have been convicted of an offence. The regulations will prescribe, as per section 42(a), the circumstances in which a foreign national is rendered inadmissible by the inadmissibility of their non-accompanying family member. The regulations will also describe considerations to be taken into account when determining inadmissibility based on public health and public safety.

DIVISION 5

LOSS OF STATUS AND REMOVAL

Report on Inadmissibility

Clause 44

What the provision does

- Authorizes an officer to prepare a report setting out the relevant facts concerning a permanent resident or a foreign national who is in Canada and who the officer believes is inadmissible.
- Requires the officer to transmit the report to the Minister.
- Authorizes the Minister, if the Minister is of the opinion the report is well-founded, to
  - refer the report to the Immigration Division of the IRB for an admissibility hearing;
  - make a removal order against a foreign national in prescribed circumstances;
  - make a removal order against a permanent resident only for failure to comply with the residency obligation.
- Authorizes an officer or the Immigration Division to impose any conditions including the payment of a deposit or the posting of a guarantee for compliance with the conditions.

Explanation

The process described is similar to the process of the current Act but replaces the current three types of reports (at the port of entry, in Canada and following an immigration detention) with one generic process.

By giving discretion to the officer to prepare a report, it allows the officer to consider humanitarian and compassionate grounds before the writing of the report. It also gives the officer the discretion to allow a person who is seeking entry to Canada to withdraw their application.

Provisions in the current Act dealing with the administrative procedures following such reports (the authority to defer examination, to direct the person back to the United States in certain circumstances and the types of removal orders according to the nature of the allegation) will be set out in the regulations in keeping with the framework approach.

Bill C-11 maintains the current authority for the Minister’s delegate to issue removal orders in specific circumstances described in regulations. In keeping with the current policy, officers will deal with grounds of inadmissibility that typically require no weighing of evidence. Immigration officers will only be authorized to issue a removal order against a permanent resident in cases of failure to comply with the residency obligation.

The provision maintains the current authority for immigration officers and the IRB to impose conditions, including the posting of bonds, to persons subject to immigration proceedings.

Admissibility Hearing by the Immigration Division

Clause 45

What the provision does

- Sets out the decision-making options of the Immigration Division at the end of an admissibility hearing and requires it to make a decision.

Explanation

This section maintains the authority of the Immigration Division (currently called the Adjudication Division) to determine whether or not an allegation of inadmissibility under its purview is well founded and to make the appropriate decision following that finding.

Loss of Status

Clause 46

What the provision does

- Sets out the circumstances in which a person loses permanent resident status
  - on becoming a Canadian citizen;
  - following a final determination of a decision made outside Canada that the residency obligations have not been met and that no humanitarian and compassionate circumstances, taking into account the best interests of a child affected by the decision, justify the retention of that status;
  - when a removal order comes into force concerning the person;
  - when the person’s refugee status is vacated by the IRB or their protected person status is vacated by the Minister.
- Clarifies that a person who ceases to be a Canadian citizen for a reason other than obtaining permanent resident status through misrepresentation reverts to being a permanent resident.

Explanation

This provision clarifies the rules regarding loss of permanent residence. (With regard to removal orders, it should be noted that these are issued to permanent residents found inadmissible for a number of reasons including on security grounds, such as being a danger to the security of Canada, engaging in espionage, subversion and terrorism, or for being a member of an organization that has engaged or will engage in such acts.)

Persons who become Canadian citizens do not continue to hold concurrent permanent resident status.

Clause 46 (continued)

Only after all appeal rights have been exhausted would a permanent resident cease to be considered a permanent resident and lose the rights and privileges attached to this status.

To avoid duplication of process, a final determination vacating a person's refugee or protected person status for reasons of misrepresentation will also result in the loss of permanent resident status.

The Bill clarifies that persons who lose their Canadian citizenship for reasons other than misrepresentation related to their previous permanent resident status will revert to being permanent residents, allowing the government to determine if further enforcement action is required.

Clause 47

What the provision does

- Sets out the circumstances in which a foreign national loses temporary resident status
  - at the end of the period for which they are authorized to remain in Canada;
  - following a determination that they failed to comply with any other requirement of the Act;
  - on cancellation of their temporary resident permit.

Explanation

The provision dealing with loss of temporary resident status is almost identical to provisions of the current Act covering situations where a person remains beyond the period authorized or fails to respect other provisions of the legislation. One modification is that holders of temporary permits are treated in the same way as other temporary residents, eliminating the need for specific provisions for permit holders.

Enforcement of Removal Orders

Clause 48

What the provision does

- Defines when a removal order is enforceable.
- Requires a foreign national against whom a removal order is enforceable to leave Canada immediately.
- Requires an enforceable removal order to be enforced as soon as reasonably practicable.

Explanation

This provision is similar to provisions of the current Act. The obligation for a foreign national with an enforceable removal order to leave Canada immediately is new. The current Act has no provision that compels a person under a removal order to actually leave Canada.

Clause 49

What the provision does

- Provides that, if no refugee claim is made, a removal order is enforceable immediately if there is no right to appeal.
- Provides that a removal order that may be appealed is enforceable
  - on the expiry of the appeal period if no appeal is taken;
  - after the final decision on appeal if an appeal is made.
- Provides that a removal order made in the case of a refugee protection claimant is conditional and specifies that the order comes into force
  - the day a claimant is found ineligible for having come to Canada from a country designated by regulations;
  - seven days after any other finding of ineligibility;
  - 15 days after notification of rejection of a claim, if no appeal is made, or after denial of the appeal if one is made;
  - 15 days after notification that the claim is declared abandoned or withdrawn;
  - 15 days after a person is re-determined to be ineligible because of misrepresentation at the initial eligibility determination or because of multiple claims.

Explanation

This provision is similar to the existing Act.

The current Act provides for stays of removal, in certain circumstances, such as when an unsuccessful refugee claimant applies for leave for judicial review of their refugee decision. The Bill does not require such stays because under the Bill a removal order comes into force later in the process. For example, the appeal on merit to the Refugee Appeal Division is a new avenue for unsuccessful claimants to seek review of their refugee decision. A removal order does not come into force until after this appeal has been finalized. Additionally, the regulations will provide for a stay of removal for persons seeking judicial review by the Federal Court of the Refugee Appeal Division decision with the exception of persons ordered removed for criminality or who were found to have no credible basis for their refugee protection claim. The intention is to have a two-year "sunset clause" for this regulatory stay of removal to allow for further consideration of the issue once the Refugee Appeal Division has established a record of decisions.

The 15-day period before which a removal order becomes enforceable following a negative refugee decision will allow unsuccessful claimants to determine if they need to apply for judicial review of their Refugee Appeal Division decision.

Persons who have applied for a Pre-removal Risk Assessment (PRRA) will have a stay of removal under the regulations and consequently will not be removed until the PRRA decision is made.

Clause 50

What the provision does

- Describes circumstances in which a removal order is stayed:
  - when effecting the removal directly contravenes a decision made in a judicial proceeding at which the Minister shall be given the opportunity to make submissions;
  - when a foreign national is serving a sentence of imprisonment in Canada;
  - at the order of the Minister, the Immigration Appeal Division, or any other court of competent jurisdiction;
  - when the Minister determines that a person who is not eligible for refugee protection because of criminality, security concerns or other serious reasons is nevertheless at risk and removal is stayed.

Explanation

These stay provisions reflect the existing legislation. As in the current Act, a removal order cannot be enforced if its enforcement would contravene a judicial order. Bill C-11 provides that the Minister shall be given the opportunity to be heard at a judicial proceeding if the decision would have the effect of staying a removal order.

Clause 51

What the provision does

- Provides that a removal order that has not been enforced becomes void when the foreign national who was subject to the order obtains permanent resident status.

Explanation

In cases where a person becomes a permanent resident of Canada, any removal order made prior to that decision will be voided to dispel any doubts about their status in Canada.

Clause 52

What the provision does

- Prohibits a foreign national against whom a removal order has been enforced from returning to Canada unless authorized by an officer or in other prescribed circumstances.
- Entitles a person who left or was removed from Canada because of a removal order that could not be appealed to return to Canada at the expense of the Minister if the removal order was later set aside in judicial review proceedings.

Explanation

This is consistent with the current Act.

A person who is removed must seek an authorization as established in the regulations before returning to Canada. The regulations will establish the consequences of removal orders and the conditions of return imposed on the foreign national based on the grounds of inadmissibility that led to the order. Some inadmissibility grounds will require conditions of return while others may not.

Regulations

Clause 53

What the provision does

- Authorizes the making of regulations providing for any matter relating to loss of status and removal, including provisions respecting:
  - conditions that may or must be imposed;
  - the circumstances in which removal orders must be made or confirmed;
  - the restoration of status;
  - stays of removal;
  - the effect and enforcement of removal orders;
  - the effect of pardons on the status of persons with removal orders made against them;
  - financial obligations that may be imposed with respect to a removal order.

Explanation

This provision is consistent with the framework legislation approach. While the Bill sets out the fundamental rules and rights regarding loss of status and removal, matters of an administrative or procedural nature are to be dealt with in the regulations. The following provisions will be addressed in regulations:

- the imposition of conditions on a person who is allowed to proceed into Canada pending an admissibility determination;
- the preparation of inadmissibility reports (the documentation provided to the person) and the procedures to refer the report to the Immigration Division;
- the circumstances under which the officer may allow a person to withdraw their application to enter Canada and allow the person to leave Canada rather than write a report;
- the authority of an officer to return a foreign national to the United States pending the holding of a hearing and the circumstances where this authority could be exercised;
- the definition of "removal order" as well as the consequences and conditions of return attached to the removal order in respect to each inadmissibility grounds;
- the circumstances where a person may be allowed to voluntarily depart from Canada, the countries to which a person could be removed, and the circumstances regarding the effect and enforcement of removal orders ;
- the circumstances where the removal of persons to specified countries (or parts of such countries) may be stayed by the Minister as well as other circumstances not provided in the Bill where removal may be stayed;
- the circumstances where a removal is stayed by operation of law such as where a pre-removal risk assessment has been filed or where a foreign national has received a favourable decision on humanitarian and compassionate grounds but has not yet become a permanent resident;
- the circumstances where a foreign national needs to obtain authorization before returning to Canada and the circumstances where it may be granted.

DIVISION 6

DETENTION AND RELEASE

Clause 54

What the provision does

- Provides that the Immigration Division is the competent Division of the IRB for reviewing reasons for detention.

Explanation

This section maintains the authority of the Immigration Division (currently called the Adjudication Division) to review detention under the Act.

Clause 55

What the provision does

- Authorizes an officer who has reasonable grounds to believe that a permanent resident or a foreign national is inadmissible and either poses a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada to issue a warrant for their arrest and detention.
- Authorizes arrest without warrant of a foreign national, other than a protected person, where
  - an officer has reasonable grounds to believe they are inadmissible and either pose a danger to the public or are unlikely to appear for examination, an admissibility hearing, removal from Canada or a proceeding that could lead to removal from Canada;
  - an officer is not satisfied of their identity in the course of any procedure under the Act.
- Provides that a permanent resident or a foreign national, on entry to Canada, may be detained where
  - an officer considers it necessary in order for the examination to be completed;
  - an officer has reasonable grounds to suspect that they are inadmissible on grounds of security or violating human or international rights.
- Requires an officer to notify the Immigration Division without delay when a person is taken into detention.

Clause 55 (continued)

Explanation
The current Act permits the arrest without warrant of persons who are suspected of working illegally, overstaying, entering illegally, returning to Canada without consent and for removal from Canada. Bill C-11 broadens the authority of officers to arrest and detain without a warrant to all inadmissibility grounds including criminality, but limits this to persons who are not permanent residents or protected persons. The Bill maintains the current grounds for detention, namely danger to the public or unlikely to appear for immigration proceedings.

This provision also extends to inland situations the power to arrest and detain for identity purposes, which under the current Act is limited to persons seeking entry to Canada. Again, provisions for arrest and detention for failure to establish identity do not apply to permanent residents or protected persons.

Clause 56

What the provision does

- Authorizes an officer to order the release of a person from detention before the first detention review by the Immigration Division if the officer believes the reasons for the detention no longer exist.
- Authorizes an officer to impose any conditions considered necessary, including the payment of a deposit or the posting of a guarantee of compliance with the conditions.

Explanation

The provision expands the ability of an immigration officer to release a person right up to the first detention review. This corrects a gap in the current legislation where there is no explicit authority for an immigration officer to release a person during the first 48 hours before a detention review begins.

The provision maintains the authority of an officer to impose conditions and require the posting of bonds.

Clause 57

What the provision does

- Requires the Immigration Division to review the reasons for continued detention within 48 hours after the person has been taken into detention or without delay after that time.
- Requires that the person be brought before the Immigration Division for a review of the reasons for continued detention at least once within the 7 days after the 48-hour detention review and then at least once every 30 days after each detention review.

Explanation

The provision is consistent with the current Act with the exception of detention for identity and for suspicion of inadmissibility on grounds of security or human rights violations. These cases are now reviewed every 7 days. The approach of Bill C-11 is simpler and more transparent in that these cases will be subject to the regular detention review process of 48 hours, 7 days and every 30 days thereafter. It also allows for the initial review to take place before 48 hours where this is practicable.

Clause 58

What the provision does

- Requires the Immigration Division to order the release of a detained person unless it is satisfied, taking into account prescribed factors
  - that they are a danger to the public;
  - that they are unlikely to appear for examination, an admissibility hearing, removal from Canada or a proceeding that could lead to removal;
  - that, if detained on a reasonable suspicion of being inadmissible on grounds of security or violating human or international rights, the Minister is taking necessary steps to inquire into those grounds;
  - that, if detained for identity, the Minister is of the opinion that the foreign national's identity has not been, but may be, established and that they have not reasonably co-operated or the Minister is making reasonable efforts to establish their identity.
- Authorizes the Immigration Division to order a person into detention if satisfied that they are subject to an examination, admissibility hearing or removal from Canada and are a danger to the public or would not appear for the proceeding.
- Authorizes the Immigration Division, if releasing a person, to impose any conditions considered necessary, including the payment of a deposit or the posting of a guarantee of compliance with the conditions.

Explanation

The Immigration Division's authority to continue detention in cases of suspected inadmissibility on grounds of security or violating human or international rights is similar to the current Act in that the decision maker must be satisfied that reasonable efforts are being made to investigate the inadmissibility. This authority to continue detention in cases posing a danger or flight risk is consistent with the current Act.

The current Act authorizes the detention of persons who cannot establish their identity as long as the Minister is making reasonable efforts to do so. Bill C-11 adds another consideration, namely whether the foreign national has reasonably co-operated with officials in establishing their identity. The Bill provides for a foreign national to be released if they have reasonably co-operated by providing relevant information and, despite reasonable efforts by the Minister, it is not possible to establish identity. This approach provides an incentive to co-operate and responds to a legitimate public expectation that persons claiming Canada's protection will co-operate in establishing their identity. It also expects that genuine refugees, who are undocumented for reasons beyond their control, will reasonably co-operate in establishing identity, and thus not be detained on identity grounds.

The Immigration Division's authority to order a person into detention and, when releasing from detention, to impose conditions and require the posting of bonds is consistent with the current Act.

Clause 59

What the provision does

- Requires the person in charge of an institution where a permanent resident or a foreign national is detained under another Act of Parliament to deliver the inmate to an officer at the end of the detention period if the inmate is the subject of an immigration arrest warrant.

Explanation

The provision is similar in substance to the current Act. It ensures, for example, the seamless transfer of an incarcerated individual from prison at the expiry of a criminal sentence to an immigration detention facility. The other elements respecting interaction between immigration detention and other forms of detention in Canada are dealt with in consequential amendments to the Corrections and Conditional Release Act and are outlined in Part 5 of the Bill.

Clause 60

What the provision does

- Affirms as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

Explanation

The current Act contains no provisions that differentiate between the detention of minors and the detention of adults. Bill C-11 affirms the principle that minor children shall be detained only as a last resort. To this end, the regulations will clearly prescribe special considerations relevant to detaining minor children, consistent with Canada's commitment as a signatory to the *Convention on the Rights of the Child*. Regulations will require decision-makers, in determining whether to detain or continue the detention of a minor, to give consideration to factors such as:

- availability of alternative arrangements with local child care agencies or child protection services for the care and protection of the child;
- length of anticipated detention;
- possibility of continuing control of the minors by criminally organized smugglers or traffickers who brought them to Canada;
- nature of the detention facility, including the existence of prison-like conditions and segregation from adults and criminals;
- availability of services, notably education, counselling and recreation.

Failure to co-operate would not be a factor in the detention of minors.

Clause 61

What the provision does

- Authorizes the making of regulations relating to detention and release, including provisions respecting
  - grounds for, conditions and criteria for release of detained persons;
  - factors to be considered by an officer or the Immigration Division;
  - special considerations that may apply in relation to the detention of minor children.

Explanation

The current Act provides for the imposition of conditions on persons being released from detention. This provision would allow for the making of regulations for this purpose.

The statutory grounds for detention (identity, flight risk and danger to the public) are contained in the Act. The provision does not add to these statutory grounds but rather it establishes the authority to provide interpretative factors in regulations to be considered by decision-makers in making detention and release decisions. These factors will be based on those set out in Federal Court jurisprudence, namely:

- the original reason for detention;
- length of time already in detention;
- any unreasonable delays caused by the Crown or the person concerned; and
- the existence of alternatives to detention.

The intent is for the regulations to include a non-exhaustive list of factors to be considered in relation to danger to the public, flight risk and identity. For example, the regulations may require decision-makers to consider factors such as whether the detained person:

- is involved with, or is under the influence of criminally organized smuggling or trafficking operations;
- is a fugitive from justice in another jurisdiction;
- has convictions in Canada or abroad or outstanding charges for serious offences; or
- is affiliated with organized crime.

The provision also allows for the making of regulations to ensure that the special considerations relevant to detaining minor children are clearly prescribed.

DIVISION 7

RIGHT OF APPEAL

Clause 62

What the provision does

- Provides that the Immigration Appeal Division is the competent Division of the IRB with respect to immigration appeals.

Explanation

This section maintains the authority of the Immigration Appeal Division to hear immigration appeals under the Act.

Clause 63

What the provision does

- Gives a person who has properly filed an application to sponsor a foreign national as a family class member the right to appeal, to the Immigration Appeal Division, a refusal to issue a permanent resident visa.
- Gives the following persons a right to appeal a removal order to the Immigration Appeal Division
  - a foreign national who holds a valid permanent resident visa;
  - a permanent resident;
  - a protected person.
- Gives a permanent resident the right to appeal, to the Immigration Appeal Division, a decision made outside Canada that they failed to meet the residency obligations.
- Gives the Minister the right to appeal against a decision of the Immigration Division in an admissibility hearing.

Explanation

The provision describes who has a right to appeal to the Immigration Appeal Division. Two categories of appeal available under the current Act have been eliminated—the right of persons seeking to enter Canada with a valid visitor visa and holders of a returning resident permit (these types of permits will no longer be issued).

The current Act is ambiguous with respect to the appeal rights of permanent residents who have been determined to have lost residency because of absences from Canada. Bill C-11 makes clear that they have a right to a full appeal hearing whether the determination took place in Canada or outside Canada. The appeal rights of other permanent residents and persons who have been protected as refugees are consistent with the current Act.

Clause 64

What the provision does

- Denies a permanent resident, foreign national or their sponsor the right to appeal to the Immigration Appeal Division if the permanent resident or foreign national has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.
- Defines serious criminality, for this section, as a crime that was punished in Canada by at least two years of imprisonment.
- Denies a person who is sponsoring a foreign national as a family class member the right to appeal a refusal to issue a permanent resident visa based on the ground of misrepresentation, unless the foreign national is the sponsor’s spouse, common-law partner or child.

Explanation

Appeal rights have been eliminated for permanent residents, foreign nationals or their sponsors where the person being removed or being sponsored is inadmissible on grounds of security, violating human or international rights, serious criminality and organized criminality.

Under the current Act, serious criminals lose their right to appeal if the Minister is of the opinion that they are a danger to the public. The subjective nature of the danger opinion process, however, often leads to lengthy litigation and has not been effective in expediting the removal of serious criminals. Bill C-11 contains criteria that deny the right of appeal to serious criminals convicted of a crime in Canada that is punishable by ten years in prison and for which at least two years imprisonment was imposed. These new objective criteria will be more transparent and effective. Appeal rights will be maintained for persons who have a conviction outside Canada since it is not possible to assess the seriousness of a conviction outside Canada based upon the sentence imposed.

This new provision targets the most serious criminal offenders who are likely to pose a danger to the Canadian public. Safeguards will be built into the process to ensure that enforcement proceedings are not initiated against long-term permanent residents unless there is a lengthy criminal history or a very serious conviction. New guidelines will require careful examination and balancing of all factors, including the seriousness of the crime, attachment to Canada and the best interest of any minor children, before any decision is made to initiate the procedure to remove a long-term permanent resident. Additionally, although the administrative appeal to the Immigration Appeal Division is being eliminated for serious criminals, procedural fairness will be ensured as any removal order issued will still be subject to judicial review by the Federal Court.

Clause 64 (continued)

Under the current Act persons found inadmissible on security grounds and human rights violations have limited rights of appeal. Persons found inadmissible on grounds of organized crime lose their appeal rights if the Minister is of the opinion that they are a danger to the public. Elimination of appeal rights for persons found inadmissible on grounds of security, violating human or international rights, or organized crime is a new provision that will better ensure the safety and security of Canadians by providing for the quick removal from Canada of dangerous criminals, and security threats including persons engaged in terrorism and members of organizations engaged in such acts.

Another new provision is that no right to appeal would exist where the foreign national being sponsored is found inadmissible due to misrepresentation, unless the foreign national is the spouse, common-law partner or child of the sponsor.

Clause 65

What the provision does

- Requires the Immigration Appeal Division, before it hears certain appeals based on humanitarian or compassionate grounds, to first determine whether the foreign national being sponsored is a member of the family class and whether their sponsor is a sponsor within the meaning of the regulations.

Explanation

This provision clarifies the Board's jurisdiction in relation to appeals concerning:

- a decision to refuse a permanent resident visa to a sponsored foreign national;
- a decision to issue a removal order in relation to a foreign national seeking entry who holds a permanent resident visa as a sponsored family member.

The Bill provides that there will be no consideration of humanitarian and compassionate grounds in these cases unless the foreign national is a member of the family class and the sponsor is a valid sponsor. The definition of sponsor in the regulations will be limited to matters related to status (Canadian citizens and permanent residents) and age (minimum age of 18). Other rules for sponsorships will not be part of the definition.

Clause 66

What the provision does

- Authorizes the Immigration Appeal Division, after considering an appeal, to allow the appeal, stay a removal order or dismiss the appeal.

Explanation

This is consistent with the current Act.

Clause 67

What the provision does

- Authorizes the Immigration Appeal Division to allow an appeal where it is satisfied that, at the time that the appeal is disposed of,
  - the decision appealed is wrong in law or fact or mixed law and fact;
  - a principle of natural justice has not been observed;
  - other than in the case of an appeal by the Minister, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, and taking into account the best interests of a child directly affected by the decision.
- Allows the Immigration Appeal Division to set aside the original decision and either substitute a determination that should have been made, including the making of a removal order, or send the matter back to the appropriate decision-maker for reconsideration.

Explanation

This provision sets out the circumstances in which the Immigration Appeal Division may allow an appeal. It combines the current tests of "having regard to all the circumstances of the case" for appeals of removal orders by permanent residents and "compassionate or humanitarian considerations that warrant the granting of special relief" for appeals by sponsors into one standard test. The requirement that the best interests of a minor child be taken into consideration is new. It gives substantive meaning to the commitments made by Canada in ratifying Conventions protecting children and sends a strong signal regarding the value Canada accords to the well being of children.

Clause 68

What the provision does

- Authorizes the Immigration Appeal Division to stay a removal order where it is satisfied that sufficient humanitarian and compassionate grounds warrant special relief in light of all the circumstances of the case, and taking into account the best interests of a child directly affected by the decision.
- Requires the Immigration Appeal Division to impose prescribed conditions when staying a removal order and allows for it to impose other conditions it considers necessary.
- Provides that a stay of removal by the Immigration Appeal Division cancels all conditions previously imposed by the Immigration Division.
- Authorizes the Immigration Appeal Division to alter or vary non-prescribed conditions or cancel a stay of removal.
- Allows the Immigration Appeal Division at any time to reconsider an appeal where a removal order has been stayed.
- Provides that where a removal order issued on grounds of criminality is stayed, and the person is subsequently convicted of a serious crime, the stay of removal is automatically cancelled and the appeal is terminated.

Explanation

The reference to prescribed conditions to be imposed by the Immigration Appeal Division when staying removal orders is new and is meant to ensure that standard minimum conditions are imposed in these cases such as informing CIC and the IAD in writing in advance of any change of address, reporting to CIC as directed, maintaining the validity of an existing passport and submission of a copy to CIC or completion of a travel document application. These standard conditions are intended to create consistency and ensure that enforcement actions can be pursued if a stay of removal is cancelled.

The current Act is silent as to whether conditions imposed by the Immigration Division, for example, upon release from detention, are cancelled when the Immigration Appeal Division issues a stay of removal and imposes its own conditions. Bill C-11 clarifies that conditions imposed by the Immigration Appeal Division replace any previous conditions imposed by the Immigration Division. In granting the stay, the Immigration Appeal Division assumes all responsibility for monitoring the individual. This prevents the person from having to report to multiple tribunals.

The automatic cancellation of a stay of removal, by operation of law, when a person is convicted of a serious crime is new. This provision will expedite the removal of dangerous criminals who continue to commit crimes after being given a second chance.

Clause 69

What the provision does

- Provides that if an appeal is not allowed or the removal stayed, the appeal shall be dismissed.
- Provides that, in an appeal by the Minister, where the Immigration Appeal Division is satisfied that the decision appealed is wrong in law or fact or both or that there has been a breach of natural justice, it may still dismiss the appeal or make and stay the removal order in cases respecting a permanent resident or protected person who is not inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality if satisfied that sufficient humanitarian and compassionate grounds warrant special relief in light of all the circumstances of the case, and taking into account the best interests of a child directly affected by the decision.
- Requires the Immigration Appeal Division, if it dismisses the appeal of a permanent resident who was determined outside Canada to have failed to meet the residency obligation but subsequently returned to Canada to issue a removal order.

Explanation

The provision respecting appeals by the Minister is consistent with the current Act. The requirement that the best interests of a child be taken into consideration in accordance with Canada's international obligations and commitments is new.

In an appeal made by the Minister, the IAD may grant special relief to a permanent resident or protected person even if there are grounds to grant the Minister's appeal because of an error in law or in fact, or a breach of natural justice, if there is sufficient humanitarian and compassionate grounds in light of the circumstances of the case.

Currently, decisions on loss of permanent resident status are made in an inquiry by the Adjudication Division of the IRB and a removal order is issued if status is determined to have been lost. The authority under Bill C-11 for an officer to make a loss of residency determination outside Canada is new. In such cases, no removal order would be issued but if the person returns to Canada to appeal the determination, the Immigration Appeal Division would issue a removal order if it determines that the residency obligation has not been met.

Clause 70

What the provision does

- Provides that, in examining a person, an officer is bound by the decision of the Immigration Appeal Division.
- Provides that, if the Minister initiates judicial review of an Immigration Appeal Division decision, an examination of the person is suspended until the final determination of the application.

Explanation

The provision clarifies the requirement of the current Act for an officer to abide by the decision of the Immigration Appeal Division in any case referred to an officer for reconsideration. In cases where the Minister seeks judicial review, however, the decision of the Immigration Appeal Division shall not be implemented until a final determination has been made on the judicial review.

Clause 71

What the provision does

- Authorizes the Immigration Appeal Division to reopen an appeal of a person who is subject of a removal order but has not left Canada if the Division is satisfied that it failed to observe a principle of natural justice.

Explanation

Under the current regime, there is no legislative provision permitting the Immigration Appeal Division to reopen an appeal once it has rendered a decision on a case. It is a common law principle, however, that a tribunal can reopen a case if there has been a fundamental error of justice. Bill C-11 confirms the authority of the Immigration Appeal Division to re-open an appeal but, in order to prevent this mechanism from being used as a tactic to delay removal, it clearly limits reopenings to instances where there has been a breach of the common law principle of natural justice.

DIVISION 8

JUDICIAL REVIEW

Clause 72

What the provision does

- Provides that judicial review by the Federal Court of any matter under the Act is commenced by making an application for leave to the Court.
- Provides that an application for leave may not be made until any right of appeal under the Act is exhausted.
- Sets out the rules that govern the application for leave to commence an application for judicial review.

Explanation

This provision is consistent with the current Act requiring an application for leave to be filed to seek Federal Court review of immigration decisions.

A new provision is the elimination of the exemption from the requirement to seek leave with respect to a visa officer's decision. The exemption was justified in the past by the low volume of cases involved and the difficulty of respecting the timelines of the Court when dealing with overseas cases. An increase in numbers for these kinds of cases has forced a reconsideration of this approach. Introducing a leave requirement for overseas cases eliminates the privileged status overseas immigration applicants have in comparison with in-Canada applicants. The leave requirement itself does not unfairly deprive applicants of an independent review of their case. It is a screening mechanism managed by the Federal Court itself and meritorious cases will continue to be granted leave for full judicial review. The time limit for applying for leave for judicial review of overseas decisions is being increased to 60 days (from the current 15-day time limit for in-Canada applications) in recognition of the different circumstances surrounding overseas applications.

The requirement that administrative appeal rights be exhausted before seeking judicial review is consistent with the principles of administrative law. The introduction of a new appeal on merit to the Refugee Appeal Division will require unsuccessful refugee claimants to first exhaust this appeal before seeking judicial review by the Federal Court.

Clause 73

What the provision does

- Authorizes the Minister to apply for leave for judicial review of any decision of the Refugee Appeal Division regardless of the Minister's prior involvement in proceedings before the Refugee Protection Division or Refugee Appeal Division.

Explanation

This provision is consistent with the current Act respecting judicial review of refugee determinations and ensures the Minister's right to seek judicial review of any decision of the Refugee Appeal Division regardless of the Minister's prior participation in the proceedings.

Clause 74

What the provision does

- Sets out the provisions that govern judicial review by the Federal Court.

Explanation

This section is consistent with existing Federal Court procedural rules for judicial review.

Clause 75

What the provision does

- Authorizes the Chief Justice of the Federal Court, with the approval of the Governor in Council, to make practice and procedural rules governing applications for leave to commence an application for judicial review and for judicial reviews and appeals.
- Provides that these practices and rules are binding even if other practices and rules might apply.
- Provides that if there is an inconsistency between this Division and any provision of the *Federal Court Act*, this Division prevails to the extent of the inconsistency.

Explanation

This maintains the authority given under the current Act.

Division 9

Protection of Information

Examination on Request by the Minister and the Solicitor General of Canada

Clause 76

What the provision does

- Defines the terms “information” and “judge” with respect to protection of information.

Explanation

The nature of the information that may be considered by a Federal Court judge during certificate proceedings which is described in this definition is consistent with the current Act. The definition of information clarifies that intelligence from domestic sources may also be protected.

Clause 77

What the provision does

- Authorizes the Minister and the Solicitor General to sign a certificate stating that a permanent resident or a foreign national is inadmissible to Canada on grounds of security, violating human or international rights, serious criminality or organized criminality and to refer it to the Federal Court – Trial Division.
- Provides that, when a certificate is referred, any proceeding in relation to the person, other than an application to the Minister for protection, must not be started or, if commenced, must be adjourned, until the judge makes the decision.

Explanation

Security certificates are an important element of Canada's strategy to remove persons who constitute a threat to Canada. The Federal Court certificate process that is currently applicable to non-permanent residents would apply, under this provision, to both permanent residents and non-permanent residents. Permanent residents would no longer be subject to the separate certificate process that involves four complex layers of decision-making including a review by the Security Intelligence Review Committee (SIRC). This process is rarely completed due to a lengthy and resource intensive procedure and multiple opportunities for judicial review. The elimination of the SIRC review will streamline the process while the Federal Court will continue to ensure protection of fundamental legal rights. The provision will lead to more expeditious decisions concerning persons who are inadmissible, including persons posing a threat to national security. Permanent residents can still request SIRC to review the CSIS background check which led to a security certificate through the normal complaints mechanism.

The list of inadmissible grounds leading to a certificate is similar to that contained in the current Act but adds the ground of violating human or international rights.

This provision also clarifies that other immigration proceedings, other than an application to the Minister for protection, may not take place or be continued until the Court has made a decision on the certificate.

Clause 78

What the provision does

- Sets out the provisions governing a determination in relation to a certificate.

Explanation

These rules mirror key aspects of the certificate proceedings under the current Act. However, there are three important changes:

- the new rules clarify that the Minister and Solicitor General may apply to the judge at any time during the proceedings to hear evidence or information in the absence of the person concerned and their counsel;
- the ability under the current Act to withdraw foreign source information has been extended to allow the withdrawal of domestic source information in order to prevent disclosure that may result in injury to national security or the safety of persons;
- the person who is the subject of certificate proceedings will be provided by the Court with notice of the certificate proceedings. Although this is a requirement in the current Act, the proposed Bill is silent on this issue, given that it is a procedural matter that will be dealt with by the Court.

Clause 78

What the provision does

- Sets out the provisions governing a determination in relation to a certificate.

Explanation

These rules mirror key aspects of the certificate proceedings under the current Act. However, there are three important changes:

- the new rules clarify that the Minister and Solicitor General may apply to the judge at any time during the proceedings to hear evidence or information in the absence of the person concerned and their counsel;
- the ability under the current Act to withdraw foreign source information has been extended to allow the withdrawal of domestic source information in order to prevent disclosure that may result in injury to national security or the safety of persons;

the person who is the subject of certificate proceedings will be provided by the Court with notice of the certificate proceedings. Although this is a requirement in the current Act, the proposed Bill is silent on this issue, given that it is a procedural matter that will be dealt with by the Court.

Clause 79

What the provision does

- Requires a judge to suspend a certificate proceeding on the request of the Minister or the person concerned, so that an application by the person to the Minister for protection can be considered.
- Requires the Minister to notify the person and the judge of the decision respecting the application for protection.
- Requires the judge to resume the proceeding after the Minister files the decision.
- Requires the judge to review the lawfulness of the Minister's decision in accordance with Federal Court grounds of review.

Explanation

This provision sets out an expeditious process for dealing with persons named in a certificate who claim they would be at risk if removed from Canada. Upon application by the Minister in such cases, the certificate proceedings would be suspended until the Minister has made a decision on the application for protection. Upon resumption, the judge reviewing the reasonableness of the certificate would also review the Minister's decision on protection in the context of the certificate proceedings. The incorporation of the pre-removal risk assessment into the certificate process will minimize delays with respect to removal that would occur if the pre-removal risk assessment and related judicial review took place after the certificate process.

Clause 80

What the provision does

- Requires the judge to decide whether a certificate is reasonable and whether the Minister's decision respecting the request for protection is lawfully made.
- Requires the judge to quash the certificate if the judge believes that it is not reasonable.
- Requires the judge to quash the Minister's decision respecting the request for protection if the judge believes it is not lawfully made and suspend the proceeding to allow the Minister to re-examine the application for protection.
- Provides that the decision of the judge is final and may not be appealed or judicially reviewed.

Explanation

As under the current Act, a Federal Court judge is required to make a determination about the reasonableness of the security certificate. Under Bill C-11, the judge is also authorized to quash the Minister's risk decision if the judge believes it is not lawfully made. Where the certificate is found to be reasonable, but the risk decision is quashed, the judge will suspend the certificate proceedings to allow the Minister to re-examine the request for protection. In this way, the certificate may be upheld and remain intact while the Minister forms a new opinion.

As in the current legislation, neither the judge's decision with respect to the reasonableness, nor any other decision made by the judge during the course of certificate proceedings is subject to appeal or review in any court.

Clause 81

What the provision does

- Provides that a certificate that is determined to be reasonable by a judge
  - is conclusive proof that the person named in the certificate is inadmissible;
  - is a removal order that cannot be appealed and may be immediately enforced.
- Provides that the person may not make another application for protection.

Explanation

The provision eliminates the necessity, under the current Act, of holding an immigration inquiry once a certificate has been upheld by making the certificate a removal order by operation of law. This provision facilitates the early removal of persons who are inadmissible on serious grounds, including persons posing a threat to the security of Canada.

Because persons may apply for protection during the certificate proceeding, they are barred from doing so once a certificate is upheld, thereby limiting potential delays in removal.

Detention

Clause 82

What the provision does

- Authorizes the Minister and the Solicitor General of Canada to issue a warrant for the arrest and detention of a permanent resident named in a certificate if they have reasonable grounds to believe that the permanent resident is a danger to national security or the safety of persons or would be unlikely to appear for proceeding or removal.
- Requires a foreign national named in a certificate to be detained without a warrant.

Explanation

Consistent with the current legislation, non-permanent residents who are named in a certificate are subject to mandatory detention. In recognition of the increased rights that flow from permanent resident status, this provision requires a warrant to arrest and detain a permanent resident named in a certificate.

Where neither danger nor flight risk are a factor, a permanent resident may be the subject of certificate proceedings without being detained.

Clause 83

What the provision does

- Requires that the judge review the reasons for a permanent resident's continued detention not later than 48 hours after the beginning of detention.
- Provides that judicial considerations governing the protection of information in certificate proceedings apply to the detention review with any necessary modifications.
- Requires the detained permanent resident to be brought before a judge at least once every six months and at other times that the judge authorizes until a decision is made on the reasonableness of the certificate.
- Requires the judge to order continued detention if satisfied that the permanent resident continues to be a danger to national security or to the safety of persons or would be unlikely to appear for a proceeding or removal.

Explanation

This provision sets out the detention review procedures applicable to permanent residents who are named in a certificate. Detention reviews will take place at 48 hours and every 6 months or at such additional times as a judge might order. During these reviews, the Ministers must satisfy the judge as to the continued grounds for detention. Consistent with the current Act, non-permanent residents are detained without detention review during certificate proceedings.

Clause 84

What the provision does

- Authorizes the Minister, on application by a permanent resident or a foreign national, to order their release from detention to permit their departure from Canada.
- Authorizes a foreign national who has been detained for more than 120 days after the Federal Court determined that a certificate was reasonable to apply to the judge for release.
- Authorizes the judge to order the release from detention of a foreign national under conditions considered appropriate if the judge believes that the person will not be removed from Canada within a reasonable time and the person's release would not pose a danger to national security or to the safety of persons.

Explanation

Provisions governing detention reviews for foreign nationals whose certificates have been upheld by the Federal Court are consistent with current legislation but, under the proposed Act, are expanded to apply to permanent residents.

Clause 85

What the provision does

- Provides that provisions governing detention during certificate proceedings prevail over detention provisions elsewhere in the Act to the extent of any inconsistency.

Explanation

In the event of any inconsistency, the rules that apply to the review of the detention of a person named in a certificate take precedence over rules governing detention and release in Division 6 of Part I of Bill C-11.

Consideration During an Admissibility Hearing or an Immigration Appeal

Clause 86

What the provision does

- Allows the Minister to make an application for non-disclosure of information during an admissibility hearing, a detention review or an appeal before the Immigration Appeal Division.
- Provides that the rules set out in section 78 relating to the judicial consideration of a certificate apply to the determination of the application with necessary modifications.
- Provides that a reference to "judge" in the rules set out in section 78 are to be read as a reference to the applicable Division of the Board.

Explanation

Under the current Act there are two procedures in place to protect information where a person is inadmissible for reasons relating to national security at hearings before the Immigration and Refugee Board. At an Immigration Appeal Division hearing, the current Act requires the Minister to apply to the Federal Court for protection of information. At a detention review, it is the Minister who certifies that the person is inadmissible and that the information must be protected for reasons of national security or the safety of persons. There is currently no procedure available for protection of information during an immigration inquiry.

This provision gives authority to the Immigration and Refugee Board to protect the confidentiality of any information which, if released, would cause injury to national security or the safety of persons.

An application for non-disclosure would be made by the Minister to a member of the Immigration Division or the Immigration Appeal Division. If the decision-maker determines that disclosure of the information would be injurious to national security or the safety of persons, a summary of information or evidence would be provided to the person concerned to allow them to respond at the hearing but without the information that was the subject of the application. If the application is rejected, the Minister may withdraw the information.

Consideration During Judicial Review

Clause 87

What the provision does

- Authorizes the Minister, in the course of a judicial review, to apply to the judge for non-disclosure of information.
- Provides that the rules set out in section 78 relating to the judicial consideration of a certificate apply to the determination of the application for non-disclosure with any necessary modifications with the exception of the obligation to provide a summary and the seven-day time limit for making a decision.

Explanation

This provision allows the Minister to make an application for non-disclosure to a judge of the Federal Court who is conducting a judicial review with respect to certain decisions. For such applications, the judge must respect the rules set out for the certificate process, except the rules about providing a summary of information to the person and the seven-day time limit for proceeding.

DIVISION 10

GENERAL PROVISIONS

Loans

Clause 88

What the provision does

- Authorizes the Minister of Finance to advance funds up a maximum prescribed amount from the Consolidated Revenue Fund for the making of loans for the purposes of the Act.
- Authorizes the making of regulations to provide for any matter relating to classes of persons who may receive loans and the purposes for which loans may be made.

Explanation

The authority to loan monies for certain immigration-related purposes is contained in the current Act. The current regulations allow for immigration loans to be made to foreign nationals to pay for transportation costs to come to Canada, admissibility and resettlement assistance, and for the right of landing fee.

Fees

Clause 89

What the provision does

- Provides for the making of regulations governing fees for services provided in the administration of the Act and cases where fees may be waived.

Explanation

Fee setting authority has been added to the new Bill to provide ministerial authority to set fees in addition to authority under the *Financial Administration Act*. This provides additional flexibility. The Governor in Council will retain responsibility for approval of fee regulations.

Social Insurance Number Cards

Clause 90

What the provision does

- Authorizes the Minister to direct the Canada Employment Insurance Commission to issue a special Social Insurance Number Card to a person who is neither a Canadian citizen nor a permanent resident that identifies them as a person who may require special authority to work in Canada.

Explanation

This authority is contained in the current Act. The use of distinctive digits on social insurance cards enables employers to identify foreign nationals who may be required under the Act to obtain an employment authorization.

Representation

Clause 91

What the provision does

- Provides for the making of regulations governing who may or may not represent, advise or consult with a person who is subject of a proceeding or application before the Minister, an officer or the IRB.

Explanation

- This provision is similar to section 114(1)(v) of the current Act.

Material Incorporated in Regulations

Clause 92

What the provision does

- Provides that certain material, not produced by the Governor in Council, may be incorporated by reference in the regulations.
- Provides that material that is incorporated by reference may be incorporated as it existed on a specified date or as it is amended from time to time.
- Provides that material developed jointly with another government or government agency for the purpose of harmonizing the regulation with other laws may be incorporated by reference in the regulations.
- Provides that material that is incorporated by reference in the regulations does not itself become a regulation for the purposes of the Act.

Explanation

This provision would expressly allow material, such as international agreements or technical standards or guidelines, to be made part of the requirements of the regulations. Because the material would not, itself, be considered a regulation, the registration and publication requirements of the *Statutory Instruments Act* would not apply to it.

Clause 93

What the provision does

- Provides that instructions given by the Minister under the Act and guidelines issued by the IRB chairperson are not statutory instruments for the purposes of the *Statutory Instruments Act.*

Explanation

In Part 1 of the Bill, the Minister is authorized to issue instructions relating to

- how the regulations on sponsorship are required to be implemented;
- how an officer is required to conduct an examination to determine whether a person may enter or remain in Canada;
- how an officer may issue a temporary resident permit in Canada to a foreign national who would otherwise be inadmissible.

The current Act does not refer to instructions by the Minister. The authority to give instructions to officers can be used to ensure consistency in application of the Act with respect to these three matters. This would result in greater fairness for immigration clients. The registration and publication requirements of the *Statutory Instruments Act* would not apply to these ministerial instructions or to guidelines issued by the IRB chairperson.

Report to Parliament

Clause 94

What the provision does

- Requires the Minister to submit an annual report to Parliament on the operation of the Act.
- Requires the report to include information about
  - initiatives taken in relation to the selection of foreign nationals including measures taken in co-operation with the provinces;
  - the number of foreign nationals who became permanent residents in Canada, their linguistic profile, and the number who are projected to become permanent residents in the following year;
  - the number of foreign nationals in each class who became permanent residents, with respect to each province that is solely responsible for selecting certain classes of foreign nationals under a federal-provincial agreement, and who are expected to settle in the province as permanent residents in the next year;
  - the number of temporary resident permits issued to foreign nationals who would otherwise be inadmissible to Canada or who do not meet the requirements of the Act, categorized by grounds of inadmissibility, if any;
  - the number of persons granted permanent resident status by the Minister on humanitarian and compassionate considerations;
  - a gender-based analysis of the impact of the Act.

Explanation

The requirement for an annual report in this provision enhances program transparency by requiring both the report on numbers required under the current Act and information that is broader in scope about immigration and refugee protection.

PART 2

REFUGEE PROTECTION

DIVISION 1

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION

Clause 95

What the provision does

- Provides that refugee protection is conferred on a person when
  - they are determined to be a Convention refugee or person in similar circumstances under a visa application and are given either permanent or temporary resident status;
  - they are determined to be a Convention refugee or person in need of protection by the IRB;
  - they are granted protection by the Minister.
- Defines a protected person as person on whom refugee protection has been conferred and not subsequently lost through cessation or vacation.

Explanation

Bill C-11 consolidates the three ways a person can currently obtain protection (through the refugee resettlement program overseas, the refugee determination system in Canada or from the Minister through a pre-removal risk assessment) into a single concept of refugee protection. This consolidation better reflects Canada's humanitarian obligations towards refugees and persons in similar circumstances under international treaties. The grounds applied by decision-makers in granting protection are the same as those in effect in various protection processes today and the consequences of receiving protection are the same.

This provision ensures that all persons who have been determined to be in need of protection, whether by way of visa or permit, or through a determination by the IRB or the Minister are treated equally and are all considered to be protected persons unless their status subsequently ceases or is vacated.

Clause 96

What the provision does

- Provides a definition of "Convention refugee".

Explanation

This provision repeats the current definition of "Convention refugee", which largely implements the definition of refugee found in the 1951 *Convention Relating to the Status of Refugees* (the *Refugee Convention*). The Convention's cessation and exclusion clauses are incorporated in other provisions of Bill C-11.

Clause 97

What the provision does

- Defines a person in need of protection as a person who
  - if removed to their country of origin, would be personally subjected to danger or torture within the meaning of Article 1 of the *Convention Against Torture*;
  - if removed to their country of origin, would be personally subject to a risk to their life or to a risk of cruel and unusual treatment or punishment, where the risk is not inherent or incidental to lawful sanctions unless imposed in disregard of accepted international standards and not caused by the inability of that country to provide adequate health or medical care;
  - is a member of a class of persons prescribed by regulations as being in need of protection.

Explanation

This new provision applies only to persons who claim refugee protection in Canada. It generally consolidates the existing protection-related grounds which are spread through various provisions of the current Act and regulations and are evaluated under separate procedures. This provision upholds Canada's obligations under international conventions and the *Charter of Rights and Freedoms* and provides a clear definition of a person in need of protection under one provision.

This section incorporates the definition of torture contained in the *Convention Against Torture* and permits the future inclusion in regulations of other Conventions. A person in need of protection will also include persons who would be subjected to a risk to life or of cruel and unusual treatment or punishment. The risk must be faced by the person in every part of the country and not be faced generally by the population of that country.

Cases where a person faces a risk due to lack of adequate health or medical care can be more appropriately assessed through other means in the Act and are excluded from this definition. Lack of appropriate health or medical care are not grounds for granting refugee protection under the Act.

Clause 98

What the provision does

- Provides that a person who is referred to in the exclusion clauses of the Refugee Convention is not a Convention refugee or a person in need of protection.

Explanation

This provision, like the current Act, implements the exclusion clauses of the *Refugee Convention*, namely sections E and F of Article 1 of the Convention. The provision extends the exclusion clauses of the *Refugee Convention* to the *Convention against Torture* (CAT) as well as to those who otherwise face a risk to life or of cruel and unusual treatment or punishment. The CAT itself does not contain the exclusion provisions.

Section E of the *Refugee Convention* provides that the *Refugee Convention* does not apply to a person who is recognized as having the rights and obligations attached to the possession of the nationality of the country in which the person has taken up residence. Section F provides that the *Refugee Convention* does not apply to a person when there are serious reasons to consider that person has committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime outside the country of refuge prior to admission to that country as a refugee, or has been guilty of acts contrary to the purposes and principles of the United Nations.

Under Bill C-11, persons who are subject to the *Refugee Convention's* exclusion clauses cannot be provided any form of refugee protection in Canada In some cases, however, they may be given a stay of removal.

DIVISION 2

CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION

Claim for Refugee Protection

Clause 99

What the provision does

- Provides that a claim for refugee protection may be made in or outside Canada.
- Provides that a refugee protection claim outside Canada must be made by making an application for a visa as a Convention refugee or person in similar circumstances.
- Provides that overseas applications for refugee protection are governed by Part 1 of the Act which deals with immigration to Canada.
- Entitles a person in Canada, who is not subject to a removal order, to make a claim for refugee protection to an officer.
- Provides that applications for refugee protection made in Canada are governed by Part 2 of the Act which deals with refugee protection.
- Provides that applications by protected persons for permanent residence are governed by Part 1 of the Act which deals with immigration to Canada.

Explanation

This provision reflects the current Act. It clarifies that the provisions of Part 1, such as admissibility requirements, apply to protected persons applying for permanent residence, unless the Act provides otherwise.

Examination of Eligibility to Refer Claim

Clause 100

What the provision does

- Requires an officer who receives a claim for refugee protection to decide whether the claim is eligible for referral to the Refugee Protection Division within three working days.
- Requires an officer to refer eligible claims in accordance with the rules of the Board.
- Requires an officer to suspend considering the eligibility of a claim when the Immigration Division has been asked to determine if the claimant is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.
- Requires an officer to suspend considering the eligibility of a claim when the claimant has been charged in Canada with an offence punishable by a maximum term of ten years or more and the officer considers it necessary to wait for the court decision.
- Provides that the Refugee Protection Division has jurisdiction to consider a claim only after it is referred by the officer but that the claim will be deemed to have been referred at the end of the three day period unless the claim has been suspended or determined to be ineligible.
- Provides that it is the claimant's responsibility to prove that a claim is eligible to be referred to the Refugee Protection Division.
- Requires a refugee claimant to answer all questions truthfully.
- Requires a claimant whose claim is referred to produce all documents and information as required by the Board's rules.

Explanation

The powers, duties, and responsibilities conferred under this provision are consistent with those conferred on immigration officers under the current Act. The responsibilities of the claimant are also consistent with the current Act.

The following concepts are new:

- the three-working-day timeframe for rendering eligibility decisions. This is intended to ensure faster referrals to the Board and decrease processing time;
- the deemed referral of a claim to the IRB at the expiration of the three-working-day period if no eligibility decision has been made unless there has been a suspension of eligibility determination or a claim has been determined ineligible;
- the authority to suspend consideration of eligibility when charges are laid for a serious criminal offence in Canada that might render the claimant ineligible or where a report has been sent to the Immigration Division to determine serious criminality.

Clause 101

What the provision does

- Provides that a claim for refugee protection is not eligible to be referred to the Refugee Protection Division if
  - refugee protection has already been conferred on the claimant under the Act;
  - a claim for refugee protection has already been rejected by the IRB;
  - a prior claim was determined to be ineligible, withdrawn or abandoned;
  - the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;
  - the claimant came to Canada from a safe third country designated by regulations other than their country of nationality or former habitual residence;
  - the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for a person who is inadmissible solely on the grounds of an international sanction referred to in 35(1)(c).
- Provides that a refugee claim is ineligible by reason of serious criminality if the claimant
  - has been convicted in Canada of a federal offence punishable by a maximum prison term of at least ten years and for which a sentence of at least two years imprisonment was imposed;
  - has been convicted outside of Canada of an offence that, if committed in Canada, would be a federal offence punishable by a maximum prison term of at least ten years and the Minister is of the opinion that the person is a danger to the public.

Explanation

The current Act contains many of the same eligibility rules but Bill C-11 clarifies and strengthens certain aspects.

The current Act allows previous claimants who return to Canada after 90 days to make a new refugee protection claim. This provision has been subject to abuse by many non-genuine claimants who, rather than going back to their country of origin, leave for the United States for the 90-day period and return to make another claim, without any change of circumstances. New provisions in Bill C-11 render persons ineligible whose prior claim was rejected by the IRB or was determined to be ineligible, withdrawn or abandoned. As a result, previous claimants are barred from a subsequent IRB refugee protection determination but may, if they return to Canada after six months, apply to the Minister for protection in the context of a pre-removal risk assessment.

The authority for regulations to prescribe safe third countries is present in the current Act although it has never been implemented.

Clause 101 (continued)

Under the current Act, persons who are determined inadmissible on grounds of serious criminality are ineligible to have their claim referred to the Board if the Minister is of the opinion that the person is a danger to the public. Bill C-11 continues this approach for persons with serious convictions outside of Canada. The refugee protection decision for persons convicted of criminal offences overseas will be made by the IRB, unless the individual is determined to be a danger to the public. A requirement for the determination of danger to the public in such cases takes into account that foreign laws and judicial systems do not always equate with Canadian standards and the possibility of politically motivated trumped-up convictions or excessive penalty is present in some countries. Additionally, foreign nationals found inadmissible for acts or omissions committed outside Canada (where there is no conviction) will be eligible to have their claim determined by the Refugee Determination Division.

Bill C-11 creates an objective test for rendering persons with serious convictions in Canada ineligible for refugee determination. Persons convicted in Canada of a serious crime, as defined in the inadmissibility provisions (an offence punishable by a sentence of 10 years or more) will be ineligible to have their claim determined by the Refugee Protection Division only if they were sentenced to at least two years of imprisonment. This provision takes into account that the judicial system would have already evaluated that the circumstances of the transgression were serious enough to warrant a significant term of imprisonment.

The ineligibility provisions in the current Act deny access to the refugee determination system to persons found to be inadmissible on grounds of security including terrorism or human rights violations if the Minister is of the opinion that it would be contrary to the national interest to have the claim determined. In order to better protect the safety and security of Canadians, Bill C-11 strengthens this provision by eliminating the need for a Ministerial opinion.

A new ineligibility provision is established for persons found inadmissible on grounds of organized criminality, an element intended to deny access to the refugee determination system to smugglers and human traffickers and others involved in organized crime. The provisions defining organized crime, however, ensure that refugee claimants who have merely used the services of such organizations to come to Canada continue to have access to a refugee determination by the IRB, as it is recognized that such persons may validly fear persecution if returned to the country of origin.

Clause 102

What the provision does

- Authorizes the making of regulations for matters relating to the determination of eligibility, including the definition of terms.
- Provides that the regulations may, for the purpose of sharing responsibility for considering refugee claims with foreign governments, include provisions
  - designating countries that comply with Article 33 of the Refugee Convention and Article 3 of the *Convention Against Torture*;
  - making a list of those countries and amending it as necessary;
  - respecting the circumstances and criteria for the application of the provision dealing with a claimant who came directly or indirectly to Canada from a prescribed country, other than a country of their nationality or their former habitual residence.
- Sets out the factors that must be considered in deciding whether to designate a country as one that complies with Article 33 of the Refugee Convention and Article 3 of the *Convention Against Torture*.
- Requires the Governor in Council to ensure that these factors are continually reviewed for each designated country.

Explanation

The requirement that countries prescribed by regulations as safe third countries comply with the *Convention Against Torture* is new and reflects a comprehensive approach to Canada's policy to implement that Convention.

Suspension or Termination of Consideration of Claim

Clause 103

What the provision does

- Requires the Refugee Protection Division and the Refugee Appeal Division to suspend proceedings when notified by an officer that
  - the case has been referred to the Immigration Division to decide whether the claimant is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality;
  - the claimant is charged with an offence punishable by a maximum prison term of at least 10 years and that the officer considers it necessary to wait for the court's decision.
- Requires the Refugee Protection Division and the Refugee Appeal Division to resume proceedings if notified by an officer that the suspended claim was determined to be eligible.

Explanation

The current Act allows for suspension of a refugee claim for determinations of inadmissibility on grounds of serious criminality. Bill C-11 expands the situations in which the Board must suspend its consideration of a claim to include grounds of security, violation of human or international rights, and organized criminality. These new grounds parallel the grounds that could render a person ineligible for referral to the IRB.

By permitting claims for refugee protection by persons charged with serious criminal offences to be suspended until their eligibility is properly assessed, the Bill provides a consistent approach in denying access to the refugee determination system to serious criminals.

Clause 104

What the provision does

- Allows an officer to give notification to the Refugee Protection Division ending their jurisdiction over the case and to re-determine eligibility with respect to a claim that is before the Division in certain cases where the person should not have been eligible.
- Clarifies that the re-determination of eligibility can be based on misrepresenting or withholding material facts relating to a relevant matter.
- Allows an officer to end the Refugee Protection Division or Immigration Appeal Division jurisdiction and to re-determine eligibility with respect to a claim that is before or has been determined by either Division when it is not the first protection claim made by the person.
- Provides that, if the ineligibility is based on multiple protection claims, any decision respecting a claim by either the Refugee Protection Division or the Refugee Appeal Division other than the first claim will be nullified.

Explanation

The current Act allows for re-determination of eligibility in cases of fraud or misrepresentation of a material fact. This provision clarifies that upon notification to either Divisions of the IRB an officer may in certain circumstances end their jurisdiction. The officer may then make a re-determination of the claim that is before the Refugee Protection Division that it is ineligible on the basis of misrepresentation through the withholding of material facts relating to a relevant matter that were not brought to the attention of the officer at the time of the eligibility determination.

The provision relating to multiple claims reflects the current Act. Multiplicity of claims is an abuse of the refugee protection determination system and a provision is needed to confer an authority to terminate the consideration of claims other than the first one made and to nullify decisions made in this regard.

Extradition Procedure

Clause 105

What the provision does

- Prohibits the Refugee Protection Division and Refugee Appeal Division from starting or continuing to consider any matter concerning a person against whom extradition proceedings have been authorized in relation to an offence punishable by a maximum prison term of at least 10 years until a final decision has been made under the *Extradition Act.*
- Authorizes the applicable Division to start or continue their proceedings as if there had been no extradition proceedings if the person is finally discharged under the *Extradition Act.*
- Provides that a surrender order made under the *Extradition Act* against a person in relation to an offence punishable by a maximum prison term of at least 10 years is deemed to be a rejection of a claim for refugee protection on the grounds that there are serious reasons for considering that the claimant committed a serious non-political crime outside Canada before being admitted to Canada.
- Provides there is no appeal of the deemed rejection of the claim for refugee protection.
- Provides there is no judicial review of the deemed rejection of the claim for refugee protection except to the extent that the surrender order may be subject to judicial review under the *Extradition Act.*
- Provides that if the person has not made a claim for refugee protection before the surrender order was made under the *Extradition Act*, they may not make a claim before the surrender.

Explanation

This provision reflects amendments made to the current Act as a result of the coming into force of the *Extradition Act*. It gives the Minister of Justice exclusive jurisdiction in relation to proceedings under the *Extradition Act* with respect to certain serious offences under Canadian law until a final decision is made on the extradition issue.

Where the person is ordered surrendered under the *Extradition Act*, the order is deemed to be a rejection of a claim for refugee protection based on Article 1F (b) of the Refugee Convention. That article excludes from refugee protection persons who have committed a serious non-political crime outside the country of refuge prior to admission to that country.

Because the Minister of Justice, under the *Extradition Act*, is provided with a comprehensive authority to assess risks upon surrender, a person ordered surrendered may not make an application to the Minister of Immigration for protection under Bill C-11.

Claimant Without Identification

Clause 106

What the provision does

- Requires the Refugee Protection Division to take into account, when assessing a claimant's credibility, whether they possess acceptable documentation establishing identity, have provided a reasonable explanation for the lack of documentation, and have taken reasonable steps to obtain the documentation.

Explanation

This provision is new but it is consistent with an existing published practice notice of the Immigration and Refugee Board. The current Act provides for deemed rejection of a claim where, in cases of a split decision, both members of the Board are satisfied that there are reasonable grounds to believe that the person had, without valid reasons, destroyed or disposed of identity documents in the person's possession. With the new approach of one-member panels, the issue of split decisions is no longer relevant and so this provision of the Bill adapts the former approach to respond to the one-member panel environment.

This provision is one element of the general policy in relation to undocumented and uncooperative arrivals. By embodying present Board practices in the legislation, it broadens the current approach to undocumented refugee claimants which focuses on the destruction or disposal of identity documents without valid reason. The provision clarifies that the Refugee Protection Division must take into account a claimant's lack of identity documents and failure to take reasonable efforts to obtain them when assessing credibility.

Decision on Claim for Refugee Protection

Clause 107

What the provision does

- Requires the Refugee Protection Division to decide whether or not a person who makes a claim for refugee protection is a Convention refugee or a person in need of protection.
- Requires the Refugee Protection Division, in circumstances where it rejects a claim and is of the opinion that there was no credible or trustworthy evidence on which it could have made a favourable decision, to state in its reasons that there is no credible basis for the claim.

Explanation

This provision clarifies the broader jurisdiction of the Refugee Protection Division to make a determination of whether a person is a Convention refugee or a person in need of protection. It also reflects the current Act in providing that where the Division is of the opinion that no credible or trustworthy evidence was presented, the Division must state that there is no credible basis for the claim.

Cessation of Refugee Protection

Clause 108

What the provision does

- Requires the IRB to reject a claim for refugee protection and provides that a person is not a Convention refugee or person in need of protection in circumstances reflecting cessation of status as a protected person.
- Authorizes the IRB to decide, on application by the Minister, that refugee protection already conferred on a person has ceased due to certain specified circumstances.
- Provides that when an application for cessation is allowed, the claim for refugee protection is deemed to be rejected.
- Provides that, if the original reasons for which refugee protection was sought have ceased to exist, cessation may still not apply, if the person establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of their country's protection.

Explanation

This provision adapts the provisions of the current Act that deal with the cessation of Convention refugee status to apply to the consolidated grounds for protection. It authorizes the Board, in determining the protection claim, to assess at the same time whether a person has compelling reasons to fear returning to the country from which they sought protection because of previous persecution, torture, treatment or punishment in that country notwithstanding that the reasons for seeking protection have ceased to exist. Under Bill C-11, the Refugee Protection Division has jurisdiction to determine cessation, including in cases of persons who obtained refugee protection overseas or through a pre-removal risk assessment.

Applications to Vacate

Clause 109

What the provision does

- Authorizes the Refugee Protection Division, on application by the Minister, to vacate a decision allowing a claim for refugee protection if it finds that the decision was made as a result of a material misrepresentation, or the withholding of information, relating to a relevant matter.
- Authorizes the Refugee Protection Division to reject the vacation application if the Division is satisfied that there was other sufficient evidence considered at the time the decision was made to justify refugee protection.
- Provides that if the Refugee Protection Division allows the vacation application,
  - the claim for refugee protection is deemed to be rejected;
  - the decision that led to the conferral of refugee protection is nullified.

Explanation

This provision is consistent with provisions of the current Act but differs in the following ways:

- the Minister is no longer required to obtain leave from the Chairperson of the IRB to initiate vacation proceedings;
- the provision clarifies that the decision to vacate is equivalent to a negative decision and triggers the application of other provisions in the Act relating to refused claims;
- the provision applies to persons who have been conferred refugee protection based on a determination that the person is a Convention refugee or a person in need of protection.

Appeal to Refugee Appeal Division

Clause 110

What the provision does

- Entitles a claimant or the Minister to appeal to the Refugee Appeal Division decisions of the Refugee Protection Division respecting a claim for refugee protection or an application by the Minister for vacation or cessation of refugee status.
- Provides that the appeal
  - may be on a question of law, fact or mixed law and fact;
  - must be made in accordance with the rules of the Immigration and Refugee Board.
- Prohibits an appeal of a determination that a refugee claim has been withdrawn or abandoned.
- Requires the Refugee Appeal Division to decide the appeal without a hearing.
- Authorizes the Refugee Appeal Division to accept written submissions, including by a representative of the UNHCR and any other person described in the rules of the Board.
- Requires the Refugee Appeal Division to decide the appeal on the basis of the Refugee Protection Division's record of proceedings.

Explanation

Under the current Act, unsuccessful refugee claimants can seek leave for judicial review of their refugee determination. Judicial review by the Federal Court is a review of the legality of the decision and its process, and is not an examination of the merits of the decision. If granted, judicial review involves setting aside the decision and sending the case back to the original decision-maker for reconsideration. It also involves possible appeals through the Courts and is often, as a result, time-consuming.

Bill C-11 creates a new right to appeal decisions of the Refugee Protection Division to the Refugee Appeal Division which will be specialized in refugee protection issues. The new appeal is designed to improve quality and consistency in refugee decision making. The Refugee Appeal Division would be able to correct, in a quick and efficient manner, errors of fact and law in cases which would otherwise go to the courts. The appeal would be restricted to a paper review avoiding multiplicity of oral hearings and ensuring efficiency. Refugee claimants will have already had full opportunity to put forward their claim to protection through an oral hearing at the Refugee Protection Division.

A decision of the Refugee Protection Division that a refugee claim has been withdrawn or abandoned may only be reviewed by the Federal Court.

Clause 111

What the provision does

- Requires the Refugee Appeal Division to make one of the following decisions after considering an appeal from the Refugee Protection Division's decision to allow or reject a claim for refugee protection:
  - confirm the original decision;
  - set aside the original decision and substitute the decision that, in its opinion, should have been made;
  - refer the matter back to the Refugee Protection Division for re-determination with any directions it considers appropriate.
- Requires the Refugee Appeal Division to refer the matter back to the Refugee Protection Division for re-determination if
  - it is of the opinion that a hearing is required;
  - it has allowed an appeal by the Minister that was based on a question of the claimant's credibility.

Explanation

This provision is new. It provides the remedies and decisions available to the Refugee Appeal Division after its consideration of the appeal. Because the appeal process is a paper review, the Refugee Appeal Division has the power to refer the matter back to the Refugee Protection Division for a hearing, if required.

DIVISION 3

PRE-REMOVAL RISK ASSESSMENT

Protection

Clause 112

What the provision does

- Entitles a person in Canada, other than protected persons or Convention refugees recognized by another country, against whom a removal order is in force or who is named in a certificate to apply to the Minister for protection, in accordance with the regulations.
- Provides that a person may not apply for protection if
  - extradition proceedings have been authorized in relation to the person;
  - their claim for refugee protection was determined to be ineligible because they came to Canada directly or indirectly from a safe third country;
  - they have not left Canada since the application for protection was rejected and the prescribed period has not expired;
  - a previous refugee claim was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected, and less than six months has passed since their departure from Canada.
- Provides that refugee protection may not result from an application for protection if the person
  - is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;
  - is determined to be inadmissible for serious criminality with respect to a serious conviction in Canada punished by at least two years of imprisonment or with respect to a serious conviction outside Canada;
  - is excluded from refugee protection on the basis of section F of Article 1 of the Refugee Convention;
  - is named in a certificate.

Explanation

This provision is new. It consolidates existing procedures respecting pre-removal risk reviews and reflects protections provided by the *Canadian Charter of Rights and Freedoms* as well as respecting Canada's international obligations and Supreme Court of Canada decisions.

Under the current Act, a refused refugee claimant may make an application under the regulations to obtain permanent residence on grounds of risk to life, excessive sanctions or inhuman treatment upon removal to the country of origin. A person may also make an application for relief to the Minister based on humanitarian and compassionate considerations which include the risks to the person upon removal.

Protection

Clause 112 (continued)

Under Bill C-11, persons against whom a removal order is in force or who are named in a certificate may make an application for protection to the Minister. This includes persons whose claim for refugee protection has been rejected and who have not yet left Canada. The provision is meant to be applied when the person is to be removed to the country of origin, in order to assess any changes in circumstances in that country close to the time of removal.

Persons who have left Canada after their previous refugee claim was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected, would be ineligible for a pre-removal risk assessment if they return to Canada in less than six months following their departure. Under other provisions of Bill C-11, previous claimants will not have access to the IRB refugee determination process.

Bill C-11 clarifies that refugee protection will not be conferred on persons who are determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, persons whose claim has been rejected by the Board on the basis of section F of the Convention's exclusion grounds, and persons named in a certificate. At the pre-removal risk assessment, the Minister will consider both the risk of return (based on factors excluding *Refugee Convention* protection) and the danger that the person would constitute to the public, national security or against the national interest. In cases where the risk of return is determined to be paramount, the application would be allowed and the execution of the removal order would be stayed.

Clause 113

What the provision does

- Provides that persons, whose claim to refugee protection has been rejected, may only present new evidence that arose after the rejection, or that the applicant could not reasonably have been expected in the circumstances to have presented.
- Provides that a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that it is required.
- Provides that for most persons, a pre-removal risk assessment will be based on Refugee Convention and *Convention Against Torture* criteria and risk to life or risk of cruel and unusual treatment or punishment.
- Provides that, for persons who were ineligible for refugee determination on grounds of security, violating human or international rights, serious criminality or organized criminality, who were excluded on the basis of section F of the Convention's exclusion grounds, or who are named in a certificate,
  - the pre-removal risk assessment will only be based on *Convention Against Torture* grounds and risk to life or risk of cruel and unusual treatment or punishment;
  - danger to the public will be a consideration with respect to serious criminals;
  - the nature and severity of acts committed by the applicant or the danger posed to the security to Canada will be a consideration for the rest of this group.

Explanation

The objective of the pre-removal risk assessment, with respect to unsuccessful refugee claimants, is to provide a final assessment to deal with risks that arise subsequent to the refugee determination decision (such as changed country or personal circumstances). The provision to limit the pre-removal risk assessment to new evidence is to prevent the re-hearing of cases already heard by the IRB. Evidence that was available but which the applicant could not reasonably have been expected, in the circumstances, to have presented can be submitted at the pre-removal risk assessment.

Bill C-11 provides officers conducting a pre-removal risk assessment with discretion to allow an oral hearing in certain exceptional cases, to be prescribed by regulations.

Clause 113 (continued)

The Bill provides that for most persons, the pre-removal risk assessment will be based on the same grounds considered by the Refugee Protection Division. For persons ineligible for refugee protection because of serious grounds of inadmissibility, however, the pre-removal risk assessment will be based only on *Convention Against Torture* and cruel and unusual treatment criteria as well as consideration as to whether the person poses a danger to the public in Canada, or the nature and severity of acts they committed and the danger they pose to the security of Canada. As they will have been found by a member of the IRB Immigration Division to be inadmissible on grounds which make them ineligible for a determination of a claim for refugee protection and which exclude them from the international protection of the *Refugee Convention*, they will not be assessed on Convention refugee criteria.

Trumped-up charges, trumped-up convictions and excessive penalties will be factors taken into consideration when assessing whether the person poses a danger to the public or the security of Canada.

Clause 114

What the provision does

- Provides that a decision to allow an application for protection
  - in most cases, has the effect of conferring refugee protection on the person;
  - stays the removal of, but does not confer refugee protection upon, persons who are seriously inadmissible, whose claim has been rejected by the Board on the basis of section F of the *Refugee Convention's* exclusion grounds and persons named in a certificate.
- Authorizes the Minister to re-examine the grounds on which the stay of removal was ordered and to cancel the stay if the Minister is of the opinion that the circumstances surrounding the stay of removal have changed.
- Authorizes the Minister to vacate a decision to allow an application for protection where the Minister believes the decision was obtained as a result of misrepresentation or withholding material facts on a relevant matter.
- Provides that a decision that is vacated is deemed to have been rejected.

Explanation

Where the application for protection is approved in cases of persons who are not seriously inadmissible, the effect is to confer refugee protection and the person may apply for permanent residence.

When an application is allowed but refugee protection is not conferred because of serious inadmissibility, the removal of the person will be stayed. This provision formalizes the current policy of not removing a person who is at risk but upon whom protection cannot be conferred. A review of the decision to stay a removal order may be conducted when circumstances have changed.

The provision to allow the Minister to vacate a protection decision on the basis of misrepresentation or withholding material facts on a relevant matter is designed to enhance the integrity of the pre-removal risk assessment process by providing the remedy of revoking protection that should not have been conferred.

Principle of Non-refoulement

Clause 115

What the provision does

- Prohibits a protected person or a person recognized as a Convention refugee by another country to which they may be returned from being removed from Canada to a country where they are at risk of persecution by reason of race, religion, nationality, political opinion or membership in a particular group, or at risk of torture or cruel and unusual treatment or punishment.
- Provides that the prohibition against removal does not apply in certain circumstances related to danger to the Canadian public.
- Provides that a person whose claim was determined to be ineligible because they came to Canada from a safe third country is to be removed to that country unless certain conditions apply.

Explanation

This provision, similar to a provision in the current Act, implements Article 33 of the *Refugee Convention*. That article provides for protection against *refoulement* of a person determined to be a refugee, with exceptions where the refugee is a serious criminal and a danger to the community or where the person is a danger to security. Bill C-11 extends this principle to persons determined to be in need of protection.

Removal will not be executed to a country where there is a risk of persecution or, in keeping with the consolidated concept of refugee protection, where there is a risk of torture or cruel and unusual treatment or punishment. The provision allows for exceptions to the protection against removal for persons determined to be inadmissible on grounds of serious criminality and who constitute in the opinion of the Minister a danger to the public. Another exception to the protection against removal is prescribed for persons determined to be inadmissible on grounds of security, violating human or international rights or organized criminality where in the opinion of the Minister the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

The current Act contains a similar provision but the Bill extends the exceptions to this rule to facilitate the removal of war criminals whose presence is contrary to the national interest because of the nature and severity of the acts committed in the past although they may no longer strictly meet the test of danger to the security of Canada. These exceptions are consistent with the *Refugee Convention*.

As in the current Act, the provision also specifies in the case of a person found ineligible to have their claim referred to the Board on the ground that the person came from a safe third country, the countries to which the person may be removed. The provision stipulates, in such cases, that a person may only be removed to a country which has been designated as a safe third country or to any country if their claim for refugee status in the safe third country has been rejected.

Clause 116

What the provision does

- Authorizes the making of regulations relating to pre-removal risk assessments and the principle of non-refoulement, including provisions respecting procedures to be followed with respect to an application for protection and decisions made with respect to exceptions to the principle of non-refoulement, including establishing factors to determine whether a hearing is required.

Explanation

This provision is new and provides for general regulation-making authority for the pre-removal risk assessment and the protection against removal. It will include procedures relating to applications for the pre-removal risk assessment.

PART 3

ENFORCEMENT

Human Smuggling and Trafficking

Clause 117

What the provision does

- Prohibits a person from knowingly organizing, inducing, aiding and abetting the coming into Canada of one or more persons who do not have a visa, passport or other document required by the Act.
- Sets out the penalty for the offence if fewer than ten people are involved
  - if convicted on indictment for a first offence, a maximum fine of $500,000 or a maximum prison term of 10 years, or both;
  - if convicted on indictment for a subsequent offence, a maximum fine of $1,000,000 or maximum prison term of 14 years, or both;
  - on summary conviction, a maximum fine of $100,000 or maximum prison term of 2 years, or both.
- Provides for a maximum fine of $1,000,000 or life imprisonment, or both, as the penalty for a conviction on indictment if ten or more people are involved.
- Requires the consent of the Attorney General of Canada to initiate criminal proceedings for the offence.

Explanation

This provision makes it an offence to organize or assist the illegal entry into Canada of persons who do not have a passport or other travel document.

The offence is substantively similar to the offence of organizing illegal entry in the current Act. The penalties, however, have been significantly increased:

- in cases involving fewer than 10 persons, from a maximum fine of $100,000 or five years in prison to a maximum fine of $500,000 or 10 years in prison;
- in cases involving 10 persons or more, from a maximum fine of $500,000 or ten years in prison to a maximum fine of $1,000,000 or life in prison.

The higher penalties that may be imposed for subsequent offences is also new. Prosecution of this offence requires the consent of the Attorney General; however the requirement for the *personal* consent of the Attorney General has not been maintained.

Clause 118

What the provision does

- Prohibits a person from knowingly organizing the coming into Canada of one or more persons by abduction, fraud, deception, force, coercion, or the threat of force or coercion.
- Provides that organizing includes recruiting and transporting people and, after they arrive in Canada, receiving and harbouring them.

Explanation

Canada recently signed (December 2000) two new United Nations Protocols on smuggling of migrants and on trafficking in persons which require state parties to criminalize the act of smuggling and trafficking in humans. The provision responds to this new commitment by creating a new offence prohibiting trafficking in persons. The offence is designed to attack the growing phenomenon of human trafficking (the importation of persons into Canada by means of deception or force with the intent to subject them to degrading treatment such as forced labour or sexual exploitation).

Clause 119

What the provision does

- Prohibits a person from disembarking a person or a group of people at sea for the purpose of inducing, aiding or abetting them to come into Canada in contravention of the Act.

Explanation

This provision prevents persons from avoiding prosecution by disembarking persons at sea for the purpose of illegal entry to Canada. The provision is broader than the current Act in that its application is not limited to “a master or a member of a crew of a vehicle used for transportation by sea”. The intention is to include, for example, a snakehead or enforcer of a criminal organization aboard a vessel who is not actually a member of the crew.

Clause 120

What the provision does

- Provides for a maximum fine of $1,000,000 or life imprisonment, or both, as the penalty, on indictment, for the offences relating to trafficking in people and disembarking people at sea.

Explanation

The penalties for the offence of disembarking persons at sea have been increased from the current Act. The penalties for the new offence of trafficking in people are equivalent to the new penalties for human smuggling involving 10 persons or more.

Clause 121

What the provision does

- Sets out four aggravating factors that the court must take into account in determining the penalty for the offences relating to organizing illegal entry into Canada, trafficking in people and disembarking people at sea.
- Defines the expression “criminal organization” that is referred to in one of the factors.

Explanation

Factors to be considered by judges when establishing sentences for persons found guilty of smuggling and trafficking offences and of disembarking passengers at sea include bodily harm or death, the involvement of organized crime, profit as a motivating factor, and whether the victim was subjected to humiliating or degrading treatment. The concept of aggravating factors set out in the Bill is a new approach, designed to facilitate the imposition of sentences appropriate to the seriousness of the circumstances.

Offences Related to Documents

Clause 122

What the provision does

- Describes offences related to possessing, using, importing, exporting or dealing in passports, visas and other documents in order to contravene the Act.
- Creates an evidentiary presumption that a person who possesses, uses, imports, exports or deals in blank, incomplete, altered or forged documents intends to contravene the Act.

Explanation

This offence provides for the first time a single and comprehensive prohibition against the possession and use of fraudulent immigration-related documents. Also covered is the improper use of otherwise legitimate immigration documents whether issued by Canada or another jurisdiction.

Clause 123

What the provision does

- Sets out the penalty, on indictment, for offences related to documents:
  - for the offences related to possessing these documents, a maximum five-year prison term;
  - for the offences related to using, importing, exporting or dealing in these documents, a maximum 14-year prison term.
- Sets out the aggravating factors that a court must take into account in determining the penalty for these offences including the involvement of organized crime and profit as a motivating factor.

Explanation

The penalties for document-related offences are increased to be consistent with the new penalties for other immigration offences. Higher penalties are intended to provide greater deterrence in light of the large amounts of money that can change hands in illegal immigration schemes, particularly where organized crime is involved.

General Offences

Clause 124

What the provision does

- Provides that it is an offence
  - to contravene a provision of the Act for which there is no specific penalty provided;
  - to fail to comply with a condition or obligation imposed under the Act;
  - to escape or attempt to escape from lawful custody or detention under the Act;
  - to employ a foreign national to do work they are not authorized under the Act to do.
- Provides that an employer will be considered to have known that the employment was unauthorized if they did not exercise due diligence to find out whether the employment was authorized.
- Provides a due diligence defence to the owners and operators of vehicles, transportation facilities, and their agents who are charged with contravening a provision of the Act that has no specific penalty or failing to comply with a condition or obligation imposed on them under the Act.

Explanation

This general offence would cover a number of separate offences contained in the current Act including those relating to transportation companies.

The due diligence requirements relating to employers and transportation companies in the current Act have been maintained.

Clause 125

What the provision does

- Sets out the penalties for the offences related to contravening a provision of the Act that has no specific penalty, failing to comply with a condition or obligation imposed under the Act, escaping from lawful custody or detention, and illegally employing a foreign national:
  - on conviction on indictment, a maximum fine of $50,000 or maximum prison term of 2 years, or both;
  - on summary conviction, a maximum fine of $10,000 or maximum prison term of six months, or both.

Explanation

The penalties for these offences have been increased from those in the current Act so that a conviction on indictment has gone from a maximum fine of $5000 to $50,000. The summary conviction penalty has also been increased from a maximum fine of $1000 to $10,000.

Clause 126

What the provision does

- Explains that everyone who knowingly counsels any person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that could induce an error in the administration of the Act is guilty of an offence.

Explanation

This provision expands the current offence, which relates to the counselling of misrepresentation in the context of refugee claims only. The intent is to become more effective in dealing with smugglers, traffickers or others who advise fraud or misrepresentation.

Clause 127

What the provision does

- Describes offences related to misrepresenting or withholding relevant and material facts that could induce an error in the administration of the Act.
- Describes offences related to making false or misleading statements intended to induce or deter immigration to Canada.
- Describes offences related to refusing to participate in an examination or proceeding.

Explanation

This is an expansion of existing offences to include not only making misleading statements but also the withholding of material facts in regard to any decision-making under the Act. This expanded provision is intended to reflect a stronger stand on the part of the government to persons who commit fraud in order to gain entry to Canada.

Clause 128

What the provision does

- Sets out the penalties for offences relating to counselling or aiding misrepresentation, misrepresentation, and refusing to participate in a proceeding:
  - on conviction on indictment, a maximum fine of $100,000 or a maximum prison term of 5 years, or both;
  - on summary conviction, a maximum fine of $50,000 or a maximum prison term of 2 years, or both.

Explanation

This provision increases the applicable penalties in the current legislation.

Clause 129

What the provision does

- Describes offences related to the conduct of officers and federal government employees, including issuing false documents, accepting bribes or knowingly failing to perform their duties under the Act.
- Describes offences related to illegal activities, including bribing, impersonating or obstructing an officer.
- Sets out the penalties for these offences:
  - on conviction on indictment, a maximum fine of $50,000 or a maximum prison term of 5 years, or both;
  - on summary conviction, a maximum fine of $10,000 or a maximum prison term of 6 months, or both.

Explanation

This provision is similar to provisions in the current Act establishing offences and penalties for abuse of office by officers, impersonation of officers, or interference with officers, but increases the fine that may be imposed. The current Act refers to offences by officers and adjudicators, whereas Bill C-11 expands this to include any employee of the Government of Canada.

Proceeds of Crime

Clause 130

What the provision does

- Describes offences relating to the possession of property or proceeds obtained by certain illegal activity under the Act.
- Describes offences relating to the laundering of property or proceeds derived from certain illegal activity under the Act.
- Sets out the punishment for the offences under this provision:
  - on conviction on indictment, a maximum fine of $500,000 or a maximum prison term of 10 years, or both;
  - on summary conviction, a maximum fine of $100,000 or a maximum prison term of 2 years, or both.

Explanation

This is a new provision making it an offence to possess or to launder property obtained as a result of offences under the Act. It extends Criminal Code provisions regarding proceeds of crime in order to enable the seizure of assets in cases involving human smuggling. The provision will make it possible to prosecute persons using Canada as a home base or as a place to launder monies related to people smuggling or trafficking.

Clause 131

What the provision does

- Provides that it is an offence to knowingly induce, aid or abet another person to commit any offence under the Act (other than an offence related to misrepresentation or refusal to participate in a proceeding), or to attempt to do so.
- Provides that it is an offence to counsel a person to do any of the things described in the provision.
- Provides that the penalty for these offences is the same penalty that could be imposed on the person who actually commits the main offence.

Explanation

The intention in creating this provision is to reduce the need to repeat the language regarding inducing, aiding, or abetting in each of the previous provisions that create specific offences, with the exception of clauses 126 and 127.

Clauses 126 and 127 describe separate offences of misrepresentation and counselling or aiding a person to misrepresent or withhold relevant and material facts that could induce an error in the administration of the Act.

Clause 132

What the provision does

- Provides that certain *Criminal Code* sections dealing with search, seizure, detention, forfeiture, and disclosure of information in relation to proceeds of crime apply to proceedings for offences under the Act.

Explanation

Along with the consequential amendment which amends the *Criminal Code* provisions dealing with proceeds of crime to include certain immigration offences, this clause allows for the application of the proceeds of crime provisions of the *Criminal Code.* This will enable police to seize property obtained as a result of the commission of offences related to people smuggling, trafficking and other violations of the Act.

Prosecution of Offences

Clause 133

What the provision does

- Prohibits a refugee claimant from being charged with certain offences relating to their coming into Canada if refugee protection is conferred or, if it is not, until their claim is disposed of.

Explanation

This provision is similar to a provision in the current Act which ensures that refugee claimants will not be punished for violations of the Act which facilitated their arrival in Canada.

Clause 134

What the provision does

- Provides that when material is incorporated into a regulation by reference no one can be found guilty of contravening that regulation, or required to pay a penalty for contravening it, unless it can be proved that at the time of the alleged contravention:
  - the accused had reasonable access to the material;
  - reasonable steps had been taken to ensure that the material was accessible to people likely to be affected by the regulation, or;
  - the material had been published in the *Canada Gazette*.

Explanation

The purpose of the section is to ensure fairness in prosecutions so that a person may only be convicted in cases where they were or should have been aware of all their legal obligations.

Clause 135

What the provision does

- Provides that acts or omissions that are an offence in Canada under the Act can be tried and punished in Canada even if the offence was committed outside Canada.

Explanation

This provision, similar to an existing one, ensures that persons involved in violations of Canada's immigration laws while outside of Canada are punishable in Canada.

Clause 136

What the provision does

- Provides that proceedings relating to an offence under the Act may be held at the place in Canada
  - where the offence was committed;
  - where the person who is charged with the offence is or has an office or place of business at the time the proceedings begin.
- Provides that proceedings relating to an offence under the Act committed outside Canada can be held anywhere in Canada.

Explanation

This provision, which establishes venue for any court proceedings, is similar to provisions in the current Act.

Forfeiture

Clause 137

What the provision does

- Authorizes the court to order the forfeiture of offence-related property to the Crown in addition to any other punishment imposed on a person convicted of an offence under the Act.
- Authorizes the regulations to define the expression “offence-related property”, to provide for any matter relating to the application of the provision, and to include provisions with respect to the following matters in relation to seized offence-related property:
  - its return to the lawful owner;
  - its disposition;
  - the disposition of its proceeds of disposition.

Explanation

Current provisions allow only for the forfeiture of vehicles used in the commission of an immigration offence. This provision broadens the power of forfeiture to include any property used in the commission of an immigration offence.

Officers Authorized to Enforce Act

Clause 138

What the provision does

- Provides that an officer, if expressly authorized, has the authority and powers of a peace officer to enforce the Act, including the authority and powers set out in certain provisions of the *Criminal Code* dealing with search warrants and the forfeiture of offence-related property.
- Provides that this authority and power may be used to enforce the Act, including any provisions that involve the arrest, detention or removal from Canada of any person.
- Authorizes an officer to employ a person to assist the officer in cases of emergency.
- Provides that the person has the officer’s authority and powers for not more than 48 hours unless the Minister approves a longer period.

Explanation

This provision is similar to provisions in the current Act.

Clause 139

What the provision does

- Authorizes an officer to search any person seeking to enter Canada, their personal effects and their means of transportation in certain specified circumstances.
- Requires a personal search to be done by a person who is of the same sex as the person being searched.
- Authorizes an officer to authorize another suitable person of the same sex to conduct a personal search if an officer of the same sex is not available.

Explanation

This provision is similar to the search powers in the current Act.

Clause 140

What the provision does

- Authorizes an officer to seize and hold any means of transportation, document or other thing if the officer believes on reasonable grounds one of the following:
  - that the means of transportation, document or other thing has been fraudulently or improperly obtained or used;
  - that the seizure is necessary to prevent its fraudulent or improper use;
  - that the seizure is necessary to carry out the purposes of the Act.
- Clarifies that a thing or document that is detained under the *Customs Act* and seized by an officer is not "in the course of post" for the purposes of the *Canada Post Corporation Act.*
- Authorizes the regulations to provide for any matter relating to the application of this provision and to include provisions with respect to
  - the deposit of security as a guarantee to replace things that have been seized or that might otherwise be seized;
  - the return of seized things to their lawful owner;
  - the disposition of seized things.

Explanation

This provision consolidates a number of separate seizure powers which immigration officers have under the current Act. The reference to the *Customs Act* and the *Canada Post Corporation Act* replicate provisions in the current *Immigration Act.*

Clause 141

What the provision does

- Provides that an officer has the authority to administer oaths and to take and receive evidence under oath on any matter arising out of the Act.

Explanation

These powers are contained in the current Act.

Peace Officers

Clause 142

What the provision does

- Requires a peace officer or a person in charge or control of an immigrant station to follow the directions of an officer to execute a warrant or written order made under the Act for the arrest, detention or removal of a person from Canada.

Explanation

As in the current Act, this provision gives authority to execute arrest warrants and other orders.

Clause 143

What the provision does

- Provides that a warrant or detention order made under the Act gives the person to whom it is addressed authority to arrest and detain the person named in the warrant or order, regardless of any other law.

Explanation

As in the current Act, this provision clarifies the authority to carry out a warrant or detention order.

Ticketable Offences

Clause 144

What the provision does

- Provides that proceedings for offences designated by the regulations may be started under the ticketing scheme established by this provision, as an alternative to using other procedures set out in the Act or the *Criminal Code*.
- Sets out the elements of the ticketing scheme including
  - how to begin a proceeding by filling out a ticket;
  - what information a ticket is required to contain;
  - where the separate parts of the ticket should be delivered and filed.
- Provides that if the accused pays the fine within the time allotted
  - the payment constitutes a guilty plea;
  - a conviction will be recorded against the accused but no other action will be taken with respect to the offence;
  - any thing seized from the accused relating to the offence or any proceeds of its sale are forfeited to the Crown.
- Authorizes the regulations to provide for any matter relating to the application of the provision and to include provisions prescribing
  - which offences are ticketable;
  - how offences may be described on the ticket;
  - the amount of the fine (maximum $10,000).

Explanation

This provision will allow immigration officers to write tickets for violations of the Act. The ticketing scheme is designed to promote compliance with the law by deterring future breaches. It is foreseen that regulations will designate specific immigration offences where a monetary penalty will be considered sufficient to encourage compliance with the law. The provision provides the basic procedural requirements for the issuance of a ticket, in particular the information the ticket must provide. It also provides for regulatory authority to designate the fines, up to a maximum of $10,000.

Ticketable Offences

Clause 144

What the provision does

- Provides that proceedings for offences designated by the regulations may be started under the ticketing scheme established by this provision, as an alternative to using other procedures set out in the Act or the *Criminal Code.*
- Sets out the elements of the ticketing scheme including
  - how to begin a proceeding by filling out a ticket;
  - what information a ticket is required to contain;
  - where the separate parts of the ticket should be delivered and filed.
- Provides that if the accused pays the fine within the time allotted
  - the payment constitutes a guilty plea;
  - a conviction will be recorded against the accused but no other action will be taken with respect to the offence;
  - any thing seized from the accused relating to the offence or any proceeds of its sale are forfeited to the Crown.
- Authorizes the regulations to provide for any matter relating to the application of the provision and to include provisions prescribing
  - which offences are ticketable;
  - how offences may be described on the ticket;
  - the amount of the fine (maximum $10,000).

Explanation

This provision will allow immigration officers to write tickets for violations of the Act. The ticketing scheme is designed to promote compliance with the law by deterring future breaches. It is foreseen that regulations will designate specific immigration offences where a monetary penalty will be considered sufficient to encourage compliance with the law. The provision provides the basic procedural requirements for the issuance of a ticket, in particular the information the ticket must provide. It also provides for regulatory authority to designate the fines, up to a maximum of $10,000.

Debt Due to Her Majesty

Clause 145

What the provision does

- Provides that the following amounts are debts to the Crown payable on demand:
  - debts incurred by the Crown which a person must pay under the Act;
  - an amount that a person has agreed to pay as a deposit or guarantee of performance of an obligation under the Act;
  - costs incurred in removing a prescribed foreign national from Canada;
  - an amount that the Minister has ordered to be garnisheed;
  - costs and fees payable by transportation companies related to bringing certain persons to Canada.
- Provides that an amount a sponsor is required to pay because of an undertaking is payable on demand to the federal government or to the government of the applicable province or both, subject to the terms of any relevant federal-provincial agreement that may be in effect.
- Provides that a debt may be recovered at any time.

Explanation

This provision clarifies what constitutes a debt owing to the Crown in the immigration context.

Collection of Debts Due to Her Majesty

Clause 146

What the provision does

- Authorizes the Minister to certify an amount or part of an amount payable under the Act
  - at any time, if the Minister believes that the person who owes the amount is attempting to avoid payment;
  - in any other case, 30 days after the person has defaulted.
- Requires the certificate to be registered in the Federal Court.
- Provides that the certificate, when registered, has the same effect as a judgement for the certified amount plus interest.
- Provides that the costs of registering the certificate are recoverable as if those costs were included in the certificate.

Explanation

This provision allows the Minister to certify bad debts and to register that certification with the Federal Court to allow for judicial enforcement of the obligation.

Clause 147

What the provision does

- Provides that the Minister may order a person to pay, to the Receiver General, all or part of the money that the person owes to another person who, in turn, owes money under the Act.
- In the situation where an employer is required, under the Minister's order, to pay money to the Receiver General that would otherwise be payable to an employee:
  - provides that the order applies to all of the employee's future remuneration until the debt owed by the employee under the Act has been paid off;
  - requires the employer to pay to the Receiver General, from each pay cheque, the amount stipulated.
- Provides that a receipt from the Minister constitutes a discharge of the debt to the Crown to the extent of the payment.
- Authorizes the regulations to provide for any matter relating to the application of the provision.

Explanation

This provision is new and gives the Minister garnishment powers.

Transportation Companies

Clause 148

What the provision does

- Provides that the obligations imposed on owners and operators of vehicles and transportation facilities and their agents must be fulfilled in accordance with the regulations.
- Requires transportation companies not to bring the following persons to Canada:
  - persons prescribed by the regulations;
  - persons who do not have prescribed documents;
  - persons who an officer directs them not to bring to Canada.
- Sets out obligations of transportation companies in relation to persons they bring to Canada, including obligations respecting
  - holding persons and prescribed documents;
  - presenting persons for examination;
  - arranging for medical attention;
  - providing prescribed information;
  - providing holding and examination facilities;
  - carrying certain persons out of Canada.
- Requires transportation companies to pay prescribed costs and fees associated with bringing certain prescribed persons to Canada, holding persons or documents, presenting persons for examination, arranging for medical attention, and carrying certain persons out of Canada.
- Requires transportation companies to provide security to ensure compliance with their obligations under this provision.
- Authorizes the detention, seizure or forfeiture of any security provided by, or any vehicle or prescribed good owned or operated by, a transportation company that fails to comply with any of its obligations under the Act.

Explanation

This provision states in a concise manner the obligations in the current Act requiring transportation companies to ensure that passengers have the appropriate documents and are presented for examination on arrival in Canada. It also sets out actions, similar to those in the current Act, that may be taken against a transportation company that fails to meet its obligations, including the detention, seizure and forfeiture of vehicles.

Clause 149

What the provision does

- Sets out two rules respecting the prescribed information that transportation companies are required to provide in relation to persons they bring to Canada:
  - the information may be used only for the purposes of the Act or to identify a person named in an arrest warrant;
  - the person must be told that information about them was used.

Explanation

This provision sets out limits on the use that CIC may make of the information provided by transportation companies and ensures that passengers are notified when information about them is used by CIC.

Clause 150

What the provision does

- Authorizes the regulations to provide for any matter relating to the purposes of the provisions that deal with transportation companies and to define terms used in those provisions.
- Authorizes the regulations to include provisions respecting
  - requirements and procedures that apply to transportation companies;
  - costs and fees payable by transportation companies;
  - procedures for detaining, seizing, forfeiting or returning vehicles or other security;
  - procedures for third parties to claim that their interest in vehicles or other goods that have been detained, seized or forfeited has not been affected.

Explanation

While fundamental rights and obligations of transportation companies remain in the Act, administrative matters are to be moved to the regulations.

PART 4

IMMIGRATION AND REFUGEE BOARD

Composition of Board

Clause 151

What the provision does

- Sets out the Divisions of the Immigration and Refugee Board:
  - Refugee Protection Division;
  - Refugee Appeal Division;
  - Immigration Division;
  - Immigration Appeal Division.

Explanation

Under the current Act, the Immigration and Refugee Board has three divisions, the Convention Refugee Determination Division, the Immigration Appeal Division and the Adjudication Division. This Bill's provision would rename two of these Divisions to better reflect their jurisdiction and add a fourth, the Refugee Appeal Division.

Clause 152

What the provision does

- Provides that the Board is composed of a Chairperson and other required members.

Explanation

This provision would ensure that the Immigration and Refugee Board has a Chairperson, and the number of members required for each Division of the Board that are necessary for it to function properly.

Clause 153

What the provision does

- Sets out how the Chairperson and the members of three of the Board's Divisions (Refugee Protection Division, Refugee Appeal Division and Immigration Appeal Division) are to be appointed or removed, their terms of office, and conditions of employment, including that they
  - are appointed to the Board by the Governor in Council to serve in a regional or district office;
  - are appointed for not more than a seven-year term but may be removed at any time by the Governor in Council for cause;
  - must take an oath or give a solemn affirmation of office;
  - are eligible for reappointment;
  - receive remuneration fixed by the Governor in Council;
  - are entitled to reasonable travel and living expenses;
  - are deemed to be employed in the public service for specified purposes;
  - may not engage in any employment or activity inconsistent with their duties and functions;
  - must devote the whole of their time to the job if appointed as full-time members.
- Requires one Deputy Chairperson for each of those three Divisions and not more than ten Assistant Deputy Chairpersons to be designated by the Governor in Council from among the full-time members of those Divisions.
- Requires the Chairperson, as well as the Deputy Chairpersons and Assistant Deputy Chairpersons of each of those three Divisions, to be appointed on a full-time basis and the other members either full-time or part-time.
- Requires the Deputy Chairperson of the Immigration Appeal Division, a majority of the Assistant Deputy Chairpersons of the Immigration Appeal Division and at least 10% of the members of the Refugee Protection Division, Refugee Appeal Division and Immigration Appeal Division to have been members of a provincial professional law association for at least five years.

Explanation

This provision removes a ceiling contained in the current Act regarding the size of the Immigration Appeal Division and the number of co-ordinating members.

Under the current legislation members are appointed to a specific Division of the Board, such as the Convention Refugee Determination Division or the Immigration Appeal Division. Under Bill C-11, members would be appointed to the Board itself and then be assigned by the Chairperson to the Refugee Protection Division, the Refugee Appeal Division and the Immigration Appeal Division. Members of the Immigration Division would remain appointed under the *Public Service Employment Act* and would not be covered by this provision.

Clause 154

What the provision does

- Authorizes a member who hears a case to participate in deciding the case for up to eight weeks after no longer being a member, if asked to do so by the Chairperson.
- Provides that the former member is considered to be a member in these circumstances.

Explanation

This provision reflects a similar provision in the current Act and would ensure that the departure of a member does not prevent the disposition of a case that the member has already heard. It permits the completion, within a certain time period, of cases already heard but where no decisions have been made.

Clause 155

What the provision does

- Authorizes two members of a three-member panel to dispose of a matter if the third member is unable to take part in the decision.
- Provides that the two members constitute the Division in these circumstances.

Explanation

This provision mirrors a similar provision contained in the current Act but is limited to situations where one member of a three-member panel cannot take part.

Clause 156

What the provision does

- Provides legal immunity from both criminal and civil proceedings to the Chairperson and the members of the Immigration and Refugee Board when they carry out their functions under the Act in good faith.
- Provides that the same people are not competent or compellable to appear as witnesses in any civil proceedings related to the exercise of their functions.

Explanation

This is a new provision that codifies a common law principle providing qualified immunity to public officers exercising quasi-judicial functions from liability when acting in good faith and within the parameters of their jurisdiction. This provision would ensure that members will not be hindered in the exercise of their functions under the Act. Similar immunity clauses are found in several federal statutes. The non-compellability aspect of the provision is new and serves a similar purpose.

Head Office and Staff

Clause 157

What the provision does

- Requires the head office of the Immigration and Refugee Board to be in the National Capital Region.
- Requires the Chairperson to live in the National Capital Region or within reasonable commuting distance from it.

Explanation

The provision is contained in the current Act.

Clause 158

What the provision does

- Requires the Executive Director of the Immigration and Refugee Board and any other personnel necessary for the proper conduct of the board to be appointed in accordance with the *Public Service Employment Act.*
- Deems the personnel of the Board to be employed in the Public Service for the purposes of the *Public Service Superannuation Act.*

Explanation

Under the current Act, the Executive Director of the Board is appointed by the Governor in Council but other officers and employees are public servants. This provision would require the Executive Director to be appointed as a public servant in the same way as is done for other similar positions in the public service.

Duties of Chairperson

Clause 159

What the provision does

- Provides that as Chairperson of the Immigration and Refugee Board, the Chairperson is automatically a member of each Division of the Board and is the chief executive officer of the Board.
- Sets out the Chairperson's functions and duties, including
  - supervising and directing the work and staff of the Board;
  - assigning members, who were appointed to the Board by the Governor in Council, to three of the Divisions (Refugee Protection Division, Refugee Appeal Division and Immigration Appeal Division);
  - assigning a member of one of those three Divisions to work in a regional or district office other than the one they were appointed in order to satisfy operational requirements, for a maximum of 90 days unless the Governor in Council approves a longer time;
  - designating, from the full-time members of the Board, co-ordinating members for any of those three Divisions;
  - assigning administrative functions to members;
  - distributing work among members and scheduling proceedings;
  - taking any action necessary for the efficient carrying out of the duties of the members;
  - issuing written guidelines and identifying decisions of the Board as jurisprudential guides to assist members of the Board;
  - appointing experts and fixing their remuneration.
- Sets out the Chairperson's authority to delegate certain powers to a member of the Board or other official and the limitations on this authority to delegate.

Explanation

This provision is consistent with the duties and powers of the Chairperson contained in the current Act but organizes them in one provision and clarifies the Chairperson's authority to supervise and direct the work of the Board, assign members, designate co-ordinating members, and delegate certain powers to the Executive Director and to members. As in the current Act, the provision gives authority to the Chairperson to issue non-binding guidelines to assist members in carrying out their duties. The provision gives authority to the Chairperson to identify decisions that would serve as jurisprudential guides that would not be binding on members but would enhance consistency in decision-making. The power of the Chairperson to designate co-ordinating members from among the full-time members of the Board is new. Under the current Act, co-ordinating members are designated by the Governor in Council from among the full-time members of the Refugee Division.

Clause 160

What the provision does

- Gives authority for the Minister to authorize one of the Deputy Chairpersons or any other member of the Board to act as Chairperson if the Chairperson is absent or incapacitated, or if there is no Chairperson appointed.

Explanation

This provision, like the current Act, provides for a temporary replacement for the Chairperson in certain circumstances but allows the Minister to choose from among all the members of the Board rather than just from two Deputy Chairpersons.

Functioning of Board

Clause 161

What the provision does

- Authorizes the Chairperson to make procedural and administrative rules in consultation with the Deputy Chairpersons and the Director General of the Immigration Division and subject to Governor in Council approval. These rules concern matters such as:
  - activities, practices and procedures of the Board;
  - the conduct of persons in proceedings before the Board, and the consequences and sanctions for breaking the rules of conduct;
  - the requirements concerning information required by the Board for its proceedings;
  - any other matter the Chairperson believes requires rules.
- Requires the Minister to have a copy of all rules tabled in Parliament after they are approved by the Governor in Council.

Explanation

This provision reflects a similar provision in the current Act but clarifies the scope of the Chairperson's rule-making power. Authority for rules governing the conduct of persons in proceedings before the Board and for sanctions for breaking the rules of conduct is new.

Provisions that Apply to All Divisions

Clause 162

What the provision does

- Provides that each Division of the Immigration and Refugee Board has the exclusive authority to decide all questions of fact, law and jurisdiction that arise in proceedings before it under the Act.
- Requires each Division to deal with proceedings as informally and quickly as possible in the circumstances considering the requirements of fairness and natural justice.

Explanation

This provision reflects the current Act and amalgamates certain powers and duties that the Divisions of the Board have in common.

Clause 163

What the provision does

- Requires matters before a Division to be dealt with by a single-member panel.
- Provides for the Chairperson to decide that a matter should be dealt with by a three-member panel in any Division except the Immigration Division.

Explanation

Currently, proceedings before the Adjudication Division are dealt with by single member panels. Refugee hearings are dealt with by two member panels unless the claimant agrees to a single member panel. Immigration appeal hearings are heard by three member panels unless the Chairperson designates a single member panel. The provision would now require, as a general rule, proceedings before each Division to be conducted by a single-member panel. The change to single member panels would allow the best possible use of existing resources.

This change to greater use of single member panels at the Refugee Protection Division is accompanied by the establishment of a paper appeal of refugee determination decisions to the newly created Refugee Appeal Division. Panels at the Refugee Protection Division, the Refugee Appeal Division and the Immigration Appeal Division may be increased to three members at the discretion of the Chairperson in appropriate circumstances.

Clause 164

What the provision does

- Gives IRB Divisions the discretion to allow the person who is the subject of a hearing to attend in person or to participate by means of live telecommunication.

Explanation

This is a new provision that will permit a Division of the IRB, at its discretion, to conduct a hearing in the physical presence of the person or by means of videoconference or other means of telecommunication. This will allow the Refugee Protection Division, the Immigration Division, and the Immigration Appeal Division to be fair and efficient in conducting their hearings (the Refugee Appeal Division does not hold hearings). For example, this will assist appellants before the Immigration Appeal Division to participate in their appeal by teleconference or other means when they cannot attend in person because they live in a remote region in Canada or are abroad. The Board currently makes use of videoconferencing for some of its proceedings.

Clause 165

What the provision does

- Provides that the Refugee Protection Division and the Immigration Division and each member of those Divisions
  - have the powers and authority of a commissioner appointed under Part I of the *Inquiries Act;*
  - have the powers and authority to do what is necessary for a full and proper hearing.

Explanation

The provision reflects the current Act.

Clause 166

What the provision does

- Sets out the rules for public or private proceedings before a Division of the Immigration and Refugee Board, including that
  - in general, proceedings must be held in public. However, a Division may conduct the proceedings in private or take other measures to ensure confidentiality if the Division has considered all other options and is satisfied that public proceedings would pose specified risks related to the life, liberty or security of a person, the fairness of the proceedings, or the disclosure of matters involving public security;
  - subject to certain exceptions, proceedings before the Refugee Protection Division and the Immigration Division concerning claimants for refugee protection, proceedings concerning cessation and vacation, and proceedings before the Refugee Appeal Division, must be held in private. However, the Division may conduct the proceedings in public or take other measures to ensure access if the Division is satisfied it is appropriate to do so after considering all other options and the specified risks related to personal safety, fairness and public security.
- Entitles a representative or agent of the United Nations High Commissioner for Refugees to observe any proceeding concerning a protected person or a refugee protection claimant.
- Prohibits the UN representative or agent from observing any part of the proceedings that deals with information in relation to which the Minister has made an application for non-disclosure that has been allowed or not yet decided.

Explanation

This provision amalgamates in one location the rules that all the Divisions of the Board have in common regarding confidentiality of proceedings.

This provision extends provisions of the current Act regarding confidentiality of Refugee Protection Division proceedings to those before the Immigration Division where claimants are the subject of the proceedings. This differs from the current Act in that, at this time, claimants who appear before the Adjudication Division must apply for the proceedings to be held *in camera*. This allows for consistency in the confidentiality regime in all IRB proceedings involving refugee claimants.

The provision dealing with participation of a representative or agent of the United Nations High Commissioner for Refugees provides for an expanded role of its agents before any Division of the Board dealing with refugee protection claimants and protected persons.

Clause 167

What the provision does

- Entitles a person who is the subject of Board proceedings and the Minister to be represented by a barrister, solicitor or other counsel at their own expense.
- Requires a Division of the Board to designate a representative for a person who is under 18 or who the Division believes cannot appreciate the nature of the proceedings.

Explanation

This provision reflects the current Act and amalgamates the rules applicable to all Divisions of the Board relating to the right to counsel at proceedings of the Board.

Under the current Act, designated representatives are appointed for immigration inquiries before the Adjudication Division and refugee hearings before the Convention Refugee Determination Division when the person is under eighteen years of age or is unable, in the opinion of the Division, to appreciate the nature of the proceedings. Under Bill C-11, the provision is expanded to apply to any proceedings before any of the four IRB Divisions. Additionally, the provision will now provide for designated representatives to be appointed in detention reviews concerning minor children.

Clause 168

What the provision does

- Authorizes a Division to determine, in certain circumstances, that a proceeding before it has been abandoned.
- Authorizes a Division to refuse to allow an applicant to withdraw from a proceeding if the Division believes that the withdrawal would be an abuse of process under its rules.

Explanation

This provision amalgamates in one location the powers that all the Divisions have in common to determine whether or not a proceeding has been abandoned and to refuse to allow a party to withdraw from proceedings. The current situation only permits the Board to acknowledge withdrawals, without being able to make a decision to accept or refuse them. The new provision on withdrawal will permit Divisions to refuse to allow a withdrawal by a person where the Division is of the view that there is an abuse of process.

Clause 169

What the provision does

- Sets out requirements relating to the decisions of a Division, except for interlocutory decisions, including the following:
  - decisions take effect in accordance with the rules;
  - decisions must include reasons;
  - decisions may be given orally or in writing, except for decisions of the Refugee Appeal Division which must be in writing;
  - the Refugee Protection Division must give written reasons to the claimant and to the Minister when it rejects a claim;
  - a Division must give written reasons if the person who is the subject of the proceedings or the Minister requests reasons within 10 days of notification of the decision or in other circumstances set out in the rules of the Board;
  - the period in which to seek judicial review of a decision runs from the day notice of the decision is given or the day written reasons are sent, whichever is later.

Explanation

This provision modifies the current Act and amalgamates in one location rules applicable to all Divisions with respect to decisions and reasons.

Under the current Act, the Convention Refugee Division is only required to give reasons when a claim is rejected or when requested within ten days of notification of the decision. The provision clarifies that all decisions by the four IRB Divisions must include reasons. The decisions may be made orally or in writing except in the case of the Refugee Appeal Division, where they must be in writing.

Refugee Protection Division

Clause 170

What the provision does

- Sets out the rules that apply to a proceeding before the Refugee Protection Division, including that the Division
  - may inquire into any matter it considers relevant in making a decision on the claim;
  - must hold a hearing;
  - must notify the person and the Minister of the hearing;
  - must provide the Minister, on request, with the documents and information that were produced under the rules by a refugee protection claimant;
  - must give the person and the Minister a reasonable opportunity to present evidence, question witnesses and make representations;
  - may allow a claim for refugee protection without a hearing in certain circumstances;
  - is not bound by any legal or technical rules of evidence;
  - may receive and make a decision based on evidence that it considers credible or trustworthy;
  - may take notice of any facts that may be judicially noticed, any facts that are generally recognized, and any information or opinion within its expertise.

Explanation

This provision codifies the concept of the Specialized Board of Inquiry model adopted by the Board in 1995. It also allows for an unconditional participation of the Minister in proceedings before the Refugee Protection Division, whereas in the current situation, the Minister, as of right, may only present evidence or participate fully in exclusion issues. Additionally, the Minister no longer requires leave of the Chairperson to be granted in order to proceed with a vacation proceeding.

Refugee Appeal Division

Clause 171

What the provision does

- Sets out three rules that apply to a proceeding of the Refugee Appeal Division:
  - the Minister may, after giving notice, intervene in an appeal brought by the claimant;
  - the Division may take notice of any facts that may be judicially noticed, any facts that are generally recognized, and any information or opinion within its expertise;
  - a decision that is made by a three-member panel of the Refugee Appeal Division serves as a binding precedent for the Refugee Protection Division and for one-member panels of the Refugee Appeal Division.

Explanation

The Refugee Appeal Division is a new Division created to examine appeals on the merit of decisions made by the Refugee Protection Division. Both the claimant and the Minister may appeal to this Division and the Minister may intervene in any case where a claimant seeks an appeal. The Refugee Appeal Division will not hold oral hearings as the appeal will be based on a paper process. The establishment of a right of appeal to this new Division would improve the refugee determination process in Canada by enabling the correction of clear errors in decisions of the Refugee Protection Division.

The Bill provides that decisions made by three member panels of the Refugee Appeal Division are binding on both the Refugee Protection Division and panels composed of a single member of the Refugee Appeal Division, in accordance with the doctrine of precedent. The intention is for certain decisions by three member panels of the Refugee Appeal Division to serve as precedents in the same way that the decisions of hierarchically higher courts are binding on lower courts. The provision would enhance the quality and consistency in decisions.

Immigration Division

Clause 172

What the provision does

- Provides that the Immigration Division of the Immigration and Refugee Board is composed of the Director General, and other necessary directors and members.
- Provides that the Director General and the other directors and members are to be employed in accordance with the *Public Service Employment Act.*
- Provides that the Director General and the directors of the Immigration Division have all the powers and may carry out the duties and functions of members of the Division.

Explanation

This provision reflects provisions in the current Act.

Clause 173

What the provision does

- Sets out the rules that apply to a proceeding before the Immigration Division, including that the Division
  - must hold a hearing, if practicable;
  - must notify the Minister and the person of the proceedings;
  - must hear the matter without delay;
  - is not bound by any legal or technical rules of evidence;
  - may receive and base a decision on evidence that it considers credible or trustworthy.

Explanation

This provision reflects provisions in the current Act.

Immigration Appeal Division

Clause 174

What the provision does

- Provides that the Immigration Appeal Division is a court of record.
- Requires the Immigration Appeal Division to have an official seal which must be judicially noticed.
- Provides that the Immigration Appeal Division has the powers, rights and privileges of a superior court of record in relation to swearing and examining witnesses, producing and inspecting documents, enforcing orders, and other necessary matters.

Explanation

This provision reflects the current Act.

Clause 175

What the provision does

- Provides that the Immigration Appeal Division
  - is not bound by any legal or technical rules of evidence;
  - may receive and base a decision on evidence that it considers credible or trustworthy.
- Sets out rules that apply to an appeal by a permanent resident of a decision concerning residency obligations that was made outside of Canada:
  - the Immigration Appeal Division must hold a hearing;
  - the Immigration Appeal Division may order the permanent resident to appear at the hearing in person if necessary, and an officer must then issue the appropriate travel document.

Explanation

The rules of evidence reflect the current Act. The provision gives the Immigration Appeal Division authority to order a person who has been determined outside Canada to have lost their permanent resident status to return to Canada for their appeal hearing. In such cases an officer would issue a travel document to allow the person to return.

Remedial and Disciplinary Measures

Clause 176

What the provision does

- Authorizes the Chairperson to request the Minister to decide whether any member, except a member of the Immigration Division, should be subject to remedial or disciplinary measures.
- Provides that the reason for the request must be that the member is incapacitated from the proper execution of duties based on
  - infirmity;
  - misconduct;
  - failure in the proper execution of office;
  - conflict of interest.

Explanation

Clauses 176 to 186, which deal with remedial and disciplinary measures, are contained, with some variations, in the current Act. The modifications seek to improve the inquiry procedures concerning members of the Board.

Clause 177

What the provision does

- Authorizes the Minister to take various measures in response to a request, including
  - obtaining further information;
  - referring the matter for mediation;
  - requesting an inquiry to be held;
  - advising the Chairperson that it is not necessary to take further remedial or disciplinary measures.

Explanation

This provision reflects the current Act, which provides for the possibility, when it is appropriate, for the Minister to request an inquiry to be held. The provision is new in clarifying other measures the Minister may take such as obtaining information the Minister considers necessary, and advising the Chairperson that no further measures should be taken, while providing that the Minister may refer the matter for mediation. These dispositions seek to clarify the possible measures the Minister may take when seized with a request from the Chairperson.

Clause 178

What the provision does

- Authorizes the Governor in Council to appoint a judge of a superior court to conduct an inquiry into the conduct or incapacity of a member if requested to do so by the Minister and on recommendation of the Minister of Justice.

Explanation

The provision reflects the current Act in providing that, at the request of the Minister and on recommendation of the Minister of Justice, the inquiry must be conducted by an appointed judge. While the current Act restricts the appointment of judges to those of the Federal Court, this amendment expands the provision to include any judge of a superior court.

Clause 179

What the provision does

- Provides that the judge appointed to conduct the inquiry has the powers, rights and privileges of a superior court, including the power
  - to issue a summons to appear or to produce documents;
  - to administer oaths and to examine any person on oath.

Explanation

This provision reflects the current Act.

Clause 180

What the provision does

- Authorizes the judge to hire professional and technical staff to assist in conducting the inquiry.

Explanation

This provision is consistent with normal powers given to inquiry bodies.

Clause 181

What the provision does

- Requires an inquiry to be held in public.
- Authorizes the judge, if asked to do so, to take any measures considered necessary to ensure that an inquiry is confidential if the judge has considered all other options and is satisfied there are specified risks related to public security, fairness or a person’s life, liberty or security.
- Authorizes the judge to take any measures considered necessary to ensure that the hearing to determine whether to make an inquiry confidential is, itself, confidential.

Explanation

This provision reflects the current Act.

Clause 182

What the provision does

- Provides that a judge, in conducting an inquiry, is not bound by legal or technical rules of evidence and may receive and base a decision on any evidence considered credible or trustworthy.
- Entitles an interested party to intervene in an inquiry with the judge's permission and in accordance with the judge's conditions.

Explanation

This provision reflects the current Act.

Clause 183

What the provision does

- Requires the member who is the subject of an inquiry to be given
  - reasonable notice of the subject-matter and the time and place of the hearing;
  - an opportunity to be heard, present evidence and cross-examine witnesses.

Explanation

This provision reflects the current Act.

Clause 184

What the provision does

- Requires the judge to submit a report to the Minister after the inquiry with any findings and recommendations.
- Authorizes the judge to recommend in the report that the member be suspended without pay or removed from office, or recommend any other disciplinary or remedial measures, for reasons related to infirmity, misconduct, failure in the proper execution of duty or conflict of interest.

Explanation

The disciplinary measures are contained in the current Act. Remedial measures, including mediation, are new.

Clause 185

What the provision does

- Requires the Minister to send any inquiry report that contains a recommendation to the Governor in Council.
- Authorizes the Governor in Council to suspend the member in question without pay, remove them from office or impose any other disciplinary or remedial measure.

Explanation

Clauses 176 to 185, which deal with remedial and disciplinary measures, are contained, with some variations, in the current Act. Remedial measures, including mediation, are new.

Clause 186

What the provision does

- Provides that nothing in the provisions dealing with remedial and disciplinary measures against members affects any right or power of the Governor in Council in relation to removing a member from office for cause.

Explanation

This provision would ensure that an inquiry into a member's conduct does not interfere with the power of the Governor in Council to remove the member for cause.

PART 5

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

Transitional Provisions

Clause 187

What the provision does

- Provides a definition of "former Act" for the purposes of sections relating to transitional provisions.

Explanation

Sections 188 to 201 of the Bill deal with proceedings that are pending when the new legislation comes into force. This provision ensures that references in those sections to the current Act also include the applicable regulations and rules made under it.

Clause 188

What the provision does

- Continues the Immigration and Refugee Board that was itself continued by the former Act.
- Provides that the Chairperson, Deputy Chairpersons and Assistant Deputy Chairpersons who were appointed under the former Act continue to hold their positions with the Immigration and Refugee Board until their appointments expire or are revoked.
- Provides that a person who was appointed as a member of the Convention Refugee Determination Division or the Immigration Appeal Division under the former Act is a member of the Immigration and Refugee Board until their appointment expires or is revoked.
- Provides that the person who is the Executive Director when this transitional provision comes into force is deemed to have been appointed as Executive Director under section 158 of the new Act.
- Provides that the deeming provision does not adversely affect any salary or benefits that the Executive Director may receive because they held the office before the provision came into force.

Explanation

This provision removes the need to create a new administrative tribunal under Bill C-11, by ensuring that the present Immigration and Refugee Board already established under the current Act continues under Bill C-11.

It also removes the need to appoint a new Executive Director and Chairperson, and new Deputy and Assistant Deputy Chairpersons by providing that the persons holding those positions at the time the provision comes into force continue in that position.

Clause 189

What the provision does

- Provides that certain provisions of the former Act are deemed not to be repealed even though paragraph 274(a) of Bill C-11 would otherwise repeal them.
- Provides that the Minister may exercise any of the powers described in certain provisions of the former Act in relation to immigrant investor funds initially approved under the former Act.

Explanation

The current *Immigration Act* and regulations provide for an immigrant investor program whose objective is to make additional venture capital provided by immigrants available to small Canadian businesses.

Investment in a Canada-based fund which has received Ministerial approval is one of several requirements for immigrant visas in the investor class. Monies in these funds must be invested and remain invested in active business operations in Canada for a minimum period.

The provisions listed in this clause are the provisions of the current Act used to combat fraud in the investor program and to ensure compliance with program requirements. Since many of these private sector funds are still in existence, the current Act enforcement provisions are still required for enforcement purposes.

Section 94.6 of the current *Immigration Act* describes offences relating to approved businesses or funds. For example, that provision makes it an offence for anyone to submit false or misleading information to the Minister in applying for the approval of a business or a fund.

Sections 102.001 to 102.002 of that Act provide the Minister with the powers necessary to be able to examine approved businesses and funds to ensure that they are being operated in accordance with the Act.

Section 102.003 requires anyone who operates, manages or promotes an approved business or fund to keep records in Canada.

Section 107.1 authorizes the Federal Court Trial Division to issue an injunction ordering a person to stop doing anything in relation to a business or fund that is contrary to the Act or to any term or condition governing the approval to do something to comply with the terms and conditions of approval.

Clause 190

What the provision does

- Provides that the new Act will govern all matters that were still pending or in progress under the former Act just before this provision comes into force.

Explanation

This provision ensures that the principles and procedures established under the Bill C-11 are applied as soon as possible after the new Act comes into force, even to applications pending or in progress. To ensure clarity and fairness, subsequent transitional clauses provide various exceptions to that general principle and the regulation-making authority foresees further exceptions.

Clause 191

What the provision does

- Provides that matters that are before the Convention Refugee Determination Division under the former Act just before this provision comes into force will be continued under the former Act, but will be dealt with by the new Refugee Protection Division, if evidence has been introduced but no decision yet made.

Explanation

This provision ensures that a hearing before the current Convention Refugee Determination Division that has already dealt with substantive evidence will be heard by the new Division under Bill C-11 but under the rules of the former Act.

Clause 192

What the provision does

- Provides that an appeal filed with the Immigration Appeal Division just before this provision comes into force will be continued under the former Act by the new Immigration Appeal Division.

Explanation

This provision provides that an appeal that has been filed before the current Immigration Appeal Division prior to the coming into force of the new Act will be dealt with under the rules of the former Act.

Clause 193

What the provision does

- Provides that matters that are before the Adjudication Division under the former Act just before this provision comes into force will be continued under the new Act and dealt with by the new Immigration Division if substantive evidence has been introduced but no decision yet made.

Explanation

This provision ensures that Bill C-11 will apply to proceedings that are before the Adjudication Division when the Act comes into force.

Clause 194

What the provision does

- Provides that a decision by the Refugee Protection Division that follows a hearing commenced by the Convention Refugee Determination Division cannot be appealed to the Refugee Appeal Division.

Explanation

The right to appeal to the Refugee Appeal Division under section 110 in relation to a claim for refugee protection is a new policy, and should, therefore, apply only to claimants whose claim has been allowed or rejected by the new Refugee Protection Division on the new protection grounds.

Claimants whose cases are decided under the rules of the former Act will be able to apply for judicial review in the Federal Court and for a Pre-Removal Risk Assessment by the Minister.

Clause 195

What the provision does

- Provides that a decision made by the Convention Refugee Determination Division before this provision comes into force cannot be appealed to the Refugee Appeal Division under section 110.

Explanation

The right to appeal to the Refugee Appeal Division under section 110 in relation to a claim for refugee protection is a new policy, and should, therefore, apply only to claimants whose claim has been allowed or rejected by the new Refugee Protection Division on the new protection grounds.

Clause 196

What the provision does

- Provides that an appeal made to the Immigration Appeal Division before this provision comes into force must be discontinued in the following circumstances:
  - the appellant has not been granted a stay of a removal order under the former Act; and
  - the appellant would not be eligible to make an appeal under the new Act because of a finding of inadmissibility on grounds of security, violating human or international rights, serious criminality, organized criminality, or misrepresentation other than misrepresentation concerning a sponsor's spouse, common-law partner or child.

Explanation

This provision requires an appeal commenced under the current Act to be discontinued if the appellant would have been ineligible to make an appeal under Bill C-11, unless a stay of removal has already been granted under the current Act. In this way, Bill C-11's new ineligibility rules for certain inadmissible persons will be made to apply to appeals in progress.

Clause 197

What the provision does

- Provides that an appellant who has been granted a stay of a removal order under the former Act and who breaches a condition of the stay is subject to section 64 of Bill C-11, which denies a person who is inadmissible on certain grounds the right to appeal to the Immigration Appeal Division.

Explanation

If the conditions of a stay of removal granted by the Immigration Appeal Division under the current Act are breached, then, in cases where the person is inadmissible on grounds of security, violating human or international rights, serious criminality, organized criminality, or misrepresentation other than misrepresentation concerning a sponsor's spouse, common-law partner or child, the appeal would be discontinued.

In addition, if a person who is inadmissible on grounds of criminality or serious criminality is convicted of another serious offence, then any stay granted by the Immigration Appeal Division under the current Act would be cancelled and the appeal would be terminated.

Clause 198

What the provision does

- Provides that the Refugee Protection Division has jurisdiction to consider decisions of the Convention Refugee Determination Division that are set aside by the Federal Court or the Supreme Court of Canada.
- Requires the Refugee Protection Division to dispose of those matters in accordance with the proposed Act.

Explanation

This provision deals with applications before the Federal Court or the Supreme Court of Canada to review a decision of the current Convention Refugee Determination Division and that are pending when Bill C-11 comes into force. If the Federal Court or the Supreme Court of Canada sets aside the decision under review and orders that the decision be redetermined, this provision would authorize the new Refugee Protection Division to conduct that redetermination and to do so under the new Act.

Clause 199

What the provision does

- Provides that the pre-removal protection procedures under sections 112 to 114 apply to a redetermination of a decision set aside by the Federal Court related to a refugee claimant's application for landing as a member of the *Post-Determination Refugee Claimants in Canada* (PDRCC) class under the current regulations.

Explanation

The current regulations provide for a *Post-Determination Refugee Claimants in Canada* (PDRCC) class of immigrants. This is an additional protection decision, which can take place only after an initial negative decision by the Convention Refugee Determination Division. Under Bill C-11, this regulatory program will be eliminated and a new pre-removal risk assessment will be implemented. In cases where the Federal Court sends back a PDRRC decision for redetermination, the claim for protection would be assessed under the new pre-removal risk assessment.

Clause 200

What the provision does

- Provides that the requirement of the new Act to provide permanent residents with a document indicating their status does not apply in relation to people who are permanent residents under the former Act when this provision comes into force.

Explanation

Bill C-11 provides that all permanent residents are to be provided with a document indicating their status. That requirement is intended to apply only to a person who becomes a permanent resident after the new Act comes into force. Permanent residents who obtained their status before the Act comes into force will be able to obtain the document upon application as set out in the regulations.

Clause 201

What the provision does

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

Explanation

There are two main areas in which regulations are expected to be made under this authority:

- to provide exceptions to the general rule that the proposed Act will apply immediately to pending proceedings or proceedings in progress in addition to the exceptions specifically mentioned in the transitional provisions;
- to indicate which classes of persons described in the current Act correspond to classes of persons described in Bill C-11.

Consequential and Related Amendments

Access to Information Act

Clause 202

What the provision does

- Replaces, in a provision of the *Access to Information Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 4(1) of the *Access to Information Act* provides that certain people, including a permanent resident within the meaning of the *Immigration Act*, are entitled, on request, to access to any record under the control of a government institution.

This amendment is required because the Bill C-11 would change the short title of the Act.

Agricultural Marketing Programs Act

Clause 203

What the provision does

- Replaces, in a provision of the *Agricultural Marketing Programs Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Paragraph 2(1)(a) of the *Agricultural Marketing Programs Act* includes, as part of the definition of "producer", a Canadian citizen or a permanent resident. A permanent resident, under that subsection, is said to have the same meaning as it does under the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Animal Pedigree Act

Clause 204

What the provision does

- Replaces, in a provision of the *Animal Pedigree Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 7(2) of the *Animal Pedigree Act* provides that, in order to qualify to apply to form an association under the Act, a person must be eighteen years old or over and a Canadian citizen or permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 205

What the provision does

- Replaces, in a provision of the *Animal Pedigree Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 40(2) of the *Animal Pedigree Act* provides that, in order to be a director of the Canadian Livestock Records Corporation, a person must be a Canadian citizen ordinarily resident in Canada or a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Bank Act

Clause 206

What the provision does

- Replaces, in a provision of the *Bank Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of *resident Canadian* in section 2 of the *Bank Act* includes, with certain exceptions, a permanent resident within the meaning of the *Immigration Act* who is ordinarily resident in Canada.

This amendment is required because Bill C-11 would change the short title of the Act.

Budget Implementation Act, 1998

Clause 207

What the provision does

- Replaces, in a provision of the *Budget Implementation Act, 1998*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 27(1) of the *Budget Implementation Act, 1998* authorizes the Canada Millennium Scholarship Foundation to grant scholarships to people who meet certain criteria. Paragraph 27(1)(a) lists as one of the criteria that the person must be a Canadian citizen or permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Business Development Bank of Canada Act

Clause 208

What the provision does

- Replaces, in provisions of the *Business Development Bank of Canada Act*, references to the *Immigration Act* with references to the Immigration and Refugee Protection Act.

Explanation

Subsection 6(6) of the *Business Development Bank of Canada Act* requires that a person be either a Canadian citizen or a permanent resident within the meaning of the *Immigration Act* in order to be eligible to be appointed or to continue as President of the Business Development Bank of Canada or as a Chairperson or member of the Board of Directors. It also excludes from eligibility for those same offices a permanent resident within the meaning of the *Immigration Act* who has been ordinarily resident in Canada for more than one year after becoming eligible to apply for Canadian citizenship.

This amendment is required because Bill C-11 would change the short title of the Act.

Canada Business Corporations Act

Clause 209

What the provision does

- Replaces, in a provision of the *Canada Business Corporations Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.
- Replaces, in the same provision, *he* with *he* or *she.*

Explanation

The definition of *resident Canadian* in subsection 2(1) of the *Canada Business Corporations Act* includes, with certain exceptions, a permanent resident within the meaning of the *Immigration Act* who is ordinarily resident in Canada.

This amendment is required because Bill C-11 would change the short title of the Act.

The second amendment introduces gender-inclusive language into the provision.

Canada Customs and Revenue Agency Act

Clause 210

What the provision does

- Replaces, in a provision of the *Canada Customs and Revenue Agency Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 16(2) of the *Canada Customs and Revenue Agency Act* requires that a person be either a Canadian citizen or a permanent resident under the *Immigration Act* in order to be a director of the Canada Customs and Revenue Agency.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *under* for consistency.

Canada Elections Act

Clause 211

What the provision does

- Replaces, in a provision of the *Canada Elections Act,* a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Subsection 331(b) of the *Canada Elections Act* prohibits a person who does not reside in Canada during an election period from inducing electors to vote or refrain from voting unless the person is a permanent resident as defined in subsection 2(1) of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 212

What the provision does

- Replaces, in a provision of the *Canada Elections Act,* a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 213

What the provision does

- Replaces, in a provision of the *Canada Elections Act,* a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 214

What the provision does

- Replaces, in a provision of the *Canada Elections Act,* a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Canada Labour Code

Clause 215

What the provision does

- Replaces, in a provision of the *Canada Labour Code,* a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 10(4) of the *Canada Labour Code* requires that a person be a Canadian citizen or a permanent resident within the meaning of the *Immigration Act* in order to be a member of the Canada Industrial Relations Board.

This amendment is required because Bill C-11 would change the short title of the Act.

Canada Shipping Act

Clause 216

What the provision does

- Replaces, in a provision of the *Canada Shipping Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

The definition of *qualified person* in section 2 of the *Canada Shipping Act* includes a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 217

What the provision does

- Replaces, in a provision of the *Canada Shipping Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.
- Makes stylistic changes.

Explanation

Subsection 125(2) of the *Canada Shipping Act* prohibits the granting of a master or seaman certificate to an applicant who is not a Canadian citizen or a permanent resident of Canada within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 218

What the provision does

- Replaces, in a provision of the *Canada Shipping Act,* a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 712(3) of the *Canada Shipping Act* limits the right to file a claim for loss of income due to an oil spill to individuals who are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act*, subject to certain exceptions.

This amendment is required because Bill C-11 would change the short title of the Act.

Canada Student Financial Assistance Act

Clause 219

What the provision does

- Replaces, in a provision of the *Canada Student Financial Assistance Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of *qualifying student* in subsection 2(1) of the *Canada Student Financial Assistance Act* includes a Canadian citizen or permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Canada Student Loans Act

Clause 220

What the provision does

- Replaces, in a provision of the *Canada Student Loans Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of *qualifying student* in subsection 2(1) of the *Canada Student Loans Act* includes a Canadian citizen or permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Canada Transportation Act

Clause 221

What the provision does

- Replaces, in a provision of the *Canada Transportation Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 7(2) of the *Canada Transportation Act* sets out the composition of the Canadian Transportation Agency and requires each member of the Agency to be a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 222

What the provision does

- Replaces, in a provision of the *Canada Transportation Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of *Canadian* in subsection 55(1) of the *Canada Transportation Act* includes a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Canadian Security Intelligence Service Act

Clause 223

What the provision does

- Replaces, in a provision of the *Canadian Security Intelligence Service Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Section 14 of the *Canadian Security Intelligence Service Act* authorizes the Canadian Security Intelligence Service to provide a minister of the Crown with certain advice or information relevant to the Minister's powers, duties or functions under the Citizenship Act or the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 224

What the provision does

- Replaces, in a provision of the *Canadian Security Intelligence Service Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 16(1) of the *Canadian Security Intelligence Service Act* authorizes the Canadian Security Intelligence Service, for specified purposes within Canada, to assist in the collection of information relating to any person other than a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 225

What the provision does

- Deletes, in a provision of the *Canadian Security Intelligence Service Act*, a reference to a provision of the *Immigration Act.*

Explanation

Section 38 of the *Canadian Security Intelligence Service Act* sets out the functions of the Security Intelligence Review Committee. These functions include conducting investigations in relation to reports made to the Committee under specified sections of the Citizenship Act and *Immigration Act* relating to security or criminal intelligence information received about certain individuals.

This amendment is required because of changes made, under Bill C-11, to the security certificate process. The Security Intelligence Review Committee (SIRC) will no longer play a role in immigration matters where there are allegations involving protected information.

Clause 226

What the provision does

- Deletes, in provisions of the *Canadian Security Intelligence Service Act*, references to provisions of the *Immigration Act.*

Explanation

Section 55 of the *Canadian Security Intelligence Service Act* requires the Security Intelligence Review Committee to consult with the Director when it prepares certain reports or statements, including reports or statements under the current *Immigration Act*.

This amendment is required because of changes made, under Bill C-11, to the security certificate process.

Chemical Weapons Convention Implementation Act

Clause 227

What the provision does

- Replaces, in a provision of the *Chemical Weapons Convention Implementation Act*, a reference to a provision of the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Section 22 of the *Chemical Weapons Convention Implementation Act* provides that a Canadian citizen or a permanent resident within the meaning of the *Immigration Act* whose conduct outside Canada would be an offence under the *Chemical Weapons Convention Implementation Act* if it had been carried out in Canada will be treated as if the conduct were carried out in Canada.

This amendment is required because Bill C-11 would change the short title of the Act.

Citizenship Act

Clause 227.1

What the provision does

- Replaces, in provisions of the *Citizenship Act*, a reference to *deportation order* with *removal order*.

Explanation

This amendment is required to cover situations where a person has been issued a removal order other than a deportation order.

Clause 228

What the provision does

- Replaces, in provisions of the *Citizenship Act*, references to a person who is a permanent resident under the *Immigration Act* with references to a person who is a permanent resident status under the Immigration and Refugee Protection Act.
- Replaces, in provisions of the *Citizenship Act*, a reference to *deportation order* with *removal order*.
- Replaces *his* with *his or her.*

Explanation

Subsections 5(1) and (2) of the *Citizenship Act* require the Minister to grant citizenship to any person who meets the listed requirements. A permanent resident is included in the list if, among other conditions, they have not ceased to be a permanent resident pursuant to section 24 of the *Immigration Act*.

These amendments are required because Bill C-11 would change the short title of the Act and the reference to permanent residents would be changed to refer to the definition used in subsection 2(1) of Bill C-11.

This amendment is required to cover situations where a person has been issued a removal order other than a deportation order.

The amendment also introduces gender-inclusive language into subsection 5(1).

Clause 229

What the provision does

- Replaces, in provisions of the *Citizenship Act*, a reference to *deportation order* with *removal order*.
- Replaces, in a provision of the *Citizenship Act*, references to a person who has permanent resident status under the *Immigration Act* with references to a person who has permanent resident status under the Immigration and Refugee Protection Act.
- Replaces *his* with *the*.

Explanation

This amendment is required to cover situations where a person has been issued a removal order other than a deportation order.

Subsection 11(1) of the *Citizenship Act* requires the Minister to grant citizenship to any person who, having ceased to be a citizen, meets the listed requirements. A permanent resident is included in that list if they have not ceased to be a permanent resident pursuant to section 24 of the *Immigration Act*.

These amendments are required because Bill C-11 would change the short title of the Act and the reference to permanent residents would be changed to refer to the definition used in subsection 2(1) of Bill C-11.

The amendment also introduces gender-inclusive language into the provision.

Clause 230

What the provision does

- Replaces, in a provision of the *Citizenship Act,* a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.
- Replaces the term *inquiry* with *admissibility hearing*.
- Deletes a provision of the *Citizenship Act.*

Explanation

Subsection 14(1) of the *Citizenship Act* authorizes a citizenship judge to make a decision on an application to grant, retain, renunciate or resume an applicant's citizenship. Subsection 14(1.1) prohibits the judge from making that determination in relation to a permanent resident applicant who is the subject of an inquiry under the *Immigration Act* until a final decision has been made as to whether to issue a removal order against the applicant.

Subsection 14(1.2) of the *Citizenship Act* provides that the terms *permanent resident* and *removal order* have the meanings assigned to them in the *Immigration Act*.

These amendments are required because:

- Bill C-11 would change the short title of the Act;
- what is now referred to as an inquiry would be called an admissibility hearing under Bill C-11;
- the term *removal order* is an expression defined in the current Act and is used but not defined in Bill C-11.

Clause 231

What the provision does

- Replaces, in a provision of the *Citizenship Act,* a reference to consent under the *Immigration Act* with a reference to authorization under the Immigration and Refugee Protection Act.

Explanation

Paragraph 22(1)(e) of the *Citizenship Act* prohibits a person from being granted citizenship if the person:

- has been removed from Canada under an immigration removal order;
- requires the consent of the Minister to re-enter Canada; and
- has not obtained that consent.

This amendment is required because Bill C-11 would change the authority under which that consent to re-enter must be obtained.

Clause 232

What the provision does

- Replaces, in a provision of the *Citizenship Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 35(1) of the *Citizenship Act* authorizes the Lieutenant Governor in Council of a province to prohibit or restrict acquisitions of property in a province by non-Canadians. Subsection 35(3) provides that the authority to prohibit or restrict acquisitions does not apply to acquisitions by a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Comprehensive Nuclear Test-Ban Treaty Implementation Act

Clause 233

What the provision does

- Replaces, in a provision of the *Comprehensive Nuclear Test-Ban Treaty Implementation Act*, a reference to a provision of the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 19(2) of the *Comprehensive Nuclear Test-Ban Treaty Implementation Act* describes the privileges and immunities granted to inspectors who are Canadian citizens or permanent residents within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Cooperative Credit Associations Act

Clause 234

What the provision does

- Replaces, in a provision of the *Cooperative Credit Associations Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of *resident Canadian* in section 2 of the *Cooperative Credit Associations Act* includes, with certain exceptions, a permanent resident within the meaning of the *Immigration Act* who is ordinarily resident in Canada.

This amendment is required because Bill C-11 would change the short title of the Act.

Copyright Act

Clause 235

What the provision does

- Replaces, in a provision of the *Copyright Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Section 15 of the *Copyright Act* gives a performer the copyright to their performance in specified circumstances. Under subsection 15(2), one of those circumstances is where the performance is fixed in a sound recording made by a person who was a permanent resident of Canada within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 236

What the provision does

- Replaces, in a provision of the *Copyright Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsections 17(2) and (3) of the *Copyright Act* give a performer the right to enforce an agreement entitling them to remuneration in relation to certain uses of cinematographic works in which they have performed, but limit this benefit to prescribed cinematographic works. Subsection 17(4) authorizes the Minister, in specified circumstances, to extend this benefit to certain performers, including those who are permanent residents within the meaning of the *Immigration Act*, for performances in works other than prescribed cinematographic works.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 237

What the provision does

- Replaces, in a provision of the *Copyright Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 18(2) of the *Copyright Act* sets out the circumstances in which a maker of a sound recording has a copyright in the recording. One of those circumstances is where the maker of the sound recording was a permanent resident of Canada within the meaning of the *Immigration Act* during a specified time.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 238

What the provision does

- Replaces, in provisions of the *Copyright Act*, references to the *Immigration Act* with references to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 20(1) of the *Copyright Act* sets out the circumstances in which performers and makers of published sound recordings are entitled to be paid equitable remuneration for certain performances or communications of the recording. One of these circumstances is where the maker was, on a certain date, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, or a citizen or permanent resident of a Rome Convention country.

Subsection 20(2) of the *Copyright Act* authorizes the Minister of Industry to limit the protection for sound recordings whose makers are citizens or permanent residents of a Rome Convention country in certain circumstances. One of those circumstances is where the Minister is of the opinion that the country does not grant a similar right to equitable remuneration for makers of sound recordings who were permanent residents of Canada within the meaning of the *Immigration Act*.

These amendments are required because Bill C-11 would change the short title of the Act.

Clause 239

What the provision does

- Replaces, in provisions of the *Copyright Act*, references to the *Immigration Act* with references to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 22(1) of the *Copyright Act* authorizes the Minister of Industry to grant certain benefits under the Act to persons from certain countries if the Minister believes that the country provides substantially equivalent benefits to Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act*.

Subsection 22(2) of the *Copyright Act* deals with the situation where the Minister of Industry believes that the other country does not provide substantially equivalent benefits to Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act*. In such a case, the Minister is authorized to grant certain benefits under the Act to persons from that country only to the extent that that country grants those benefits to Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act*.

These amendments are required because Bill C-11 would change the short title of the Act.

Clause 240

What the provision does

- Replaces, in provisions of the *Copyright Act*, references to the *Immigration Act* with references to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of *eligible maker* in section 79 of the *Copyright Act* includes a maker of a musical sound recording who was, on a certain date, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, subject to certain conditions. The definition of *eligible performer* in that same section includes a performer of a described musical work who was, on a certain date, a Canadian citizen or permanent resident of Canada within the meaning of the *Immigration Act*, subject to certain conditions.

These amendments are required because Bill C-11 would change the short title of the Act.

Clause 241

What the provision does

- Replaces, in provisions of the *Copyright Act*, references to the *Immigration Act* with references to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 85(1) of the *Copyright Act* authorizes the Minister of Industry to grant certain benefits under the Act to performers and sound recording makers from another country if the Minister believes that the other country provides substantially equivalent benefits to Canadian citizens and permanent residents of Canada within the meaning of the *Immigration Act*.

Subsection 85(2) of the *Copyright Act* deals with the situation where the Minister of Industry believes that the other country does not provide substantially equivalent benefits to performers and sound recording makers who are Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act*. In such a case, the Minister is authorized to grant certain benefits under the Act to performers and sound recording makers from the other country only to the extent that that country grants those benefits to Canadian citizens or permanent residents of Canada within the meaning of the *Immigration Act*.

These amendments are required because Bill C-11 would change the short title of the Act.

Corrections and Conditional Release Act

Clause 242

What the provision does

- Replaces, in a provision of the *Corrections and Conditional Release Act*, a reference to a provision of the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.
- Changes the types of absence and release that are dealt with in that provision.
- Adds new provisions to the *Corrections and Conditional Release Act.*

Explanation

This provision deals with individuals who have committed a criminal offence, have been sentenced, and are also the subject of a removal order. Such persons may not be released from prison before the date at which they become eligible for full parole. Thus, they are not eligible for day parole or unescorted temporary absence until after their full parole eligibility date. Furthermore, the sentence of an offender who is subject to a deportation order is deemed to be completed when that individual is released after their full parole eligibility date, thereby permitting deportation from Canada.

Clause 243

What the provision does

- Replaces, in a provision of the *Corrections and Conditional Release Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Section 159 of the *Corrections and Conditional Release Act* requires that a person be ordinarily resident in Canada and either a Canadian citizen or a permanent resident as defined in the *Immigration Act* in order to be eligible to be appointed or to continue as Correctional Investigator.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Criminal Code

Clause 244

What the provision does

- Replaces, in a provision of the *Criminal Code*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 7(4.1) of the *Criminal Code* deems certain behaviour that is committed outside Canada to be an offence committed in Canada if the behaviour is committed by a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Clause 245

What the provision does

- Replaces, in a provision of the *Criminal Code*, references to specific sections of the *Immigration Act* with references to specific sections of the Immigration and Refugee Protection Act.

Explanation

The definition of *offence* in section 183 of the *Criminal Code* lists offences that may form the basis of an application for an authorization to intercept private communications and a warrant for video surveillance. Offences under the current Act relating to organizing entry into Canada, disembarking persons at sea and counselling false statements form part of that list of offences.

This amendment would replace the current provision numbers and add references to new offences relating to documents, officers and trafficking in persons created under Bill C-11.

Clause 246

What the provision does

- Adds, to a provision of the *Criminal Code*, references to specific provisions of the Immigration and Refugee Protection Act.

Explanation

The definition of *enterprise crime offence* in section 462.3 of the *Criminal Code* lists offences that are included, among others, in the proceeds of crime provisions of the Code.

This amendment would add to that definition references to all of the offences described in Bill C-11.

Clause 247

What the provision does

- Replaces, in a provision of the *Criminal Code*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subparagraph 477.1(a)(ii) of the *Criminal Code* deems certain behaviour that is committed in the exclusive economic zone of Canada to be an offence committed in Canada if the behaviour is committed by or in relation to a Canadian citizen or a permanent resident within the meaning of the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Emergencies Act

Clause 248

What the provision does

- Replaces, in a provision of the *Emergencies Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Section 4 of the *Emergencies Act* provides that the Act does not give the Governor in Council the power to make orders or regulations that provide for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the *Immigration Act* on the basis of race, national or ethnic origin, or other listed characteristics.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 249

What the provision does

- Replaces, in provisions of the *Emergencies Act*
  - references to the *Immigration Act* with references to a provision of the Immigration and Refugee Protection Act;
  - references to provisions of the *Immigration Act* with applicable text from the Immigration and Refugee Protection Act.

Explanation

Subsection 30(1) of the *Emergencies Act* provides the Governor in Council with certain powers to deal with an international emergency. Among these is the power to order the removal of people from Canada except for Canadian citizens or permanent residents as defined in the *Immigration Act*. The Governor in Council also is prohibited from ordering the removal of anyone who has been determined to be a Convention Refugee except for a person described in certain provisions of the *Immigration Act*.

These amendments are required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

In addition, the cross-references to provisions of the *Immigration Act* that deal with the circumstances in which a person who has Convention Refugee status may be ordered to leave Canada have been replaced with applicable circumstances from Bill C-11.

Extradition Act

Clause 250

What the provision does

- Replaces, in a provision of the *Extradition Act*, a reference to a provision of the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.
- Changes the words that refer to a refugee claim.

Explanation

Subsection 40(2) of the *Extradition Act* requires the Minister of Justice to consult with the Minister responsible for the *Immigration Act* before making a surrender order in relation to a person who has claimed Convention refugee status under the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

The words that describe a refugee claim would be changed to reflect the expressions used in Bill C-11.

Clause 251

What the provision does

- Replaces, in a provision of the *Extradition Act*, a reference to a provision of the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.
- Changes the words that refer to a refugee claim.

Explanation

Subsection 48(2) of the *Extradition Act* requires the Minister of Justice, when ordering the discharge of a person who has claimed refugee status under the *Immigration Act*, to send copies of all relevant documents to the minister responsible for the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act.
The words that describe a refugee claim would be changed to reflect the expressions used in Bill C-11.

Clause 252

What the provision does

- Replaces, in provisions of the *Extradition Act*, references to the *Immigration Act* with references to the Immigration and Refugee Protection Act.
- Changes the words that refer to persons who are inadmissible to Canada.
- Changes the words that refer to persons who are temporarily in Canada and stay longer than authorized.

Explanation

Under the *Extradition Act,* the Minister of Justice is authorized to give *consent to transit* which authorizes a person who is being extradited from one country to another country to be conveyed through Canada. Where the consent to transit relates to a person who is a member of an inadmissible class of persons described in the *Immigration Act*, subsection 75(1) of the *Extradition Act* gives the Minister of Justice the power to authorize the person to temporarily come into Canada under certain restrictions and conditions. Subsection 75(3) of the *Extradition Act* provides that, if the person fails to comply with any of the restrictions or conditions, they shall be deemed, for the purposes of the *Immigration Act*, to be a person who entered Canada as a visitor and remains in Canada after they have ceased to be a visitor.

These amendments are required because Bill C-11 would change the short title of the Act. The words that describe persons who are inadmissible to Canada in the first subsection and the words that describe persons who are temporarily in Canada in the second subsection would be changed to reflect the expressions used in Bill C-11.

Foreign Publishers Advertising Services Act

Clause 253

What the provision does

- Replaces, in provisions of the *Foreign Publishers Advertising Services Act*, references to the *Immigration Act* with references to a provision of the Immigration and Refugee Protection Act.

Explanation

The definitions of *Canadian* and *Canadian Corporation* in section 2 of the Foreign Publishers Advertising Services Act include references to permanent residents within the meaning of the *Immigration Act*.

The amendments are required because Bill C-11 would change the short title of the Act.

Income Tax Act

Clause 254

What the provision does

- Replaces, in provisions of the *Income Tax Act*, references to the *Immigration Act* with references to the Immigration and Refugee Protection Act.
- Changes the words that refer to a person who is temporarily in Canada.
- Changes the words that refer to a person who has refugee protection.

Explanation

The amendments are required because Bill C-11 would change the short title of the Act. The words that describe persons who are temporarily in Canada in the second subparagraph and the words that describe persons who have refugee protection in the third subparagraph would be changed to reflect the expressions used in Bill C-11. The words *within the meaning of* are used instead of *within the meaning assigned by* for consistency.

Insurance Companies Act

Clause 255

What the provision does

- Replaces, in a provision of the *Insurance Companies Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of "resident Canadian" in subsection 2(1) of the *Insurance Companies Act* includes, with certain exceptions, a permanent resident within the meaning of the *Immigration Act* who is ordinarily resident in Canada.

This amendment is required because Bill C-11 would change the short title of the Act.

International Centre for Human Rights and Democratic Development Act

Clause 256

What the provision does

- Replaces, in a provision of the *International Centre for Human Rights and Democratic Development Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 13(1) of the *International Centre for Human Rights and Democratic Development Act* requires that specified members of the Board of Directors of the International Centre for Human Rights and Democratic Development be Canadian citizens or permanent residents as defined in the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 257

What the provision does

- Replaces, in provisions of the *International Centre for Human Rights and Democratic Development Act*, references to the *Immigration Act* with references to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsections 17(2) and 17(6) of the *International Centre for Human Rights and Democratic Development Act* refer to permanent residents as defined in the *Immigration Act* when setting out membership and quorum requirements for the executive committee of the Board of Directors of the International Centre for Human Rights and Democratic Development.

These amendments are required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 258

What the provision does

- Replaces, in a provision of the *International Centre for Human Rights and Democratic Development Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 20(2) of the *International Centre for Human Rights and Democratic Development Act* refers to permanent residents as defined in the *Immigration Act* when setting out the quorum requirements for meetings of the Board of Directors of the International Centre for Human Rights and Democratic Development.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Investment Canada Act

Clause 259

What the provision does

- Replaces, in a provision of the *Investment Canada Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.
- Replaces, in the same provision, *he* with *he or she.*

Explanation

The definition of *Canadian* in section 3 of the *Investment Canada Act* includes a permanent resident within the meaning of the *Immigration Act* who has been ordinarily resident in Canada for a specified length of time.

This amendment is required because Bill C-11 would change the short title of the Act.

The amendment also introduces gender-inclusive language into the provision.

Labour Adjustment Benefits Act

Clause 260

What the provision does

- Replaces, in a provision of the *Labour Adjustment Benefits Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.
- Replaces, in the same provision, *he* with *the employee.*

Explanation

Subsection 14(1) of the *Labour Adjustment Benefits Act* authorizes the Canada Employment Insurance Commission to decide that a laid-off employee who meets the specified requirements is qualified to receive labour adjustment benefits under the Act. One of the requirements is that the employee be a Canadian citizen resident in Canada or a permanent resident within the meaning given that term by the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *within the meaning given that term by* for consistency.

The amendment also introduces gender-inclusive language into the provision by using *the employee* instead of *he*.

Mutual Legal Assistance in Criminal Matters Act

Clause 261

What the provision does

- Replaces, in provisions of the *Mutual Legal Assistance in Criminal Matters Act*, references to the *Immigration Act* with references to the Immigration and Refugee Protection Act.
- Changes the words that refer to persons who are not admissible to Canada.
- Changes the words that refer to persons who are temporarily in Canada and stay longer than authorized.

Explanation

Under subsection 40(1) of the *Mutual Legal Assistance in Criminal Matters Act*, the Minister of Justice may authorize a person who is a member of an inadmissible class of persons described in the *Immigration Act* to come into Canada, subject to certain restrictions and conditions, for specified purposes related to international criminal law enforcement agreements.

Subsection 40(3) of the *Mutual Legal Assistance in Criminal Matters Act* provides that, if the person fails to comply with any of the restrictions or conditions, they shall be deemed, for the purposes of the *Immigration Act*, to be a person who entered Canada as a visitor and who remains in Canada after they have ceased to be a visitor.

These amendments are required because Bill C-11 would change the short title of the Act. The words that describe persons who are not admissible to Canada in the first subsection and the words that describe persons who are temporarily in Canada in the second subsection would be changed to reflect the expressions used in Bill C-11.

National Energy Board Act

Clause 262

What the provision does

- Replaces, in a provision of the *National Energy Board Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 3(4) of the *National Energy Board Act* requires, among other criteria, that a person be either a Canadian citizen or a permanent resident within the meaning of the *Immigration Act* in order to be eligible to be appointed or to continue as a member of the National Energy Board.

This amendment is required because Bill C-11 would change the short title of the Act.

Old Age Security Act

Clause 263

What the provision does

- Replaces, in a provision of the *Old Age Security Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

The definition of *specially qualified individual* in section 2 of the *Old Age Security Act* contains a reference to a permanent resident as defined in the *Immigration Act*.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 264

What the provision does

- Replaces, in a provision of the *Old Age Security Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Subsection 11(7) of the *Old Age Security Act* prohibits the payment of a monthly guaranteed income supplement to a pensioner for certain months, including any month during which the pensioner is a specially qualified individual and a permanent resident as defined in the *Immigration Act* for whom an undertaking by a sponsor is in effect.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 265

What the provision does

- Replaces, in a provision of the *Old Age Security Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Subsection 19(6) of the *Old Age Security Act* prohibits the payment of a spousal allowance to the spouse of a pensioner for certain months, including any month during which the spouse is a specially qualified individual and a permanent resident as defined in the *Immigration Act* for whom an undertaking by a sponsor is in effect.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 266

What the provision does

- Replaces, in a provision of the *Old Age Security Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Subsection 21(9) of the *Old Age Security Act* prohibits the payment of a spousal allowance to a widow for certain months, including any month during which the widow is a specially qualified individual and a permanent resident as defined in the *Immigration Act* for whom an undertaking by a sponsor is in effect.

This amendment is required because Bill C-11 would change the short title of the Act. The words *within the meaning of* are used instead of *as defined in* for consistency.

Clause 267

What the provision does

- Replaces, in a provision of the *Old Age Security Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.

Explanation

Paragraph 33.11(b) of the *Old Age Security Act* authorizes the Department of Citizenship and Immigration to share with the Department of Human Resources and Development any information that was obtained in the administration of the *Immigration Act* that relates to applicants, beneficiaries or their spouses if the information is necessary for the administration of the *Old Age Security Act*.

This amendment is required because Bill C-11 would change the short title of the Act.

Pilotage Act

Clause 268

What the provision does

- Replaces, in a provision of the *Pilotage Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 22(2) of the *Pilotage Act* prohibits a licence or pilotage certificate from being issued to certain people, including a permanent resident within the meaning of the *Immigration Act* except in certain circumstances.

This amendment is required because Bill C-11 would change the short title of the Act.

Privacy Act

Clause 269

What the provision does

- Replaces, in a provision of the *Privacy Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

Subsection 12(1) of the *Privacy Act* provides that Canadian citizens and permanent residents within the meaning of the *Immigration Act* are entitled, on request, to be given access to personal information in a personal information bank or to other personal information under the control of a government institution subject to certain conditions.

This amendment is required because Bill C-11 would change the short title of the Act.

Proceeds of Crime (Money Laundering) Act

Clause 270

What the provision does

- Replaces, in a provision of the *Proceeds of Crime (Money Laundering) Act*, references to provisions of the *Immigration Act* with references to provisions of the Immigration and Refugee Protection Act.

Explanation

This amendment is required because Bill C-11 would change the short title of the Act. It also is required to change the section numbers referring to objective, inadmissibility and offence clauses of the current Act with the new clause numbers under Bill C-11.

Trade-marks Act

Clause 271

What the provision does

- Replaces, in a provision of the *Trade-marks Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act.

Explanation

The definition of *Canadian* in subsection 11.17(2) of the *Trade-marks Act* includes a permanent resident within the meaning of the *Immigration Act* who has been ordinarily resident in Canada no more than one year after the time the person became eligible to apply for citizenship.

This amendment is required because Bill C-11 would change the short title of the Act.

Trust and Loan Companies Act

Clause 272

What the provision does

- Replaces, in a provision of the *Trust and Loan Companies Act*, a reference to the *Immigration Act* with a reference to a provision of the Immigration and Refugee Protection Act

Explanation

The definition of *resident Canadian* in section 2 of the *Trust and Loan Companies Act* includes, with certain exceptions, a permanent resident within the meaning of the *Immigration Act* who is ordinarily resident in Canada.

This amendment is required because Bill C-11 would change the short title of the Act.

Terminology

Clause 273

What the provision does

- Replaces the title *Immigration Act* with the title Immigration and Refugee Protection Act in any regulation and certain other legal instruments.

Explanation

The effect of this provision would be to automatically replace the current title of the Act with the new title in any regulation or other legislative instrument under an Act of Parliament or the authority of the Governor in Council.

This legislative technique is used so that each location where the title of the Act is used would not need to be found.

Co-ordinating Amendments

Clause 273.1

What the provision does

- Replaces, in provisions of the *Marine Liability Act*, a reference to the *Immigration Act* with a reference to the Immigration and Refugee Protection Act.
- Repeals section 218 of this Act which refers to section 712(3)(b)(i) of the Canada Shipping Act which is repealed by the *Marine Liability Act*.

Explanation

This amendment is required because Bill C-11 would change the short title of the Act.

This amendment repeals a section of this Act which is made obsolete by the new *Marine Liability Act*.

Repeals

Clause 274

What the provision does

- Repeals the current *Immigration Act.*
- Repeals three Acts that amended the current *Immigration Act* and that made other related amendments.

Explanation

Bill C-11 would replace the current *Immigration Act*. When the new Act comes into force, the old Act must be repealed expressly by law.

Coming Into Force

Clause 275

What the provision does

- Provides that the provisions of the Act come into force on the day or the days fixed by order in council.

Explanation

This provision allows different Parts or different provisions of Bill C-11 to come into force at different times.

Schedule

What the schedule does

- Sets out the text of sections E and F of Article 1 of the *United Nations Convention Relating to the Status of Refugees.*
- Sets out the text of sections 1 and 2 of Article 1 of the *Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment.*

Explanation

Section 98 of Bill C-11 provides that a person who is referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection. The first part of the schedule sets out the text of those sections.

Paragraph 97(1)(a) of Bill C-11 sets out one of the circumstances that would define *a person in need of protection* under the Act, namely that sending them back to their country of nationality or their habitual residence would subject them personally to danger of torture within the meaning of Article 1 of the *Convention Against Torture*. The second part of the schedule sets out the text of that article.

These articles are also referred to in the definitions of *Convention Against Torture* and *Refugee Convention* in subclause 2(1) of Bill C-11.