



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

**BUILDING  
ON A STRONG  
FOUNDATION FOR  
THE 21ST CENTURY**

**New Directions  
for Immigration  
and Refugee Policy  
and Legislation**

**Canada**

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STATEMENT BY THE HONOURABLE  
LUCIENNE ROBILLARD  
MINISTER OF CITIZENSHIP AND IMMIGRATION

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Immigration goes to the core of our values and aspirations. It has shaped our country. It speaks to who we are as Canadians, and what sort of a society our children will inherit. Immigration is an issue in which all Canadians have a stake.

In my consultations last year, I met Canadians from every walk of life. I was impressed by the experience and conviction with which so many spoke, by their constructive and creative suggestions, and by the dedication many of them demonstrated to the service of immigrants and refugees. The consultations reinforced my faith in the collective desire of Canadians to make our immigration system work for us all. The consultations did not end with the public hearings. I also received over 2,200 written submissions, which have helped guide me and my officials as we sought to identify ways in which our policies and legislation can be modernized and improved.

In a rapidly changing world, the task is to ensure that our immigration and refugee policies and legislation continue to serve our country well, and treat those directly affected fairly. This presents numerous opportunities and challenges. But we must never lose sight of the broader goals we are seeking to achieve. We must be careful not to sacrifice the checks and balances we have built into the system over many years by focusing on short-term problems, or problems that can be resolved through administrative change. The refugee determination system serves as a good example — the system does need to be improved, but in doing so we must not lose sight of the overarching objective, which is to protect the persecuted.

This document, *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation*, establishes the government's ten broad directions that will guide us in adapting present policies and legislation to help meet the opportunities and challenges of the coming decades.

I am now seeking views and practical advice on the specific policies and legislative proposals that would best enable us to achieve the broad directions outlined in the document.

This is an important task. It is not every year, nor even every decade, that we have an opportunity to renew our policy and legislative structure. I invite you to join us in this important challenge.

A handwritten signature in black ink, reading "Lucienne Robillard". The signature is written in a cursive, flowing style.

Hon. Lucienne Robillard, P.C., M.P.

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# INTRODUCTION

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*“To enrich the culture of Canadians, our Government encourages people of different ethnicity and cultural background to settle in this beautiful country.”*

(Chinese Entrepreneurs Society of Canada, Vancouver, February 1998)

*“The Section agrees that globalization is the most significant trend affecting immigration today and that legislation and policies must realistically reflect the effect of this trend on the Canadian community, economy and workplace.”*

(Citizenship and Immigration Law Section, Canadian Bar Association, Ottawa, March 1998)

**On becoming a Canadian.** Canadians rightly believe that ours is a special place. Consequently, admission to the Canadian family is, in the view of most Canadians, a privilege — one extended because of family ties, special attributes that contribute to our national wealth and social fabric or, equally important, our commitment to the protection of the persecuted. Immigrants and refugees are admitted to Canada without discrimination on the basis of race, national or ethnic origin, colour, religion or gender. They are sponsored by family members in Canada, they may choose Canada independently and be selected on the basis of labour market skills, or they may be refugees who have been forced to flee their home country.

**The sum of our histories.** Modern Canada is a product of the enduring cultures of Aboriginal peoples; the joining together of French-speaking and English-speaking people; and the influence of successive waves of immigrants. Canada’s history is replete with stories of people seeking a new life for themselves and their families. As a country populated to a very large extent by immigrants and their descendants, that experience is deeply rooted in our national consciousness. Canadian values have been influenced by the need to welcome and integrate people from many cultures, religions, languages and national experiences.

**Rewards of openness.** One of the many rewards of being a welcoming land has been the attraction of newcomers who have played a vital role in the development of our values, our culture, our economy and our political institutions. A shared culture of change, adventure and adaptation produces a corresponding social and legal emphasis on equality, fairness and respect for diversity. Canadians expect these same values from those who come to our country.

**The global village.** Since Canada’s most recent *Immigration Act* was proclaimed in 1978, the world has in many ways become a global village. In the intervening 20 years, technological change and the forces of globalization have brought about sweeping changes domestically and internationally. Faster, more accessible communications; unprecedented numbers of people in transit around the world; increasing interactions among peoples of diverse nations,

expanding the awareness of different cultures and societies — these are developments that have served to bring the world to Canada and Canada to the world.

**Emerging opportunities.** These changes bring with them opportunities. Our long history of immigration and the resulting links to the world have positioned us well to take full advantage of this new global environment. Canada's willingness to embrace new realities through the expansion of world trade and the creation of new regional economic alliances, such as the North American Free Trade Agreement, have made our country an attractive destination for a pool of educated, skilled and mobile individuals who are available and able to support the development of emerging industries anywhere in the world.

**Population and refugee movements.** Mass population movements are a significant phenomenon confronting governments today. One hundred and twenty-five million people are on the move internationally. The United Nations estimates that there are over 30 million refugees and displaced persons worldwide. Many make refugee claims in Western countries. The flow of refugee claimants to Canada has increased from 500 in 1977 to 24,000 in 1997. The critical challenge is to grant Canada's protection to those who need it while discouraging those who are clearly not genuine refugees.

**New challenges.** Opportunities rarely exist without challenges. In a world where borders are ever more frequently crossed and therefore less easy to control, transnational criminal organizations ranging from drug cartels to ethnically based criminal gangs have prospered. People smuggling has become a lucrative business. Ever increasing trade links underscore the need to facilitate the entry of business travellers at ports of entry while maintaining vigilance to detect people who aim to circumvent legitimate immigration requirements. Openness must be coupled with a concern for system integrity and a determination to stem abuse.

**A changing Canada.** In response to globalization and other forces, Canada has undergone fundamental change in the past 20 years. The *Canadian Charter of Rights and Freedoms* has strengthened Canada's democratic character by enshrining in the Constitution our fundamental freedoms. Democratic, mobility, legal and equality rights have been spelled out in the Constitution. By fundamentally redefining the relationship between the individual and the state, the Charter has affected decision making in the immigration area in a way not contemplated by the current Act.

*“Canada historically has been compassionate and humanitarian in its response to refugees and must be challenged to continue to provide leadership in this area in the future.”*

(Saskatoon Refugee Coalition,  
March 1998)



***“The present Immigration Act has become so complex and convoluted that it has become both abusive and open to abuse. It does not serve us well. We need clarity, transparency and confidence in our legislation ... Immigration holds the key to Canada’s future; today we must find some way to work together to meet both our current and future obligations and opportunities.”***

(Divine Mission in Canada,  
The United Church of Canada,  
Vancouver, February 1998)

**Coherence and transparency.** No comprehensive review of the legislation has been undertaken during the past two decades. The Act has been amended, on an *ad hoc* basis, more than 30 times, resulting in a complex patchwork of legislative provisions that lack coherence and transparency. The logic and key principles of the Act have become difficult to discern for both immigrants and Canadians.

**Need for revised legislation.** Without measures to update our current policy and legislative base, immigration and refugee protection objectives will be increasingly difficult to achieve. More piecemeal changes would only compound the current problems. The legislation requires revision for several reasons: to respond to the challenges of the new domestic and international environments; to address the legitimate expectation of potential immigrants and their sponsors that their rights and obligations will be presented in a clear and comprehensible way; to update Canada’s approach to refugee selection abroad and to refugee determination in Canada; and to ensure that the legislation provides the tools that allow immigration to maintain its positive role in the social and economic development of the country.



# THE LEGISLATIVE REVIEW PROCESS

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**Legislative Review Advisory Group.** In recognition of the need for change, an independent advisory group was established in November 1996 to review legislation relating to immigration and the protection of refugees. The Legislative Review Advisory Group submitted its report to the Minister of Citizenship and Immigration on December 31, 1997. The Advisory Group's report, *Not Just Numbers: A Canadian Framework for Future Immigration*, was made public on January 6, 1998.

*“Issues that have beset and obsessed us are all thrown in the air. The lid is blown off and while the fallout may be pretty hot stuff, I am delighted we have this chance to examine everything from fundamentals to specifics ... There have been criticisms that its [the Advisory Group's] initial consultations were too cursory. That is inevitable. Unless every nuance uttered by everyone interested is received and commented upon (a recipe for stultification), there will always be this criticism.*

(Citizenship Council of Manitoba,  
March 1998)

**A catalyst for debate.** In addition to proposing values and principles to inform Canada's immigration and refugee systems, the Advisory Group made 172 recommendations dealing with almost every aspect of immigration and refugee policy and law. Its comprehensive report proposed fundamental changes in the way immigrants and refugees are chosen, as well as new ways of managing immigration. The report served as the catalyst for an important, wide-ranging debate on all aspects of Canada's immigration and refugee protection policies, legislation and programs.

**An ongoing process.** Many of the broad directions proposed by the Advisory Group were consistent with the directions the government had established through regulatory change after extensive national consultations and the adoption of a strategic framework for immigration in 1994. Other proposals were similar to initiatives under development at the time the report was released. One of the significant achievements of the Advisory Group was to pull together the multiple threads of the immigration and refugee systems into a coherent, comprehensive package. This holistic approach to the legislative and policy base provided impetus to the review process and stimulated informed public debate.

**Broad directions.** The following is a brief overview of the key directions proposed in the Advisory Group report:

- a simpler legislative framework to ensure clarity, transparency and accountability, and the involvement of provincial governments and other key stakeholders;

- a reinforcement of the family class as the traditional cornerstone of Canada's immigration program, with significant liberalization in some areas coupled with equally significant restrictions in others;
- a selection model for independent immigrants based on generic attributes for success in a dynamic labour market rather than specific occupations; a business immigration program with more obvious economic benefits for Canada; and an openness to the entry of temporary foreign workers;
- the creation of a Protection Agency with protection officers responsible for refugees in Canada and abroad, and measures to increase protection and diminish abuse;
- an enforcement system characterized by increased use of detention as an incentive for voluntary compliance, and a smart card-based computer tracking system for those in the enforcement stream.

**Consulting with Canadians.** Following the release and broad distribution of the report, the Minister of Citizenship and Immigration held public hearings across Canada in late February and early March of 1998. Canadians responded enthusiastically — the number of hearing days was doubled, and additional locations were included to accommodate as many requests as possible for participation. One hundred and fifteen organizations and individuals, representing hundreds of thousands of Canadians, were able to present and discuss their views on the future of Canada's immigration and refugee protection legislation, policies and programs. In addition to the public presentations, more than 2,200 written submissions were received from members of the public and organizations.

**Emerging themes.** Although there was a widely shared view that Canada's immigration and refugee determination systems needed to be modernized and reformed in some areas, there was little support for some of the more radical changes proposed by the Advisory Group. Key themes to emerge from the consultations included:

- appreciation for the scope and imagination of the proposals, coupled with a caveat that the system did not require the same degree of fundamental redesign as proposed in the report;
- some concern with the report's perceived economic, market-oriented focus;
- some criticism that the report was negative and problem-oriented in tone, and that the proposed solutions were not always consistent with the declared values-based approach; and
- a desire for further consultation as the government develops its legislative reform package.

***“All partners agree that the current ‘patchwork’ of legislation, regulation, and policy needs an overhaul. This is an extensive report with many useful recommendations, and some which need careful re-thinking.”***

(Mennonite Centre for Newcomers, Edmonton, March 1998)

***“I would like to commend the Legislative Review Advisory Group for its hard work and the recommendations outlined in the Executive Summary ... Although ISAM member agencies realized the need to examine and recommend changes to Canadian immigration laws, and members applaud many of these recommendations, there are several recommendations that we, as an organization, do not support.”***

(Immigrant Serving Agencies of Metro Halifax, March 1998)

*“We do not concur that it is desirable that after over 20 years of amendments to the Canadian immigration legislation that it now be completely reviewed and re-designed. However we strongly believe that comprehensive amendments should take place, that will address the gaps and inconsistencies within the legislation. These amendments should result in all components being systematically integrated.”*

(Calgary Immigrant Aid Society,  
March 1998)

**A significant achievement.** The Advisory Group achieved its mandate by presenting a coherent and thought-provoking report. Especially compelling was the report’s argument for greater openness and transparency. The very positive chapter on the importance of the family was also persuasive and received support during the consultations. The report’s analysis of the dynamics of the labour market, the need for immigrants with flexible skill sets, and the importance of the temporary economic movement reinforced the government’s thinking on this issue. And while the consultations provided little evidence of support for any significant shift in the focus of Canada’s progressive refugee determination system, the report’s analysis of the challenges to be addressed provided a valuable focus for discussions.

**Responding to Canadians.** Since the public consultations, the government has closely studied the written submissions received and has undertaken further consultations with key partners and stakeholders, including provincial and territorial governments. This is an ongoing process. Detailed policy analysis and testing of possible models has been undertaken, and broad policy directions have been developed. The broad directions contained in this document build upon the work of the Advisory Group and on what we heard when we listened to Canadians. Throughout this document, we provide examples of some of the direct comments made by Canadians during the consultations.



# DIRECTIONS FOR REFORM

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**Social cohesion and economic well-being.** The future belongs to societies whose economies are sound; who invest in knowledge, education and innovation; whose people are healthy; whose children are well prepared to learn; and who focus on securing a high quality of life for all citizens. These are the government's priorities as outlined in the 1997 Speech from the Throne. To continue to move toward increased social cohesion and sustainable economic health, we need to continue to follow policies that balance our investment in people with prudent financial management. Immigration will contribute to the achievement of these goals.

**The role of immigration.** Immigrants contribute in many different ways to Canada's social and economic well-being. In an environment where one in three Canadian jobs depends on trade, immigration plays a vital role in building bridges between Canada and other countries. Immigrants bring expertise, capital and initiative. They bring new dreams, hopes and a faith in Canada. As they integrate into Canadian society, these men and women work with Canadians to make a better future for us all.

**A humanitarian commitment.** Canadians have developed a reputation for being a compassionate society. This is a part of our national character that many Canadians value highly. We will not turn our backs on those people who need our help the most.

**A values-based society.** In this modern world, Canadians have made choices about the nature of the society they want — family as the foundation of security and social stability; a society in which people support one another, respect rights and accept obligations; diversity as a source of collective strength; and respect for personal honesty and integrity, as well as for formal institutions.

## PRINCIPLES FOR REFORM

The principles for reform set out below seek to build on the solid foundation provided by the current legislation, while responding to the challenges and opportunities of a changing world.

**Accountability and transparency.** In order for the government to be held accountable for the administration of immigration and refugee programs, the key principles and policies that support programs must be clearly set out in legislation. Where decisions are made respecting governance, Canadians expect a rules-based system that is accountable and transparent. Where rules create inflexibility, Canadians look to the exercise of discretion to resolve problems humanely.

**Supporting family reunification.** Canada has a long tradition of supporting the reunification of Canadians with their close family members from abroad. Family reunification enriches the lives of those involved and strengthens Canadian communities. In recent years, the characteristics of Canadian families have changed. New immigration and refugee protection legislation should support family reunification by responding to new social realities.

**Upholding Canada's humanitarian tradition.** The compassion of Canadians has been reflected in our willingness to offer resettlement to refugees who have been forced to flee their country of origin and for whom no other durable solution can be found. However, in recent years, the processes and procedures used to select refugees abroad and to determine refugee status in Canada have been criticized as being slow and uncertain. New legislation and policy should uphold Canada's humanitarian tradition, while supporting greater effectiveness in decision making.

**Balancing privileges and responsibilities.** The privilege of immigrating or resettling in Canada must be balanced with "reciprocal obligations," or responsibilities. Thus, for example, the privilege of sponsoring the immigration of a family member must be balanced with the responsibility to provide for that person once in Canada. Similarly, abuse of the refugee determination process by migrants not in need of protection undermines the credibility of the process and diverts resources from the protection of genuine refugees. New legislation must establish the means to take action against people who fail to meet their obligations under the law.

**Enriching our human resources.** Independent immigrants are selected on the basis of their potential to contribute to Canada's economic and social well-being. However, as Canada further develops its knowledge-based economy and society, the skills required to integrate into the labour market are changing. Canada's selection system for independent immigrant applicants needs a sharper focus on flexible and transferable skills.

*"The transparency, accountability and efficiency of those responsible for applying the legislation, the values of the Canadian Charter of Rights and Freedoms, and international solidarity are all excellent starting points for the review. The challenge will be to put mechanisms in place that will guarantee its application."*

(City of Montreal, March 1998)  
(Translated from the French)

*"The new legislation must support the Canadian leadership role in protection issues and human rights."*

(Settlement and Integration Services Organization, Ontario, March 1998)

*"I'm happy that immigration policy is being reviewed. I believe that a certain balance must be struck between Canada's position as a country favoured by immigrants and refugees ... and the caution that must be exercised to avoid exploitation of the system."*

(Member of the public, January 1998)  
(Translated from the French)



**Promoting public safety.** Two of the objectives of the current *Immigration Act* are to maintain and protect the health, safety and good order of Canadian society and to promote international order and justice by denying the use of Canadian territory to people who are likely to engage in criminal activity. As transnational crime becomes more pervasive and sophisticated, new measures need to be taken to identify, intercept and remove people who do not have a right to establish themselves in Canada.

**Fairness, effectiveness and integrity.** Fairness in decision making must and will remain a key principle of reform of the immigration and refugee system. A transparent system that can be easily understood by those most directly affected is a key element of such an approach. However, in an environment of limited resources and continuing expectations of rapid and sound decision making, it is equally important that procedures not mandated by constitutional or international obligations, or which do not advance important values, be reconsidered. Reforms should ensure that the fundamental objectives of the immigration and refugee protection programs are not distorted by frivolous litigation and delays. Concern for system integrity and determination to stem abuse are important elements of effective management of government programs and are legitimate principles for reform.

It is with these principles in mind that proposed directions for reform of immigration and refugee policy and legislation have been developed. These directions are:

- adjusting objectives in a clearer, simpler and more coherent Act;
- strengthening partnerships;
- strengthening family reunification;
- modernizing the selection system for skilled workers and business immigrants;
- facilitating the entry of highly skilled temporary foreign workers and students;
- introducing transparent criteria for permanent residence status;
- strengthening refugee protection;
- maintaining the safety of Canadian society;
- improving the effectiveness of the immigration appeal system; and
- refocusing discretionary powers.



# ADJUSTING OBJECTIVES IN A CLEARER, SIMPLER AND MORE COHERENT ACT

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## PROPOSED DIRECTIONS

**T**he objectives of the *Immigration Act* are still widely supported but need to be adjusted to reflect evolving values. Although much of the current *Immigration Act* is sound, there is significant consensus that the current legislation has, after more than 30 revisions, become complex, unwieldy and obscure to citizens and prospective immigrants.

The government proposes to:

- adjust the objectives of the Act;
- redraft the legislation in plain language; and
- ensure that detailed procedures are properly included in regulations.

The new Act would clearly state, in two distinct sections, the principles and policies of the immigration program and the refugee protection program.

**Current situation.** The present *Immigration Act* begins with several broad statements of objectives that provide an expression of the values underlying the legislative provisions.

The *Immigration Act* includes objectives such as: enriching through immigration the cultural and social fabric of Canada; facilitating the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad; and upholding Canada's humanitarian tradition with respect to the displaced and the persecuted. These objectives are still supported by Canadians. However, some of the values that Canadians hold strongly are not well reflected in the current list of objectives, namely: a belief that immigrants are social as well as economic beings who bring invaluable contributions to Canadian society; the mutual obligations inherent in the immigration "contract" (both rights and responsibilities); the fact that successful integration involves both the immigrant and the host society; and the balance required between fairness in according protection to genuine refugees and the necessity to curtail abuse of Canada's generosity. Canadians see themselves as belonging not to a society composed of isolated individuals or members of competing interest groups, but to a society of reciprocal obligations.

There is a widely held view that the current *Immigration Act* is too complicated and unwieldy. A significant amount of procedural detail has been built into the Act, making key principles and policies difficult to discern. Currently, provisions relating to the protection of refugees are scattered throughout the Act, rendering the overall thrust of refugee policy unclear. There is a need for a clear and transparent legislative framework.

**A new environment.** The current *Immigration Act* does not respond well to the needs of a world that has changed dramatically in the past 20 years. In human history, the movement of people across international borders has never been as extensive. At the same time, the processing of immigration applications, refugee status claims, visitor and temporary foreign worker visas has not kept pace. In the interest of visitors, refugees and immigrants, Canada's laws and processes must be more consistent, coherent and transparent, and allow prompt processing. Through regulation, the government must be able to adjust the selection and control mechanisms in response to new circumstances in Canada and abroad without changing any fundamental principle or policy.

***"The objectives under the current Immigration Act attempt to balance the economic interests of Canada and the need for integrity of the immigration system on the one hand, with our domestic and international obligations towards refugees and immigrants on the other."***

(Metro Toronto Chinese and Southeast Asian Legal Clinic, March 1998)

***"Like many other organizations, we believe that the current Act is very difficult to interpret because of its complexity."***

(Canadian Ethnocultural Council, Ottawa, March 1998)

***"The Act has been amended 30 times in the past 20 years to accommodate a changing environment. The legislation has become so complex that it creates serious problems even for experts and those responsible for its enforcement. This administrative burden is prejudicial not only for those who want to settle in Canada, but also for Canadians themselves, who have to pay for it all."***

(City of Montreal, March 1998)  
(Translated from the French)

## WHAT IS PROPOSED

**Proposed policy directions.** It is proposed to adjust the objectives of the *Immigration Act* to reflect evolving values. A new Act would set out in clear, understandable language:

- the overall objectives of the immigration and refugee programs;
- the components of the programs;
- the general principles and policies regarding entry into Canada and the acquisition of legal status; and
- the general principles for determining inadmissibility to Canada, offences and related enforcement measures.

***“UNHCR would endorse the Advisory Group’s basic message that protection and immigration are separate issues that should be governed by different considerations.”***

(United Nations High Commissioner for Refugees, Geneva, March 1998)

The Act would thereby provide a statutory basis for all procedures with the potential to affect fundamental rights and freedoms. The legislation would provide the flexibility demanded by the dynamics of the immigration process. The provisions relating to the protection of refugees would be grouped in a separate section, in recognition of the different objectives of the immigration and refugee programs. A new title would reflect the dual functions of the Act — immigration and the protection of refugees.

In keeping with the objectives of enhanced accountability to Parliament and the public, all reports to Parliament on the immigration and refugee protection programs would be integrated into the Minister’s regular reports to Parliament on departmental plans and priorities and on departmental performance, in line with the government’s planning, reporting and accountability structure.



# STRENGTHENING PARTNERSHIPS

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## PROPOSED DIRECTIONS

In the 1997 Speech from the Throne, the government acknowledged that to realize the goal of a just, sharing and diverse society that fosters creativity, there is a need for partnerships among Canadians, institutions, businesses, voluntary organizations and governments.

The government will strengthen partnerships in the immigration and refugee protection fields through more regular and structured consultations on policy and program development.

## CURRENT SITUATION

**Federal-provincial-territorial relations.** Immigration is an area of concurrent jurisdiction between the federal government and the provinces, with federal paramountcy. The current *Immigration Act* authorizes the Minister to conclude agreements on immigration policies and programs with individual provinces. It also requires the Minister of Citizenship and Immigration to consult with the provinces on the annual immigration plan and to ensure that the plan is consistent with federal-provincial agreements.

Recognizing that there are significant interdependencies between the two orders of government in supporting the selection, settlement and integration of newcomers to Canada, Citizenship and Immigration Canada consults with the provincial and territorial governments on areas of particular concern. However, immigration has an uneven impact across Canada, with 95 percent of all newcomers settling in Ontario, British Columbia, Quebec and Alberta.

Immigration agreements established under the *Immigration Act* are the primary mechanism used to define relationships and bilateral consultative arrangements with provincial governments. Currently, immigration agreements have been concluded with eight provinces. The Canada-Quebec Accord, concluded in 1991, is the most comprehensive of the agreements and provides a framework for sharing jurisdiction and responsibility on immigration matters, including Quebec's responsibility for selecting all independent immigrants and refugees abroad.

More recent agreements have established a framework for consultation and cooperation, with specific commitments in areas of particular provincial interest. Immigration agreements signed in 1998 with Manitoba and British Columbia provide for the transfer of settlement programs to the provinces and establish pilot programs for recruiting and selecting skilled workers through the provincial nominee process. Provincial nominee agreements permit provinces to nominate candidates for immigration to Canada who might not meet federal selection criteria but who, in the province's judgment, will bring significant industrial and economic benefit to the province. These agreements are for a limited number of years, and specify the number of candidates who may be nominated in a given year. The 1998 Canada-Saskatchewan Immigration Agreement also established a provincial nominee pilot program. Several of the provinces and one territory are parties to information-sharing agreements with Citizenship and Immigration Canada.

***“Anything which promotes more coordination between the provinces and between the provincial and federal governments is positive.”***

(The Diocese of Kootenay, British Columbia, March 1998)



*“Consultation with non-governmental organizations is ... most essential and [we] would suggest that the proper way for such consultations to take place has yet to be found. Consultations are often mechanisms for simply informing non-governmental bodies of decisions already made by government. NGOs feel that the input they are asked to give is not being heard or considered.”*

(The Refugee Task Group of the World Outreach Committee of Maritime Conference, United Church of Canada, New Brunswick, March 1998)

**Stakeholder relations.** The increasing complexity of the public policy environment requires engagement with a wide range of individuals and groups outside of the government in the process of policy and program development.

Citizenship and Immigration Canada currently benefits from valuable partnerships at the local, regional, national and international levels with a wide range of stakeholders who are affected by immigration and refugee protection programs. These include municipalities, the Canadian Council for Refugees, the United Nations High Commissioner for Refugees, the Canadian Bar Association, immigrant consultant organizations, representatives of the transportation industry, settlement service providers, and various law enforcement agencies, among others.

## **WHAT IS PROPOSED**

**Proposed new directions.** Consultations with provincial and territorial governments will be regularized and widened. Initiatives will be undertaken to provide for broader federal-provincial-territorial dialogue at both the ministerial level and among officials while respecting bilateral arrangements under current federal-provincial-territorial agreements. Municipalities will continue to be included in stakeholder consultations where appropriate. The government is committed to enhancing stakeholder relations through a structured dialogue. Efforts will continue to engage the broader public on key immigration and refugee protection policy issues.



# STRENGTHENING FAMILY REUNIFICATION

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## PROPOSED DIRECTIONS

**C**anada has a long tradition of supporting the reunification of Canadian citizens and permanent residents with their close family members from abroad, thereby assisting in social integration and the building of communities. The government proposes to support this tradition through policies that accommodate a wide range of family needs while maintaining a balance between self-reliance and collective responsibility.

It is proposed to strengthen family reunification through measures aimed at:

- keeping the core family together;
- better protecting the child in international adoptions;
- providing fair treatment to common-law and same-sex couples; and
- increasing the integrity of sponsorship undertakings.

## CURRENT SITUATION

**The family in Canadian society.** While family structures continue to evolve, the family remains the foundation for Canada’s social cohesion. Family reunification has long been a key objective of Canadian immigration policy and legislation. It permits both recent immigrants and long-established Canadians to be reunited with close family members from abroad, enriches the emotional lives of those involved, assists them in achieving self-reliance, and supports the building of communities. Canada has resisted the trend in other immigrant-receiving countries to restrict family immigration. Family class immigration has been and will continue to be the cornerstone of the immigration program.

**The family class.** The family class defines a list of relatives who may be sponsored for immigration to Canada by a citizen or permanent resident. The number of immigrants in this category depends on individual decisions to sponsor family members from abroad. The government’s role in this process is to maintain a legislative and regulatory framework that supports the reunification of families.

**Self-reliance and collective responsibility.** In developing a social policy framework, the government must balance the objectives of self-reliance and collective responsibility. Canada’s family reunification policies seek to accommodate a wide range of family needs while maintaining that balance. Consequently, Canada’s immigration policies allow Canadians and permanent residents to sponsor relatives in a broadly defined family class while requiring that arriving immigrants receive care and support from their sponsors.

**New social realities.** New legislation must reflect new social realities and ensure that rules are clear, fair and consistent. Many children are now dependent on their parents for longer periods. Same-sex and common-law couples may be permitted entry to Canada through the humanitarian or compassionate provision of the *Immigration Act*. Consistent with the need of sovereign states to manage membership in their society, the current Act requires that all immigrants apply outside Canada. However, spouses and children are currently being routinely landed in Canada on the basis of humanitarian or compassionate considerations — a provision of the Act intended to deal with exceptional circumstances. Intercountry adoptions are increasingly common. Procedures for intercountry adoptions do not always provide adequate safeguards for the best interests of the child. Canada’s immigration legislation and policies must clearly take into account these new realities.

*“We agree wholeheartedly ... that the principle of family reunification must continue to be the touchstone for measuring the success or failure of our immigration policy.”*

(Social Ministry Office of the Archdiocese of Montreal and Action Réfugiés Montréal, March 1998)  
(Translated from the French)

*“... real evidence of sponsorship integrity and commitment is required.”*

(Canadian Citizenship Federation, Halifax, March 1998)

## WHAT IS PROPOSED

The proposed policy and legislation would build on Canada's evolving values and result in an expansion of the family class. The scope of the family class would be enhanced, not diminished. Proposed measures would recognize the evolution of the Canadian family; at the same time, they would ensure that sponsors live up to their obligations to provide support to newly arriving family members.

Four aspects of the family class policy would be reformed:

- keeping the core family together;
- better protecting the child in international adoptions;
- providing fair treatment to common-law and same-sex couples; and
- increasing the integrity of sponsorship undertakings.

### I. Keeping the core family together

*“Many excellent candidates for immigration to Canada have abandoned their intent to move to Canada when they discovered they would be separated from their 19 and 20 year old children.”*

(Ukrainian Canadian Congress and Canadian Ukrainian Immigrant Aid Society, Toronto, March 1998)

**Increasing age of dependent children.** It is proposed to broaden the definition of a dependent child to better reflect contemporary social realities of longer child dependency. For the purposes of the family class, a dependent child is currently defined as a son or daughter who is: less than 19 years of age and unmarried; or in full-time attendance at an educational institution and financially supported by the parents since reaching age 19; or suffering from a physical or mental disability and who is wholly or substantially supported financially by the parents.

Increasing the current age limit for a dependent child from less than 19 years to under age 22, and maintaining a provision to include older children still in full-time studies and financially dependent on their parents, or dependent because they are suffering from a physical or mental disability, would ensure better protection of dependent children and allow more immigrant families to remain with those who form part of the core family unit. This provision would also markedly decrease the number of overage children whose cases are currently processed through the discretionary decision-making powers of the *Immigration Act*.

**Application of spouses and children from within Canada.** The current *Immigration Act* requires that all immigrants apply outside Canada. However, frequent use has been made of a section of the *Immigration Act* that permits the processing of applications from spouses, within the country, through an exception mechanism — an application for the waiver of the visa requirement on the basis of humanitarian or compassionate considerations.

It is proposed to allow spouses and dependent children in Canada who have legal status to be eligible for immigration processing from within the country, under certain conditions. New regulations would exclude people inadmissible under criminal and security provisions of the *Immigration Act* and people without legal status or under a removal order. Incentives would be used to encourage application from abroad.

**Sponsorship duration.** The government proposes to discuss, with provincial and territorial governments, a possible reduction in the length of sponsorships for spouses and children. Currently, the duration of a sponsorship is 10 years for all categories. In the province of Quebec, the duration is three years for spouses.

**Excessive medical demand.** Generally, applicants for immigration, including members of the family class, are inadmissible to Canada if it is found that their admission would cause excessive demands on health or social services.

The current excessive demands provision as applied to spouses and dependent children is often perceived as inhumane, and the decision-making process slow.

A significant number of refusals of spouses and dependent children on excessive demands grounds are overturned either on appeal to the Immigration Appeal Division of the Immigration and Refugee Board or on humanitarian or on compassionate grounds when a Minister's permit is issued.

Further research is being undertaken to assess the impact of the removal of the excessive demands provision for spouses and dependent children of Canadian citizens and permanent residents. Discussions with provincial and territorial governments will take place.

## II. Better protecting the child in international adoptions

**Adoptions.** In Canada, adoption is a provincial responsibility. Current federal immigration policy is designed to facilitate the admission of children who have been adopted abroad or who will be adopted in Canada, and to work with the provincial and territorial governments to ensure that the rights and interests of these children are protected.

**Proposed policy directions.** Canada's immigration policies on adoption would be enhanced to better protect the interests of children; to promote the principle that an adopted child and a biological child should have the same rights; and to eliminate, to the extent possible, inequalities in treatment among various adoption cases. Given provincial jurisdiction in the area of adoptions, consultations will continue on these proposed changes as well as other initiatives.

*“We endorse a reduced sponsorship period for spouses, particularly in light of the fact that most sponsored spouses are women. For them, the sponsorship may exacerbate a relationship of subordination vis-à-vis their husbands.”*

(National Automobile, Aerospace, Transportation and General Workers Union of Canada, Ottawa, March 1998)

*“... international adoption facilitates the permanent entry into Canada of individuals whose presence contributes to the prosperity and well-being of Canadian society, promotes the integrity of the family and enriches the culture of Canadians.”*

(International Adoption Families Association, Vancouver, February 1998)

Measures under consideration, to be refined in consultation with provincial and territorial governments, include:

- eliminating the distinctions between the treatment of children adopted abroad and children to be adopted after they arrive in Canada by removing the requirement that children to be adopted in Canada be orphaned or abandoned, or have parents who are separated, and by eliminating the financial criteria for the sponsorship of children to be adopted;
- strengthening safeguards against “adoptions of convenience”;
- examining the possibility of extending family class processing to certain children under guardianship orders for countries where adoption is not permitted;
- facilitating the medical examination of children for adoption before the adoption takes place to enable the prospective parents to make informed decisions; and
- preventing sponsors who have not met their commitment to a child they have adopted from sponsoring another child for adoption unless the province of residence agrees.

The immigration process will continue to apply only in cases where the recently tabled Citizenship of Canada Act does not.

*“We welcome the broad interpretation of family class which would include same-sex couples and common-law relationships.”*

(The Canadian Labour Congress, Ottawa, March 1998)

*“The Section is pleased to see a more inclusive definition of spouse that would embrace common-law and same-sex partners.”*

(Citizenship and Immigration Law Section, Canadian Bar Association, Ottawa, March 1998)

### **III. Providing fair treatment to common-law and same-sex couples**

**Definition of spouse.** The definition of spouse is used both to determine who may be sponsored in the family class and who may accompany the principal applicant in other categories. The current definition includes only legally married spouses of the opposite sex. However, common-law and same-sex relationships have been recognized through administrative guidelines since 1994. The discretionary nature of the guidelines results in a lack of transparency and has led to complaints of inconsistent treatment.

**Proposed policy directions.** Fairness, transparency and responsiveness to new social realities are key considerations for the government. Refusing permanent residence does not simply deny a benefit to the common-law spouse or same-sex partner, but may effectively deny Canadians the right to live with their life partners and withhold from them an important factor in their social and economic self-sufficiency and integration. The recognition of common-law and same-sex relationships through regulatory changes would eliminate the recourse to discretionary administrative guidelines.

#### IV. Increasing the integrity of sponsorship undertakings

**A serious commitment.** The government believes strongly in the principle of family reunification based on the responsibility of the family itself to provide the resources for supporting its sponsored members. Compliance with sponsorship undertakings is key to achieving integrity in the family class program. Default occurs when a sponsored immigrant whose essential needs were guaranteed by the sponsor for a set period receives social assistance.

**Recent government initiatives.** In recent years, the government has taken steps to strengthen family class sponsorship provisions and reduce default by ensuring that sponsorship is respected as a serious commitment. Proposed measures complement previous initiatives.

**Proposed policy directions.** The government proposes to expand Citizenship and Immigration Canada's power to undertake collection action against defaulting sponsors and to share the proceeds with the provinces. It would remain possible to assign the debts of defaulting sponsors to the provinces so that they may undertake collection action. In keeping with Canadian values and important national policies in support of families and children, it is also proposed to prohibit sponsorship by people in default of court-ordered obligations (alimony or child support) and people convicted of crimes involving domestic violence. Enacting a provision that suspends sponsorship obligations if the sponsor or the sponsored immigrant is convicted of violence against the other person would also recognize the overwhelming evidence of danger for the victim that any contact with the convicted person represents.

*“... sponsorship criteria should be made stricter, and practical steps should be taken to recover the money that the government spends on sponsorship cases.”*

(Saint-Vincent de Paul Society of  
Montreal, March 1998)  
(Translated from the French)

*“ These recommendations dealing with victims of domestic abuse are long overdue.”*

(A member of the public,  
March 1998)



# MODERNIZING THE SELECTION SYSTEM FOR SKILLED WORKERS AND BUSINESS IMMIGRANTS

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## PROPOSED DIRECTIONS

Immigration has given Canada greater strength through the attraction of diversely talented individuals. Independent immigrants are selected by Canada for their potential to establish successfully and their ability to contribute to Canada's social and economic well-being. However, the current selection system is a product of an era when governments aimed to match immigrant skills with specific Canadian labour market shortages.

Canada's selection system for independent immigrant applicants needs to focus on flexible and transferable skills rather than the introduction of rigid pass/fail criteria.

The government proposes to add a more explicit requirement for significant business experience as well as education and language skills for entrepreneurs and investor immigrants. The origin of funds would also need to be established.

It is proposed to end some programs that do not fulfil a valid labour market need or that duplicate other programs.

## CURRENT SITUATION

**Economic and social contributions.** The assessment of successful establishment for independent immigrants is based on their economic potential. Economics, however, is only part of the story. Highly skilled immigrants make an invaluable contribution to Canadian society. As they integrate into communities, these immigrants become integral parts of all facets of Canadian society. They enrich the cultural and social fabric of Canada.

**Focus of the selection system.** Evidence suggests that skilled workers have performed well and have contributed positively to Canada. However, recent research indicates that over the past decade, immigrants have not been as successful. Data reveal that new immigrants are starting from further behind than earlier immigrants, and that they are catching up more slowly. The current system for the selection of skilled immigrants, which has, with only minor modifications, been in use since 1967, is part of the problem. The system focuses on achieving targets for precise occupational niches rather than looking for the flexible and transferable skills needed in a fluid and rapidly changing society and economy. The future of a knowledge-based economy such as Canada's is linked to the strength of its human potential. Canada's selection system for skilled workers needs a sharper focus to augment the country's human capital base.

**Point system.** Independent immigrants include skilled workers, self-employed people, and business immigrants such as entrepreneurs and investors. They are selected through a point system that gauges their ability to settle successfully in Canada on the basis of a number of objective criteria. Skilled worker applicants must currently have work experience in an occupation that has been identified as having a capacity to accept new entrants. Emphasis is placed on the applicant's intended occupation, practical training, work experience, education, ability to communicate in English or French, and personal suitability.

For entrepreneurs, investors and the self-employed, specific bonus points are added. To be considered as an investor, an applicant is required to make a minimum investment in Canada and have a minimum net worth and business experience. An entrepreneur must demonstrate the intention and ability to establish and run a business in Canada. On arrival, terms and conditions are imposed requiring that the applicant make a significant contribution to the economy, manage the business, and employ Canadians. Retention of permanent residence in Canada is contingent on meeting these conditions during the first two years of residency.

*“The revolution in the knowledge and information economy is transforming all sectors of the economy. Canada is well-positioned to be a world leader in the global knowledge-based economy of the 21st century.”*

(Speech from the Throne,  
Canada, 1997)

**Difficulties with micro-management.** The current selection system is premised on the capacity of governments to intervene significantly in the management of labour markets and to match the skills of foreign applicants to specific Canadian labour market shortages. However, in a world where technological change is the norm and industries appear and disappear almost overnight, it is no longer possible to micro-manage labour market supply and demand. For such an approach to be effective, very substantial resources would be required to continuously monitor labour markets, at a prohibitive cost to taxpayers.

**Unfounded expectations.** Misleading signals are sometimes sent through the current selection system, which focuses on a list of occupations in demand in Canada. The list suggests to applicants that the country has a shortage of people in these occupations. When immigrants are admitted to Canada partly because of the occupation they intend to pursue, they expect to find employment easily in that field. They are often disappointed, sometimes because there are limits to how a national list can accurately reflect conditions in a local labour market, and sometimes because their qualifications are not recognized. One of the structural barriers is lack of recognition of foreign credentials. Compounding this is the difficulty for immigrants to obtain information and have their qualifications assessed before they emigrate to Canada.

**Language skills.** Under the current selection system, the language skills of the principal independent applicant are assessed. Visa officers award points on a graduated scale, based on information provided in an application or on language skills demonstrated during an interview. The points system is structured to make official language skills a factor, but not an essential one. Currently, about 95 percent of the successful skilled worker applicants are assessed as having some official language skills. Bonus points accorded to entrepreneurs and investors make it generally unnecessary for them to have official language skills in order to qualify. About half of the entrepreneur immigrants and two-thirds of investor immigrants have no official language skills.

**Family business job offer.** The current family business job offer program provides additional points when a Canadian citizen or permanent resident wishes to employ a family member.

*“Zero tolerance on each core category, in our judgement, reflects an insensitivity to Canada’s needs.”*

(National Indo-Canadian Council,  
Toronto, March 1998)

## WHAT IS PROPOSED

**Skilled workers.** Canada’s system of selecting independent immigrants has served the country well. In updating the selection criteria for the next century, it is proposed to retain flexibility and ensure no one is excluded because of a failure to meet a single criterion. The focus of the new selection model would

be in line with the government's Jobs and Growth Agenda. It would be based on the longer term goal of building Canada's human capital base.

**Sharpened focus on the point system.** The selection system would be a modified and flexible point system. It would:

- shift away from the current occupation-based selection model;
- seek to choose skilled workers with sound and transferable skill sets;
- emphasize education and experience, while retaining language, age, a job offer and personal suitability as selection factors;
- emphasize flexibility, adaptability, motivation and knowledge of Canada, under personal suitability.

For those areas in the labour market that need to be protected, occupation would continue to play a role.

In addition, further research would be undertaken to determine how a new selection system might take into account the potential for the social and economic contribution of spouses.

**Eliminating an obsolete program.** It is proposed to eliminate the family business job offer program as it adds to the complexity of the system and does not fulfil a valid labour-market need.

**More effective business programs.** Key to the selection of both entrepreneurs and investors is a set of criteria that clearly distinguish people who meet the objectives of the business program — people with entrepreneurial spirit, proven risk takers seeking business opportunities in Canada. Simply requiring capital to invest, directly or indirectly, is not sufficient. The government proposes to add a more explicit requirement for “significant business experience” as well as education and language skills for entrepreneurs and investor immigrants. To strengthen program integrity, a requirement that applicants establish the origin of their funds would be added.

**Optional language testing for expedited processing.** Language would not be made a rigid pass/fail criterion as this would introduce too much rigidity into immigration selection. However, communication is a cornerstone of being able to function in the workplace, especially in a service-oriented and knowledge-based economy. Therefore, a modified point system would continue to place value on language skills. Language testing would be introduced as an option for applicants wishing to more accurately assess their chances of success for immigration before submitting an application, or to expedite the processing of an application once submitted. Applicants would still be given the option of waiting to be interviewed by a visa officer to verify language ability for points assessment if they choose not to submit the results of a language test.

*“If a prospective immigrant does not have one of the so-called needed occupations in Canada, then the excuse is easy for the Consulate Immigrant officer to dismiss the applicant ... There appears to be no opportunity to evaluate a person's personality and assess their fervent desire to contribute to Canadian life. Surely, there must be a better criterion to judge a future immigrant than only the stressed demand occupations.”*

(A member of the public,  
February 1998)

**Access to trades and professions.** Working with the provinces and professional associations is key to making progress on access to professions and trades. The objectives of this federal-provincial partnership are to provide more information to prospective immigrants as they make their decision to come to Canada, and to work toward a network of provincially mandated credential evaluation services with transparent and portable credential assessments.



# FACILITATING THE ENTRY OF HIGHLY SKILLED TEMPORARY FOREIGN WORKERS AND STUDENTS

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## PROPOSED DIRECTIONS

**B**usiness travel and the international movement of temporary workers are not new phenomena. However, the volume of travel and the pace at which innovation is occurring are new. The speed at which the modern economy moves creates an urgency regarding the entry of key personnel in short supply. Highly skilled temporary foreign workers help build Canada's knowledge base. The current system for the issuance of validations of job offers and employment authorizations is complicated and labour-intensive and has not adapted well to the global shift toward facilitating the movement of highly skilled workers.

The government proposes to base its policy on the concept of net economic benefit to Canada — facilitating the entry of highly skilled temporary workers while expecting Canadian employers to commit to efforts to hire and train Canadian workers in exchange for this facilitated entry to meet short-term needs.

The importance of foreign students in enhancing Canada's interaction with the world, in developing the cultural richness of Canadian campuses and in contributing to the social fabric and the economy, is recognized. The efficient, consistent and transparent processing of foreign students remains a priority.

## CURRENT SITUATION

**Temporary foreign worker requirements.** A temporary foreign worker is a person from another country who comes to Canada to work for a limited period of time, in a specified job with a specified employer. Aside from normal travel documents, temporary foreign workers generally require an employment authorization issued by immigration officials abroad or at a port of entry and based on a job offer that has been validated by Human Resources Development Canada.

**Employer's responsibilities.** For each individual case, the current process requires an examination of the employer's efforts to hire from within Canada, and verification that the wages and working conditions offered are sufficient to attract and retain suitably qualified Canadians. The process also requires an examination of whether or not an employer has made reasonable efforts to hire or train Canadian citizens or permanent residents.

**Case-by-case authorizations.** This case-by-case process has been criticized by employers as inefficient and as producing inconsistent decisions. The case-by-case approach no longer meets the needs of a modern economy integrated into the global marketplace.

The widespread use of information and communication technology has changed the global economy, and delays that may have been tolerable as little as a generation ago are no longer acceptable. Temporary employment authorization procedures that do not keep pace with the speed of a modern economy may result in production shifts and consequent job losses for Canadians.

The current validation process is sometimes blamed for the loss of key recruits because of competing offers from employers in other countries. Even where it is clear that speedy entry is in Canada's overall interests and that the entry of the individual will inevitably be approved, applications can be subject to lengthy delays because of the case-by-case review.

## WHAT IS PROPOSED

**Pilot projects.** The government has put in place pilot initiatives that reflect some aspects of a new approach. One example is the Software Development Workers Pilot Project, which began in May 1997. Using descriptions of urgent skill shortages in the information technology sector provided by industry representatives, the pilot project expedites the processing of temporary foreign workers with the required skills through the use of a "national validation letter" to eliminate the need for case-by-case validations. Following a positive evaluation, this program will continue on an interim basis. Another example, the Spousal Pilot Project, extends employment authorizations automatically to spouses accompanying highly skilled foreign workers entering Canada for a period of more than six months. The objective is to encourage highly skilled individuals to accept job offers from Canadian employers by providing assurance that their spouses will be authorized to accept any job offer they might receive while in Canada. Programs of a more permanent nature are under consideration.

*"PNWER strongly concurs in the need for a new approach for the entry of temporary foreign workers to Canada. This issue has been an ongoing irritant to the operations of Canadian and foreign companies, to the detriment of Canada's trade in goods and services."*

(Pacific Northwest Economic Region, Vancouver, February 1998)

*"The spouses accompanying our international staff, research fellows and graduate students are usually highly educated people with independent careers of their own ... Current prohibitions against spousal employment are counterproductive and lead to difficulties in obtaining and retaining key personnel."*

(McGill University, March 1998)



*“Our major criticism of the present process is that there is no requirement for the employer and the province to have a training plan to avoid the need to fill an occupation with workers from outside the country.”*

(Canadian Labour Congress, Ottawa, March 1998)

*“We are also asking for ... a lighter burden of proof for companies that want to hire strategic foreign workers ... where it has been established that a firm is involved in a strategic economic sector or is working on a project of strategic importance for developing technology or enhancing advanced knowledge in a specific sector ... ”*

(Montreal International, March 1998)  
(Translated from the French)

**New ways of doing business.** The dominant principle for the government will be to shift the focus of the program to better ensure that the entry of highly skilled workers creates a net economic benefit for Canada. Efficient and more streamlined decision making would make Canadian employers more competitive and help them meet their short-term needs. The government would work more closely with employers and workers to ensure that their immediate short-term skill needs are met through the facilitated entry of skilled workers, while ensuring that these employers undertake specific human resource development commitments, such as training, within a defined period of time to benefit Canadian workers.

This approach could also include specific sectoral arrangements. As with individual employers, sectors could meet their temporary foreign worker needs through expedited entry in exchange for human resource development commitments from the entire sector. Other measures would be put in place to streamline decision making and to accelerate the validation process. For example, national and regional occupation lists could be developed to help identify skills in short supply.

**Foreign students.** The importance of foreign students in enhancing Canada’s interaction with the world and the cultural richness of Canadian campuses and in contributing to the economy is recognized. The efficient, consistent and transparent processing of students is a high priority. Substantial progress has been made in the processing of student applications in recent years. In 1997, over 70 percent of student visa applications were processed in less than one month. Further measures are being explored to facilitate the entry of foreign students while safeguarding the safety and health of Canadians.



# INTRODUCING TRANSPARENT CRITERIA FOR PERMANENT RESIDENCE STATUS

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## PROPOSED DIRECTIONS

**E**xisting criteria for retaining permanent residence status are subjective. Permanent residents would benefit from a more transparent and objective approach, based on a period of physical residence in Canada.

## CURRENT SITUATION

**Establishment of status.** Current provisions for the establishment and retention of permanent residence status are vague and subjective, difficult to administer, and not well suited to preventing those who have abandoned Canada as their place of residence from “re-adopting” the rights and privileges accorded with the status. Under current law, a person ceases to be a permanent resident if he or she leaves or remains outside of Canada with the intention of abandoning the country as a place of permanent residence. If the absence is more than six months in a 12-month period, a permanent resident is “deemed” to have abandoned Canada, unless able to satisfy an immigration officer that he or she did not intend to do so. The burden of proof is on the applicant, who is required to demonstrate — and immigration officers to adjudicate — “intent,” a highly subjective exercise.

**Document integrity.** Permanent residents would benefit from a secure identification document trusted by airlines, social service providers and foreign governments. A secure document would be more convenient for permanent residents and would provide them with a more reliable proof of their status, while increasing their privacy by limiting visible information to essential identification elements only. The current “record of landing” document held by permanent residents is simply a piece of paper, highly vulnerable to fraud. It never “expires.” It is relatively simple for an individual who was once a permanent resident but has abandoned Canada to re-enter as a visitor, after many years abroad and, presenting the “record of landing” as evidence, gain access to any number of rights, privileges and services (e.g., health care). Further, this document is being used fraudulently by transiting passengers seeking irregular entry in third countries, and by inadmissible people posing as the rightful holders to enter Canada.

## WHAT IS PROPOSED

**Proposed policy directions.** The government proposes to establish the residency requirement at a level that provides flexibility to travel for family reasons or to conduct extensive business outside of Canada, while recognizing the community’s legitimate expectation that those selected for immigration will make Canada their home. It is proposed that a secure identification document for permanent residents be introduced. The wallet-sized card would be valid for an initial period of five years, which would ensure that only the minority of immigrants who did not opt for citizenship during their initial five years in Canada would be required to renew it. This approach would be more objective and would be consistent with the value Canadians place on responsibility, simplicity and transparency.

*“The courts are confused as to exactly what constitutes physical residency and the intent to reside in Canada. We urge the Commission to encourage Parliament to define residency in any new legislation being considered. This will bring certainty for all and will help reduce a possible public misconception that the system is too loose and hence our border too open, and make the entire decision making process much less arbitrary.”*

(University of Victoria, Integration and Refugee Law Research Group, March 1998)

# STRENGTHENING REFUGEE PROTECTION

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## PROPOSED DIRECTIONS

**C**anada is a caring society. Compassion is a strong element of our national character.

The government proposes to uphold Canada's humanitarian tradition of resettling from abroad refugees and people in refugee-like situations for whom no other durable solution can be found. The resettlement from abroad program would be strengthened by:

- relaxing the requirement that refugees be able to settle within a year;
- making a more concerted effort to facilitate the reunion of families;
- developing a closer relationship with non-governmental partners; and
- ensuring the immediate entry into Canada of urgent protection cases.

The fairness of Canada's inland refugee determination system is recognized around the world, but it is vulnerable to abuse. The government plans to improve the refugee determination system through a balanced series of measures that would preserve Canada's tradition of offering protection to genuine refugees while increasing integrity and effectiveness.

## CURRENT SITUATION

Refugees come to Canada in one of two ways. They arrive at our borders and seek the protection of Canada or they are selected abroad by Canada, often on the recommendation of the United Nations High Commissioner for Refugees (UNHCR).

**Overseas protection.** There are currently slightly more than 13 million refugees in the world who have been forced to flee their countries of origin. To this can be added millions more who are victims of forced displacement and who, because they remain within the borders of their country, are not refugees in the strict sense.

Internationally, the UNHCR's priorities in dealing with refugee movements have been, in descending order, voluntary repatriation, local resettlement, and third country resettlement only when the first two options are not available.

Canada resettles Convention refugees and people in refugee-like situations. In doing so, Canada works with the UNHCR, receives applications directly from refugees seeking to be resettled, and processes the applications of refugees sponsored by groups of five or more people in Canada.

**Refugee claims in Canada.** In signing the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, Canada committed to not returning (*refoulement*) people deemed to be fleeing persecution. Making this determination in Canada is the responsibility of an independent tribunal, the Immigration and Refugee Board.

**Charter rights.** The current approach to making refugee decisions in Canada results largely from a decision of the Supreme Court of Canada involving the *Canadian Charter of Rights and Freedoms*. Where a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an in-person hearing before a decision maker.

*“UNHCR would wish to note ... that the Canadian system, with its resources, expertise and humanitarian focus, is recognised internationally as a model to be emulated.”*

(United Nations High Commissioner for Refugees, March 1998)

*“Participants felt very strongly that the Women at Risk Program, established since 1988, is excellent. It is therefore recommended that the program be retained and the criteria for successful establishment be removed so that those most in need, usually women and children, are given the needed protection.”*

(Pearson-Shoyama Institute, March 1998)

## ISSUES

### Overseas

**Revised approach to the ability to resettle.** Currently, refugees from abroad are selected with the expectation that they will be able to become self-sufficient within a year of their arrival in Canada. In this decade, most refugees have needed a longer period before they could successfully resettle in Canada. In addition, the requirement makes it difficult to protect refugees who are in need of resettlement but who, like women at risk, victims of violence and torture, the elderly, people requiring medical treatment and unaccompanied minors, need considerably longer than a year to settle.

*“Family reunification is important to the general health and well-being of refugees. It is a means to healthier integration into Canadian society and a stabilizing factor in lives.”*

(Saskatoon Refugee Coalition,  
March 1998)

*“Don’t get me wrong — my parents were refugees as well, but our current system must be tightened up.”*

(Member of the public,  
February 1998)

*“Our audit revealed that over the past several years, close to 60 percent of [refugee] claimants have presented themselves to Canadian officials without a passport, personal identification or travel documents.”*

(The Processing of Refugee Claims,  
Report of the Auditor General of  
Canada, December 1997)

**Refugee family reunification.** A particular concern of refugees who have just arrived from abroad is the fate of their family members. Until they are reunited, the process of resettlement is more difficult and takes longer. The issue is what can be done to ensure promptness in immediate family reunification.

### In Canada

**Need to improve effectiveness.** A feature of the current inland refugee determination system is the many layers of decision making, each of which can consume considerable time and is subject to judicial review. The resulting delays in the determination of a claim harm those in need of protection and undermine the integrity of the system by allowing those who abuse it to remain in Canada for several years. Although the inventory of refugee claims waiting for a decision has been reduced in the past year, the number remains high. The challenge is to balance fairness with effectiveness by protecting those who need protection, while dealing efficiently with those who apply for refugee status for reasons not related to protection (e.g., economic betterment). This issue is faced by all refugee-accepting countries.

**Improperly documented claimants.** More than half of refugee claimants do not present a passport or other legitimate travel document at the time they claim status. The majority of these claimants also do not have any other identification. This lack of identification raises questions of credibility since the claimants needed travel documents to board an aircraft or enter a country neighbouring Canada. The inability to establish identity adds to the already difficult task of determining whether such people represent a threat to Canada’s security or are inadmissible for other reasons, such as criminality.

**Economic migrants.** Some economic migrants apply for refugee status because they know that this avenue allows entry and possibly a lengthy stay in Canada, during which they are permitted to work or receive social assistance if needed. The abuse of the asylum process by migrants not in need of protection undermines the credibility of Canada's refugee determination system and diverts limited resources from the original purpose, which is to protect genuine refugees through an expeditious adjudication of their claim.

**Comprehensive protection criteria.** Under the current system, Immigration and Refugee Board decision makers assess protection only under the Convention Relating to the Status of Refugees. After a negative Board decision, claimants may apply to Citizenship and Immigration Canada for an assessment of risk upon return which includes risk to life, inhumane treatment and excessive sanctions, as well as an assessment of Canada's obligations under other conventions which relate to life and security of the person such as the *United Nations Convention against Torture* (Post-determination Refugee claimants in Canada class). Claimants may also apply, at any time and as often as desired, for permanent residence on humanitarian or compassionate grounds, which include risk-related elements. In addition, where a delay has occurred between a decision on risk and the proposed removal, a person may request another risk assessment prior to removal. The many consecutive layers of decision making result in delays and inconsistencies.

**Right of Minister to intervene.** The current legislation restricts the authority of the Minister to participate in refugee hearings through a representative. This is an unnecessary limitation on the Minister's need to intervene in cases where it would be beneficial to do so by making a submission at a hearing or by questioning a claimant.

**Return to country of alleged persecution and misrepresentation.**

The *Immigration Act* provides that a person ceases to be a Convention refugee (cessation of refugee status) when certain conditions occur, including voluntarily re-availing oneself of the protection of the country of one's nationality. When an individual is believed to have misrepresented important information relating to his or her claim, the Minister of Citizenship and Immigration may, with leave of the chairperson of the Immigration and Refugee Board, make an application to vacate a refugee determination.



## WHAT IS PROPOSED

**A more responsive overseas resettlement program.** It is proposed that Canada's refugee resettlement program be made more responsive through such measures as:

- shifting the balance toward protection rather than the ability to settle successfully in selecting refugees;
- establishing procedures that will allow members of an extended refugee family to be processed together overseas and, where this is not possible, providing a mechanism for the speedy reunion of families;
- working more closely with non-governmental organizations in identifying, pre-screening and resettling refugees; and
- ensuring the immediate entry into Canada of urgent protection cases.

**Refugee determination in Canada.** Canada's refugee policy needs to balance two principles: fairness and efficiency. The Immigration and Refugee Board is part of a protection system that has earned Canada respect around the world; accordingly, the government proposes to retain it. It is essential that the best elements of Canada's refugee determination system be retained while measures are taken to ensure that genuine refugees are accorded Canada's protection, and to make the system more effective and less costly.

**Consolidated decision making.** The government proposes to centralize the consideration of grounds for protection in a single body — the Immigration and Refugee Board. Accordingly, Board decision makers would assess in a single decision the need for protection not only under the Geneva Convention, but also under other instruments to which Canada is a signatory and that relate to the life and security of the person, such as the Convention against Torture. The Board would also examine the protection elements of the current humanitarian and compassionate review. Three existing decision layers — refugee status determination, post-determination risk review, and risk-related humanitarian review — would thereby be reduced to one: a protection decision by the Immigration Refugee Board. Pre-removal risk assessment would be available in appropriate circumstances.

**A streamlined process.** It is proposed to improve the application of existing eligibility criteria through more comprehensive front-end screening of refugee claimants. There would be a prescribed time frame (30 days) for making a claim, subject to exceptions in compelling circumstances. There would also be a provision whereby failed refugee claimants who return to Canada after 90 days and submit another protection claim would not have access to a protection hearing but would be examined under pre-removal risk assessment.

*“... the better approach would be to improve the existing Board so that claims can be heard and determined in a more timely and efficient manner, while maintaining the level of procedural fairness and independent decision making that the current system ensures.”*

(Citizenship and Immigration Law Section, Canadian Bar Association, Ottawa, March 1998)

*“We also acknowledge the relevance of speeding up and streamlining the protection process, of dealing with all our international commitments in one hearing and one decision (in contrast to the current process where the Convention refugee claim is considered first, and if it is rejected, the case is re-examined in relation to our other international obligations, and then in relation to humanitarian concerns) ...”*

(Centre justice et foi, Montreal, March 1998)  
(Translated from the French)

**Manifestly unfounded claims.** It is also proposed to give priority to the processing of people who come from countries that are clearly not refugee-producing (safe countries of origin) and others whose claim to refugee status is clearly related to reasons having nothing to do with a need for protection.

**Ministerial intervention.** The government proposes that the Minister be able to intervene in any case as a matter of right at a hearing of the Immigration and Refugee Board.

**Increasing ministerial cessation and vacation applications.** In order to maintain the integrity of the protection system, cessation and vacation applications would be increased where the circumstances warrant such action. The current legislation would be amended to allow the Minister, without having to seek leave from the Immigration and Refugee Board, to select cases for vacation. The Immigration and Refugee Board would be required to consider revocation of refugee status in all cases presented by the Minister.

**Improperly documented refugees.** Measures to deal with the issue of improperly documented refugees are addressed under the broad objective of maintaining the safety of Canadian society.

**Undocumented Convention Refugee in Canada Class.** A reduction in the waiting period, from five to three years, for landing in Canada is proposed for those undocumented refugees who are unable to obtain identification documents from their country of origin because there is no central authority in that country for issuing such documents.

**Decision makers.** Consideration will be given to measures to improve the recruitment of decision makers and increase transparency in the selection process. The selection criteria and process, and the role and membership of the Minister's existing advisory committee on decision-maker selection could be established in legislation.

# MAINTAINING THE SAFETY OF CANADIAN SOCIETY

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## PROPOSED DIRECTIONS

**T**he government is committed to ensuring that Canada remains a country where people feel secure in their homes and on the streets. The current *Immigration Act* provides that access to Canadian territory be denied to people likely to engage in criminal activity.

The government proposes to:

- specify more precisely who is inadmissible to Canada;
- address the concern raised by improperly documented arrivals;
- enhance the effectiveness of the removal system; and
- better define the consequences of contravening the *Immigration Act*.

## CURRENT SITUATION

In reaffirming its commitment to an open immigration system and to the protection of refugees, the government wishes to ensure a sound immigration and refugee system that is not subject to abuse.

Canada, together with other major Western industrialized countries, has committed to developing a multidisciplinary and comprehensive strategy to address the common problem of illegal migration.

## ISSUES

**People Smuggling.** Organized crime is involved in migrant smuggling and often combines trafficking in humans with other lucrative activities such as narcotics smuggling, forced prostitution and indentured labour. Terrorist activity and sanctuary for war criminals are also facilitated by the smuggling of people. The United Nations estimates that up to four million people are smuggled across national frontiers each year and that people smuggling is a global business worth over \$9 billion per year. Illegal migration has become one of the primary issues on the international stage.

Migrant smuggling, including the trafficking of women and children for sexual exploitation, has become a global and profitable business. Profits are high in smuggling people and sanctions are relatively minor compared to other crimes.

**Improperly documented claimants.** Two objectives of the *Immigration Act* are to maintain and protect the health, safety and good order of Canadian society as well as to promote international order and justice by denying the use of Canadian territory to people who are likely to engage in criminal activity. As refugee claimants without documents have the same access to Canada's determination system as claimants with documents, there is currently no incentive to cooperate in establishing identity.

**Health.** Currently, all potential immigrants, including refugees selected overseas, in-Canada refugee claimants and certain temporary entrants, are required to undergo an immigration medical examination for public health purposes. People with active tuberculosis are denied admission until rendered non-infectious by treatment. Individuals identified as having inactive tuberculosis are placed under medical surveillance. There is a need to improve the current medical surveillance process.

*“It is not the immigration industry, but the people of Canada, who want a measured immigration policy that on the one hand welcomes new Canadians and on the other hand deals swiftly and surely with those who do not qualify for entry.”*

(A member of the public,  
February 1998)

*“The emergence of new infectious diseases and the re-emergence of new problematic forms of infectious diseases, thought to be controlled, is an increasing immigration health problem ...”*

(International Organisation for  
Migration, Geneva, March 1998)

*“While there is no doubt that there are problems in immigration enforcement, the Committee does not believe that they are as dire as ‘Not Just Numbers’ suggests.”*

(Immigration Detention and Removal, Report of the Standing Committee on Citizenship and Immigration, June 1998)

## WHAT IS PROPOSED

As the government’s commitment to a generous immigration and refugee system is reaffirmed, measures need to be taken to ensure that the programs are not abused. The measures contemplated include the following.

**Enhanced interdiction.** It is proposed to enhance interdiction through measures such as expanding the network of specially trained immigration control officers to intercept improperly documented people before they arrive in Canada.

**Improved system integrity.** The government proposes to increase the integrity of the immigration and refugee process by better defining who is not admissible to Canada; better addressing the problem of improperly documented arrivals; enhancing the capacity to remove people who do not have a right to establish themselves in Canada; and providing for additional consequences for those who contravene the Act.

**New inadmissible classes.** It is proposed to strengthen the inadmissibility provisions of the *Immigration Act* by creating new classes of people inadmissible to Canada. Admission would be denied to members of a government against which Canada has approved sanctions pursuant to a resolution of the United Nations or other multilateral body; people smugglers; and people who make false declarations on their application for permanent residence.

**Improperly documented arrivals.** It is proposed to address the problem of improperly documented arrivals through measures such as increased disembarkation checks as passengers leave an aircraft; enhancing the security features of Canadian visa and travel documents; removing current restrictions on prosecuting people who aid and abet illegal migration; and working with other countries to assist in developing a system of data collection on illegal migration. Refugee claimants who refuse to cooperate in establishing their identity could be detained because of security concerns. Regular detention reviews would be conducted and obligations would be imposed on the government and the claimant to make efforts to establish identity. A cost-benefit analysis of the use of scanning technology to enhance the ability to identify travellers by recording the documents they present to authorities, en route to Canada, will be conducted.

**Removals.** Removal capacity would be enhanced through measures such as:

- reinforcing the fundamental premise in the *Immigration Act* that removal orders must be carried out as soon as practicable by describing a more limited set of circumstances under which the execution of an effective removal order may be stayed;
- transferring the power to issue a removal order from Immigration and Refugee Board adjudicators to senior immigration officers in uncontested cases and in straightforward criminal cases (i.e., convictions by Canadian courts) where no weighing of evidence is involved; and
- authorizing Immigration and Refugee Board adjudicators to continue hearings in the absence of the person concerned where proper notice of the hearing has been given.

**Additional sanctions against people who contravene the Act.** The *Immigration Act* contains specific provisions whereby people convicted of contravening the Act can be fined or imprisoned. The capacity to prosecute offenders acts as a deterrent to those who would abuse Canada's immigration laws. The following measures would enhance Canada's ability to take action against those who would aid or abet persons in contravening the Act:

- provision for the seizure and forfeiture of the assets of people convicted of people smuggling;
- stiffer penalties for inadmissible people who repeatedly return to Canada without authorization;
- a new offence for people who alter or counterfeit any immigration document;
- a new offence for representatives who assist individuals in obtaining admission, or other immigration status, through fraud or misrepresentation, increasing the maximum term of imprisonment and the maximum fine; and
- increasing the penalty for people who commit fraud or misrepresentation.

**Improved information on security issues.** The authority to exchange information with other countries on criminality and security issues would be enhanced through the negotiation of agreements with other states to permit information sharing. Provision would be made to enable access to the computer reservation systems of transportation companies to facilitate the screening of passengers prior to their arrival in Canada. These measures are essential to control as well as to facilitate entry into Canada.

**Transportation companies.** The current *Immigration Act* states that transportation companies must provide detention for people ordered removed. Transportation companies believe that they are not well equipped to undertake this function. They are also unable to charge any costs to the person being removed. The government would consider the option of providing detention facilities in return for payment from transportation companies. The government would also propose to permit the recovery of transportation costs by transportation companies from inadmissible people being removed.

**Health.** Canada, together with the United Kingdom, the United States and Australia, is engaged in a process to determine which medical screening procedures are required to protect public health. Consultations with federal and provincial health officials are under way to improve the medical surveillance process, including tracking and enforcement.





# IMPROVING THE EFFECTIVENESS OF THE IMMIGRATION APPEAL SYSTEM

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## PROPOSED DIRECTIONS

**T**he government is committed to an independent appeal system that provides the highest standards of fairness. The proposed reforms to the immigration appeal system would strengthen program integrity and reduce costs without diminishing fairness or legal safeguards. Opportunities for permanent residents convicted of serious crimes to delay their removal from Canada would be reduced.

## CURRENT SITUATION

**Legal requirements.** Under Canadian law, all administrative decisions may be reviewed by the Federal Court to ensure that they comply with the relevant statute and procedural fairness requirements.

**History of appeal mechanisms.** Canadian immigration law has long provided for appeals against removal orders. Appeals were made directly to the Minister responsible for immigration until 1956, at which time an administrative agency, still subordinate to the Minister, was established. A combination of factors, including dissatisfaction with an appeal process that lacked independence, led to the creation, in 1967, of the Immigration Appeal Board. The Board was also given powers to hear appeals by Canadian citizens and permanent residents for the refusal of an immigration application by a sponsored dependant. Few changes to the jurisdiction of the Board, now known as the Immigration Appeal Division of the Immigration and Refugee Board, have been made since 1973.

**Grounds for appeal.** An appeal to the Immigration Appeal Division may be made on a question of law or fact, or mixed law and fact. The Appeal Division's statutory authority also enables it, in most instances, to act on appeals beyond their legal and technical merits. The Appeal Division has the power to allow or dismiss the appeal of a removal order, or to stay a removal order, on broad discretionary grounds defined in the *Immigration Act* as "all the circumstances of the case." Where the Appeal Division stays a removal order issued on criminal grounds, and the person subsequently commits and is convicted of a new offence, an application must be made to the Appeal Division to lift the stay. With regard to family class refusals, the sponsor may in most cases appeal to the Appeal Division on the basis that there exist "compassionate or humanitarian considerations that warrant the granting of special relief."

*"The Appeal Division of the Immigration and Refugee Board currently provides the appropriate process and considerations and we support the continued role of that independent tribunal which performs a vital function to both Canadian society and to the permanent residents facing removal from Canada."*

(Citizenship and Immigration Advisory Committee, British Columbia and the Yukon, February 1998)

## ISSUES

**Delays.** While Canada's appeal system supports the family reunification objective of the Act and enhances the fairness of procedures, it can at times conflict with other important objectives such as program integrity, cost effectiveness and public safety. The current process of administrative appeals is lengthy and complex. Delays can impair the integrity of the system. Some 5,500 appeals were pending as of March 1998. Delays are a particular concern for removal cases. Some individuals who have been ordered deported for serious crimes may have their removal stayed as a result of their appeal, sometimes to commit further crimes.

**Multiple decision layers.** The current removal system provides up to five decision layers — consideration by a Citizenship and Immigration manager whether to refer a violation of the Act to a formal inquiry; the issuance of a deportation order by an Immigration and Refugee Board adjudicator if the person is found to have violated the Act; an appeal to the Immigration Appeal Division of the Immigration and Refugee Board; judicial review through the

Federal Court if leave to appeal is granted; and, potentially, an application to remain in Canada on humanitarian or compassionate grounds.

**Danger to the public.** In 1995, the government responded to public concerns regarding the integrity of the criminal deportation system by eliminating the right of appeal to the Immigration Appeal Division in cases where the Minister of Citizenship and Immigration determines a person to be a “danger to the public.” While the provision has been generally effective, there have been problems with the process, which is slow and resource-intensive and has led to much litigation.

## WHAT IS PROPOSED

**Retention of the Immigration Appeal Division.** It is proposed to retain the Immigration Appeal Division. An independent appeal process provides a high standard of fairness, and there is an inherent advantage in terms of consistency and accountability in having a specialized decision-making body when foreign statutes and customs are involved. Proposed reforms to the immigration appeal system would strengthen program integrity and reduce costs, without diminishing either fairness or legal safeguards.

**Removal of serious criminals from Canada.** Integrity would be enhanced and Canada’s removals system would be made more effective through the elimination of one layer of review, an appeal to the Immigration Appeal Division, for serious criminals (described in objective terms in the legislation and defined to include people convicted of serious crimes, war criminals and people who have committed crimes against humanity, terrorists, people who are a danger to national security and members of criminal organizations). Judicial review by the Federal Court would remain available, thereby meeting legal requirements. There is a strong and legitimate public expectation that when a person other than a citizen commits a serious crime, that person will be removed from Canada. Both the public interest and the interests of permanent residents would be better served by a deportation system for criminals that focuses on transparent, objective factors, such as the nature of the offence, rather than more subjective factors, such as the likelihood of future dangerous behaviour.

**Removal of people who commit criminal offences while on a stay of removal.** There should also be clear consequences for less serious criminals who have been given a “second chance” through a stay of removal, but who reoffend. The stay of a removal order would be cancelled without further reference to the Appeal Division or to an adjudicator where the order has been issued for a person convicted of a criminal offence and the person is subsequently convicted of a new offence that constitutes grounds for the removal.

**Judicial review of visa office decisions.** There is currently no requirement to seek leave of the Federal Court to appeal decisions made by visa officers on applications for visas. This has created the anomalous situation where a failed refugee claimant in Canada requires leave to apply for judicial review, but a refused visa applicant abroad, potentially with no connection to Canada and with the right to appeal to the Appeal Division if refused a family class visa, does not. Consistency of treatment, and protection from unnecessary litigation, are important. The government proposes to introduce a requirement for leave to appeal visa decisions in the Federal Court.

**Preserving a balance.** Given the importance of family reunification and the fact that family class refusals are made by visa officers through a purely administrative process, no fundamental change is proposed for this class. However, as compliance with sponsorship undertakings is the key to achieving integrity in the family class program, it is proposed to no longer provide an appeal to the Immigration Appeal Division arising from a refusal on financial grounds. Sponsors of spouses and children, who are exempt from the financial requirements, would not be adversely affected. Sponsors of other family class applicants — predominantly parents and grandparents — would have the option of reapplying at a later date when their financial circumstances have improved.

A new measure would be introduced to ensure that sponsors could receive a decision on their ability to meet financial requirements without having to incur the full expense of an application for immigration.

*“Sponsors of first tier family class members whose applications are refused must have access to a review procedure that considers the humanitarian and compassionate factors involved and not just the facts and the law. The decision-maker must have equitable and discretionary power to alleviate hardship and an unjust result. The decision-maker must be independent. The process must be open and the decision-maker accountable.”*

(Canadian Polish Congress,  
Winnipeg, March 1998)

# REFOCUSING DISCRETIONARY POWERS

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## PROPOSED DIRECTIONS

In a field as fundamentally human as immigration, discretion enables the infinite diversity of situations that arise to be resolved humanely. Discretion takes the rough edges off the legislation. However, the current system is too complex, lacks transparency and leads to inconsistent decisions. The government proposes to regularize to the extent practicable the situations that are currently dealt with through discretionary powers, and to introduce a range of measures to manage the residual cases more consistently and with greater transparency.

## CURRENT SITUATION

The *Immigration Act* includes broad descriptions of who is allowed to enter, and who is prohibited from entering, Canada. When individual circumstances are compelling and the health and safety of Canadians and national security will not be prejudiced, the law allows exemptions from general provisions through the mechanisms outlined below. In most cases, the Minister has delegated the authority to exercise discretionary powers to departmental officials.

**Minister's permits.** Minister's permits allow inadmissible people to come into or remain in Canada. They are issued for compelling reasons and only if the permit holder's presence in Canada poses minimal risk to Canadians. Delegated officials follow guidelines to assess need and risk. The issuance of permits is monitored and their annual numbers are reported to Parliament.

**Landing by Order-in-Council.** The Governor in Council may land any person who has been continuously in Canada for at least five years under the authority of a Minister's permit, independent of any reason for inadmissibility.

**Humanitarian or compassionate considerations.** Officials delegated by the Minister may, strictly for humanitarian or compassionate considerations, waive the requirement for an applicant to obtain a visa, hold a passport or satisfy the point system requirements.

**Rehabilitation and pardons.** People barred from Canada because of a conviction for a criminal offence may apply for approval of rehabilitation five years after the termination of the sentence imposed for the offence. Only the Minister may grant rehabilitation when a serious offence (or more than two less serious offences) has been committed. People convicted in Canada apply for pardons from the National Parole Board to remove the bar to their admission.

**Discretionary temporary entry.** Senior immigration officers at ports of entry may exempt people from certain bars to entering Canada (ranging from less serious criminal infractions to the absence of a visa for a genuine visitor). People exempted must be seeking entry to Canada for not more than 30 days. Terms and conditions may be imposed.

**Positive or negative discretion for independent immigrants.** If a visa officer thinks that the total points awarded to an applicant under the selection criteria grid are not a true measure of settlement potential, the officer may, with the written approval of a senior immigration officer, exercise a limited amount of discretion to approve or refuse such an application.

*“I believe that the public accepts that in exceptional cases, executive intervention should be permissible where the result is to confer right or privilege on an individual rather than removal thereof. To limit these powers to situations of national interest or dependency would unduly trammel ministerial discretion and could give rise to situations where an injustice could not be remedied.”*

(Member of the public,  
February 1998)

*“The codification of immigration principles must be based on a series of compromises, but how much simplicity will be sacrificed for comprehensiveness, how much flexibility for firmness and ultimately how much fairness for consistency? The human interpretive link may well be seen as a weak link; however, it also provides a vital flexibility. It is suggested that codification should not be seen as the fundamental element that will cure all of the ills of the immigration system.”*

(University of Victoria Immigration and Refugee Law Research Group, March 1998)

## ISSUES

**Rules and flexibility.** To be transparent, rules are required; but no rules can take account of all individual circumstances. A model under which applications from clients in situations not covered by the regulations would be refused would create an inflexible system. The loss of flexibility would reduce the ability to respond to unanticipated situations warranting the exercise of discretion.

## WHAT IS PROPOSED

**Increased transparency and effectiveness.** It is proposed to introduce a range of measures to redefine the use of discretionary powers, increase the transparency and effectiveness of the system, and better protect Canadian society against abuse and crime without constraining flexibility or increasing complexity. One approach will be to define, in regulations, situations where the approval of applications on humanitarian or compassionate grounds reaches a certain magnitude over the years and becomes the norm rather than the exception. An obvious instance covered earlier is the spouses of Canadian citizens and permanent residents, who represent 11,000 out of 15,000 people landed in Canada in 1997 on humanitarian or compassionate grounds.

**System integrity.** Concern for system integrity is an important element of effective management of the immigration and refugee programs. It is proposed that access to the humanitarian or compassionate decision-making process by unsuccessful refugee claimants will be limited to the period immediately following a negative decision by the Immigration and Refugee Board. In addition, the humanitarian or compassionate process will not include a review of the protection issues already decided by the Board. People who have had a fair but unsuccessful hearing of their claims to remain in Canada will not therefore be able to unduly delay their departure.

**Removal of serious criminals from Canada.** In line with the need to make Canada’s removal system more effective by reducing the decision layers for serious criminals, it is proposed to deny access to humanitarian or compassionate applications to the following groups of people:

- war criminals and people who have committed crimes against humanity;
- people who are a danger to national security;
- members of criminal organizations;
- members of governments who engage in systematic or gross violations of human rights; and
- people convicted of serious crimes.

**Managing residual cases more consistently.** Other measures aimed at managing residual cases more consistently and with greater transparency, without constraining flexibility or increasing complexity, would include:

- reserving the Minister's permit for cases where the decision is actually made personally by the Minister, and using other mechanisms where discretionary authority is delegated;
- transferring from the Governor in Council to the Minister the authority to grant landing to a person who has held a Minister's permit for five years; and
- extending the authority to grant discretionary entry to include a wider range of people who are inadmissible and to authorize periods of stay longer than 30 days (the requirement that the risk to Canadian society be minimal would continue to apply).

Quality assurance and monitoring of the use of discretionary powers would be enhanced.



# CONCLUSION



Canada is a country that has benefited from immigration and that continues to view immigration as a positive force for growth and openness to the world.

This document has signalled the broad directions the government proposes to take to modernize Canada's immigration and refugee policy and legislative base. Policies and legislation would build on the solid foundation provided by the current legislation, while at the same time responding to the challenges and opportunities of a changing world. They would emphasize supporting family reunification; upholding Canada's humanitarian tradition; balancing rights and responsibilities; enriching our social fabric; promoting public safety; fairness in decision making; and accountability and transparency.

Before formulating its broad directions for a new legislative framework, the government wanted to hear the views of Canadians from all walks of life. The consultations provided direction on which problems needed to be addressed as well as a number of realistic options on how best to do so. One of the key themes to emerge from the public consultations was a desire for further consultations as the government develops its legislative reform package. This document is in part a response to that call.

A great deal of work remains to be done. Proposals are not finalized. Much detailed analysis is required. By working together, differences can be bridged and solutions found. The focus of consultations will now shift to examining how these broad directions can best be implemented.

The revision of immigration and refugee policies and legislation represents both a great challenge and a unique opportunity to take full advantage of a changing global environment and to shape the future of our country.

Comments received prior to March 31, 1999 will be considered as new legislation is developed. Comments may be forwarded to:

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