September/October 2013 Immigration Law The Proclamation of 1763

LawNow

relating law to life in Canada

Laws for Your New Land

Table of Contents

Featured Articles: Laws for Your New Land

Newcomers to Canada have lots of challenges to face and learning about our laws is one of them.

Categories for Immigration to Canada

Peter Bowal and Karen Lynn Perry

There are different ways that immigrants can come to Canada, ranging from humanitarian concerns to entrepreneurship.

Permanent Residents and Residency Obligations

Alex Ning

Once they arrive in Canada for landing as permanent residents, newcomers must meet certain obligations.

Who is Family? A Look at Canadian and U.S. Immigration Law on the Definition of Qualifying Relatives

Douglas Halpert and Andrea Baldwin

Who counts as "family" for immigration to Canada, and who counts as "family" for immigration to the U.S.? The answers are different.

Tax Issues for New Canadians

Hugh Neilson

Some tax issues are unique to new Canadians.

The Calgary Legal Guidance Immigration Program

Keri Schroeder

In Calgary, compassionate and expert help is available to assist low-income immigrants and refugees facing immigration difficulties.

Special Report: The *Royal Proclamation* of 1763

***The Royal Proclamation* of 1763: Britain's Approach to Governing in the New World**

Ken Munro

Britain faced huge challenges after the Seven Years' War, when it gained control of lands stretching from Quebec to Florida. The *Royal Proclamation* was its first tentative step.

The *Royal Proclamation* and its Approach to Competing Cultures

Brian Lannan

The *Royal Proclamation* of 1763 was a first, mostly unsuccessful, attempt to deal with French Canada.

Departments

Immigrate or Emigrate: A Life-Long Journey

Ask a Law Librarian

Alberta Law Libraries

Alberta Law Libraries: An Overview

Columns

Human Rights Law

Random Alcohol and Drug Testing as a Complex Human Rights Issue

Linda McKay-Panos

Random alcohol and drug testing raises complex human rights issues.

Famous Cases Revisited

Whatever happened to... *Crocker v. Sundance* ?

Peter Bowal and Daniel Lalonde

Online Law

Working Abroad

Margo Till-Rogers

If you would like to travel and work abroad, here is some information to get you started

Criminal Law

Bill C-10: The Government's Tough Stance Against Criminal Record Holders

Pardon Services Canada

The federal Government takes a tough stance against criminal record holders.

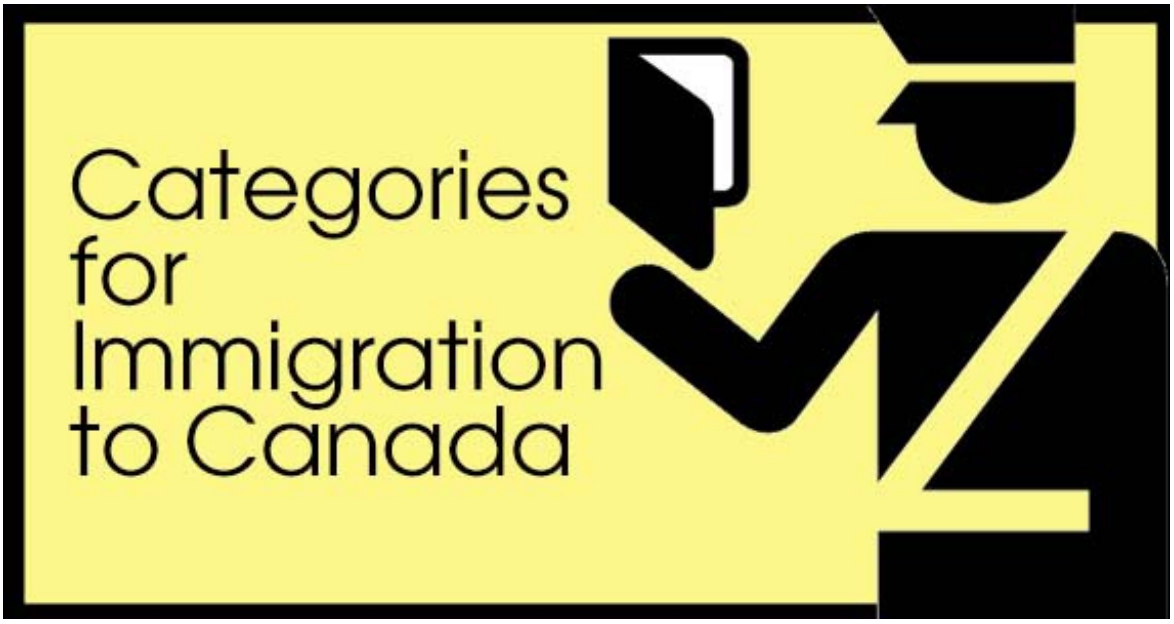
Landlord and Tenant Law

Volunteerism Fuels Class Action at the Landlord Tenant Board

Eric C. Girard

From an ACORN, good things can grow!
- See more at: http://www.lawnow.org/in-this-issue/#sthash.8hF14hxA.dpuf

Categories for Immigration to Canada



> *Since 1978, Canada has allowed Canadian citizens or permanent residents to sponsor their relatives to immigrate to Canada. Family reunification was an important objective of the former Immigration Act and remains so . . . Of the over 2 million permanent residents admitted to this country between 1997 and 2007, 615,000 (or 27%) are members of the family class.*
>
> *- Canada v. Mavi, per Binnie J. at para 1*

Introduction

Canadian immigration legislation dates from 1869, recognizing the important role that immigration has played in the foundation of this country. Canada's immigration law and policy did not always welcome all people. Some countries' nationals were barred and others faced selective levies, such as under the *Chinese Head Tax and Exclusion Act* of 1885. Today, Canadian immigration continues to be selective, not on ethnic grounds, but on other objectives such as humanitarianism, economic contribution, or family reunification.

This article will briefly describe these three categories of immigration, which is primarily a federal responsibility. The website of Citizenship and Immigration Canada is an excellent source of more complete and detailed information about immigration to Canada.

Humanitarian Immigration

Some people have a legitimate fear of persecution in their homeland. They need to flee to survive or to escape seriously oppressive discrimination. Examples include political dissidents, those who have fled war at home, or persecuted members of minority religious or ethnic populations. International conventions cover humanitarian sanctuary for refugees and Canada, like most western industrial nations, accepts and protects thousands of people each year in this way.

Many refugees apply for this status after they have reached Canada. Some 25,000 persons made asylum claims from within Canada in 2011. Those who have been convicted of serious criminal offences, who cannot demonstrate a genuine fear of persecution if returned, who have been refused asylum already or cannot pass a security check will not be admitted.

The federal government works with the United Nations High Commissioner for Refugees (UNHCR), other referral organizations and private sponsors to locate refugees for resettlement in Canada.

Refugees may also be accepted from outside Canada because many genuine refugees will not be able to get to Canada. The federal government works with the United Nations High Commissioner for Refugees (UNHCR), other referral organizations and private sponsors to locate refugees for resettlement in Canada. In addition to a generous resettlement program, the government also works with other countries to prevent the development of situations creating refugees. Overall, Canada will accept about 14, 500 refugees this year.

Individual Canadians and groups can also sponsor qualified refugees. Sponsors provide financial and social support for one year usually, but the sponsorship period can be extended to three years.

Economic Contribution Immigration

In what used to be referred to as the “independent immigrant” category, Canada now seeks immigrants with skills and experience that are most needed in the workforce.
In what used to be referred to as the “independent immigrant” category, Canada now seeks immigrants with skills and experience that are most needed in the workforce. Since May 2013 there are streams for Federal Skilled Workers and Trades, where the applicant must have at least one year of current work experience in an eligible occupation or trade, or a valid job offer. There is a cap of 8,000 for this category of worker and they are assessed on a points system over six selection factors as follows:

A score of at least 67 points is required to be accepted under this category. Education, language ability and work experience are verified, medical exams are administered and the immigrants must have enough money to support themselves and dependents in Canada.

Selection Factor	Maximum Points
English or French ability	28
Education	25
Experience	15
Age (younger is better)	12
Job Arranged in Canada	10
Adaptability	10
Total Points Possible	*100*

Live-in caregivers are given special status in Canada. These individuals are qualified to care for children, elderly or disabled persons in private homes, where they also live. After a few years, a caregiver may apply for full permanent immigrant status and may bring family to Canada.

The “Canadian Experience Class” is designed to attract immigrants who have already lived and worked in Canada for at least one year and are otherwise admissible under language, health and security screening. Temporary foreign workers or foreign students with skilled work experience and are already living in Canada can take advantage of this program.

The final class in the independent economic category is the business immigrant class which seeks to attract investors and business people to Canada who will contribute to job creation and economic development. Two categories of immigrants under this program are so popular that the immigration department has stopped taking new applications for both until the backlog has cleared. These are:

- the Immigrant Investor class of experienced business people with at least $1.6 million in net worth and

who will make a minimum $800,000 business investment; and

- the federal Entrepreneur immigrant class.

A Work Permit “Bridging” System was very recently implemented. Work permits remain valid for 12 months to allow foreign workers to keep their jobs while they await a decision on their permanent residence status. A new, unique “Start-Up Visa” program matches foreign entrepreneurs with private sector players experienced with start-ups. “Self-employed persons” is the last class under the economic contribution category for people who have experience in cultural activities, athletics or farm management.

A Work Permit “Bridging” System was very recently implemented. Work permits remain valid for 12 months to allow foreign workers to keep their jobs while they await a decision on their permanent residence status.

Business immigrants may be nominated by the province in which they plan to settle, which will also facilitate an application. Quebec is largely in control of its own immigration and does not participate in all of these federal immigration classes.

Family Reunification Immigration

Since 1978, Canadian immigration legislation has united families through the Family Sponsorship Class. Sponsors must be over 18, with a good record and must undertake to provide the basic living requirements for those they are sponsoring. They must have a minimum annual net income of $22,229 per year (slightly less in Quebec). The purpose of this program is to reunify families without passing on the cost to other Canadians. If a sponsored relative takes assistance from a federal or provincial government during their sponsorship period, the undertaking renders the sponsor accountable for these benefits. The sponsor is legally obligated to reimburse the government for any social assistance received during sponsorship.

Since 1978, Canadian immigration legislation has united families through the Family Sponsorship Class. Sponsors must be over 18, with a good record and must undertake to provide the basic living requirements to those they are sponsoring.

In the 2011 case of *Canada v. Mavi*, (2011) SCC 30, [2011] 2 SCR 504, government demands for payment on eight undertakings for sponsored family members were challenged in the Supreme Court of Canada. These eight sponsored immigrants accepted social assistance and government support, costs that once incurred, should have been covered by their sponsors. The eight sponsors denied liability for these costs. They said the phrase “may by recovered” in section 145.2 of the legislation gave the Crown the discretion to waive their debts. The Supreme Court unanimously agreed. It ordered the government to assess each case on its own merits as to whether the undertaking ought to be honoured and how it should be enforced.

Marriage fraud occurs when people in other countries marry Canadians for immigration purposes and not for love. Soon after they come to Canada, they claim citizenship and abandon their spouses. As of October 2012, the immigration department introduced new regulations in an attempt to deter individuals from using marriage fraud as a convenient way to immigrate to Canada. Spouses without children must now be sponsored for a period of three years, and must live together for two years after landing. If they do not remain in their marriage for two years, the permanent resident status can be revoked. Dependent children must be supported for 10 years or until they reach age 25.

While spouses and dependents can be sponsored to immigrate to Canada, the Parents and Grandparents Program is currently on hold. The department seeks to lower wait times and deal with 50,000 of these applications from the accumulated backlog.

While spouses and dependents can be sponsored to immigrate to Canada, the Parents and Grandparents Program is currently on hold. The department seeks to lower wait times and deal with 50,000 of these applications from the accumulated backlog. To ensure no additional burden is placed on Canadian taxpayers for medical and social assistance of parents and grandparents, new qualifying criteria increase minimum income requirements by 30 percent, which must be maintained for at least three years. Policy-makers are also looking to extend the sponsorship period from its current 10 years to 20 years but the *Mavi* decision will likely reduce the impact and efficacy of these undertakings.

Canada continues to re-write its immigration rules to make them more fair, humanitarian and responsive to the changing needs of Canadian society and to streamline its immigration processes.

Permanent Residents and Residency Obligation

People from all over the world make applications to come to the promised land of Canada.

They may come via many categories of immigration, including Family Class, Skilled Worker Class, Entrepreneur Class, Investor Class, Self-Employed Class, Canadian Experience Class, or Refugee Class. Once they arrive in Canada for landing as a Permanent Resident, Section 28 of the *Immigration and Refugee Protection Act* SC 2002 Chapter 27 (*IRPA*) applies. The Permanent Resident (PR) is required to maintain his or her Residency Obligation as prescribed under Section 28, as follows.

28. (1) A permanent resident must comply with a residency obligation with respect to every 5-year period.

(2)The following provisions govern the residency obligation under subsection (1):

(a) a permanent resident complies with the residency obligation with respect to a 5-year period if, on each of a total of at least 730 days in that 5-year period, he or she is

(i) physically present in Canada,

(ii) outside Canada accompanying a Canadian citizen who is his or her spouse or common-law partner or, in the case of a child, his or her parent,

(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province.

The Five-Year period is a moving window …

The “Five-Year Period” is a moving window; that is to say, at any date of examination by an officer (inland immigration officer, border service officer at a Port of Entry, or overseas visa officer), the PR must satisfy the examining officer that he or she has remained in Canada physically for at least 730 days (two years) cumulatively during the immediate five years.

In the event the PR has been landed in Canada for less than five years, the days in Canada from the time of his or her landing to the date of examination—plus the remaining days in the "Five-Year Period"—must total at least 730. Otherwise, the PR is in breach of his Residency Obligation and runs the risk of losing PR status.

There are exceptions to the 730 days in Canada requirement as set out in IRPA Section 28 (2)(ii) and (iii). The days spent outside of Canada are counted as In-Canada days if:

- the PR is out of Canada accompanying a Canadian citizen spouse;
- out of Canada while employed on a full-time basis by a Canadian business; or
- employed by the federal or province governments posted outside of Canada.

Affluent Asian families longing for the good living conditions of Canada frequently found themselves facing the dilemma of giving up lucrative established financial opportunities in their home country to enjoy good non-monetary lives of Canada. They arranged their family affairs to allow the spouse and children to reside and study in Canada, while the principal income-earning spouse commuted back and forth between Canada and the home country, to maintain their financial earnings.

Some went to the trouble of setting up a paper business in Canada so they could claim to be employed by a Canadian business in compliance with Section 28(2)(iii). That is usually met with suspicion by the examining officer—*IRPA* Section 61(2) states that a Canadian business does not include a business that serves primarily to allow a permanent resident to comply with his or her resident obligation while outside of Canada.

Another common misconception among PRs is that once their PR Card expires, they are no longer a permanent resident of Canada.

A common misconception of most PRs is that their PR status is safe until the expiry date of the Permanent Resident Card (PR Card) and that they will have an officer's examination during the five-year currency of their PR Card. As stated above, the "Five-Year Period" under examination is calculated from the date of examination to the immediate five years preceding the date of examination.

For the five-year period of examination, the examining officer would not count any days the person spent outside Canada. For example, a PR remained in Canada after landing for two full years, but left Canada after that and has not returned to Canada since. When examined by an officer at the end of year six, all of the PR's first year of 365 days in Canada will not be counted; he or she will be in breach of IRPA Section 28.

Another common misconception among PRs is that once their PR Card expires, they are no longer a permanent resident of Canada. We should bear in mind that the PR Card is simply an administrative tool to identify the PR's status as such and to control his or her entry into Canada through a "Commercial Transporter"—airlines, bus lines, and so on; the fact that the PR Card has expired does not remove his or her status as a permanent resident.

The PR will lose PR status only when:

- a Section 44 report is issued as a result of an examination by an officer;
- a Minister's Delegate has confirmed the PR to be a person described under Section 28; and
- the Delegate has issued the PR a Departure Order requiring him or her to leave Canada within a specified period, usually 30 days.

If a Departure Order is issued, the PR will have a right of appeal to the Immigration Appeal Division of the Immigration and Refuge Board (IAD)

Here is an analogy: A Canadian citizen's passport has expired but the person is still a Canadian citizen and has not lost citizenship just because his or her passport expired.
If a Departure Order is issued, the PR will have a right of appeal to the Immigration Appeal Division of the Immigration and Refugee Board (IAD) within 30 days (60 days if the negative determination is made when the PR is outside of Canada). The IAD Appeal can be based **on law** or **on equitable relief**, commonly known as Humanitarian and Compassionate factors (H & C) or a mixture of law and H & C.

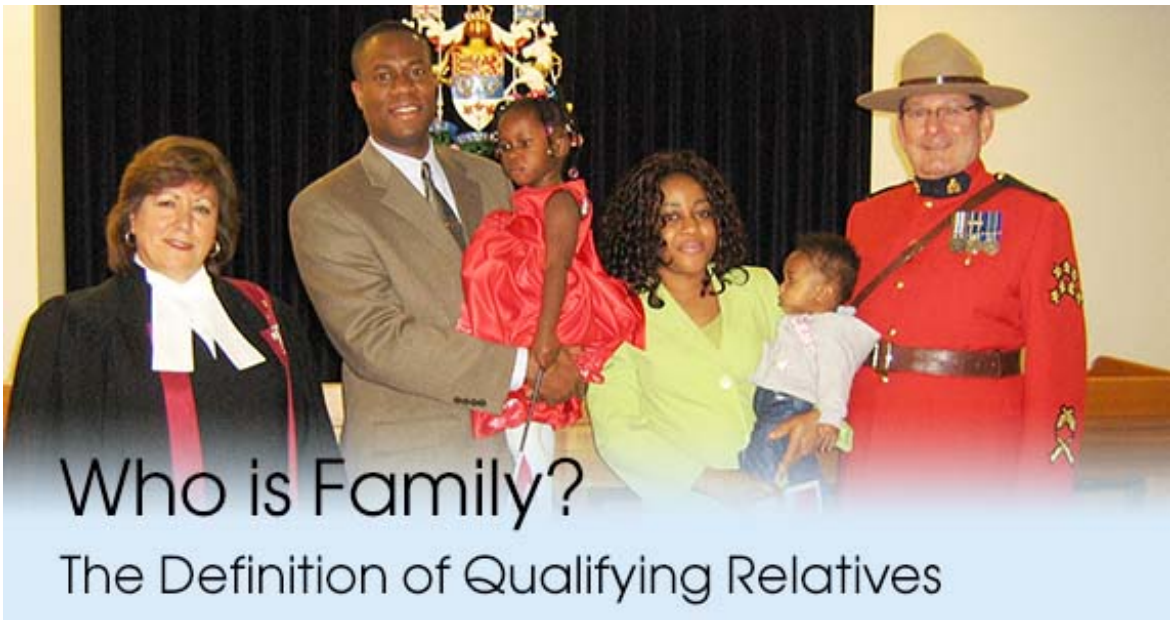
- The appeal is based **on law** if it is alleged that the examining officer made a mistake in the calculation of days or did not credit the qualifying days out of Canada as set out in Section 28(2)(ii) or (iii)
- In an appeal based on **H & C**, the IAD has jurisdiction to consider all the factors, such as the following:

1. the nature, extent, and degree of noncompliance with the residency obligation;
2. the reasons for the failure to comply;
3. the length of time an appellant lived in Canada and the degree to which the appellant is established here;
4. the continuing connections the appellant has to Canada, including connections to family members here;
5. the degree of establishment of the appellant outside of Canada;
6. the appellant's reasons for leaving Canada, and any or all attempts made to return to Canada since;
7. whether the appellant sought to return to Canada at the first reasonable and available opportunity;
8. hardship and dislocation to family members in Canada if the appellant ultimately ceases to be a permanent resident of Canada as a result of his or her noncompliance;
9. hardship to the appellant if he or she ultimately ceases to be a permanent resident as a result of his or her noncompliance;
10. "Best Interests of the Child"; and
11. *IRPA* Section 3 "the Objectives of this Act with respect to immigration are" in 3(d) "to see that families are reunited in Canada".

The list is not exhaustive; it is subject only to the skills and ingenuity of a good advocate at the Appeal Hearing.

This article was originally published in the Fall 2012 issue of The Scrivener, and is reprinted with permission.

Who is Family? A Look at Canadian and U.S. Immigration Law on the Definition of Qualifying Relatives



In 1979, the American disco group, Sister Sledge, sang, "We Are Family. I got all my sisters with me." By contrast, under both Canadian and U.S. immigration law, determining who is a family member that can achieve an immigration status based upon a family relationship can prove challenging. The immigration law in both countries has evolved significantly in this respect, and also been the subject of shifting interpretations by the relevant federal immigration agencies. This article highlights some of the major factors with particular focus on Canadian family immigration law.

Who counts as "family" for immigration to Canada?

Family reunification is one of the main objectives of Canadian immigration policy. This foundational principle: "to see that families are reunited in Canada", is enshrined in law as one of the stated purposes of Canada's *Immigration and Refugee Protection Act (IRPA).* Nevertheless, the list of relatives who are included as members of the "family class" for immigration to Canada has fluctuated with societal norms and government economic policy.

Nowadays Canadian citizens and permanent residents (PRs) can sponsor the immigration of their spouse (husband or wife), common-law partner, conjugal partner, dependent children and parents or grandparents to Canada. This has not always been the case. When *IRPA* became law on June 28, 2002, the family class was formally expanded to include common-law and conjugal partners, including partners of the same sex. In the decade prior, Canada processed applications from same-sex and common-law partners of Canadians and PRs as economic, rather than family, class immigrants on humanitarian and compassionate grounds.

A common-law relationship is recognized by Canadian law once a couple has cohabited in a marriage-like relationship for at least one year. The conjugal partner immigration category was created in recognition that the mandatory cohabitation requirement is impossible in some situations, especially for same-sex couples or for couples of different nationalities, and allows sponsors to support the immigration of a partner living outside of Canada with whom the sponsor has been in a serious committed relationship for at least a year. Following the introduction of *IRPA* in 2002 Canada became a nation of choice for many bi-national same-sex couples.

Family class immigration applications from spouses, common-law or conjugal partners and dependent children are given the highest priority, ahead of parents and grandparents. These priorities are controlled by quotas, targets, and more recently by temporary pauses on the acceptance of new applications in certain categories. In the past, an unlimited number of sponsorship applications were accepted for parents and grandparents such that the backlog for this category grew to over 160,000 applications (and processing wait times of eight years). To deal with the backlog (and concerns that many applicants might not live to see their application processed), Citizenship and Immigration Canada (CIC) temporarily stopped accepting new sponsorship applications for parents and grandparents in November 2011 to focus on those already in the queue. A substantial dent has been made in the backlog and CIC recently announced that the parent and grandparent program will reopen in January 2014. Only 5,000 applications will be accepted next year.
Proposed regulatory amendments will decrease the maximum age of dependent children to 18 for all immigration programs to Canada. The full-time student provision is also being abolished.

Foreign nationals who immigrate to Canada can bring their dependent children. In 2002, the eligibility age of a dependent child increased from 19 to 22. Currently, unmarried children (and those not in a common-law relationship) under the age of 22 are considered dependents for immigration purposes. Children who are 22 or older, but who are continuously enrolled in school full-time, or who are physically or mentally unable to be financially self-supporting are also considered dependents. This is about to change. Proposed regulatory amendments will decrease the maximum age of dependent children to 18 for all immigration programs to Canada. The full-time student provision is also being abolished. These changes are expected to come into force on January 1, 2014. This proposal is attracting much criticism from those who claim it will split families and force many parents to permanently say goodbye to 19-year-old children.

Who counts as “family” for immigration to the United States?

Under the current immigration law, “immediate relatives,” defined as spouses, parents, and adults (over 21 years of age) children of U.S. citizens receive the most preferential treatment, as no quotas apply to the number that can be sponsored each year in the interest of family reunification.

In a major change, the United States Supreme Court just struck down *The Defense of Marriage Act (DOMA)*. This forced U.S. Citizenship and Immigration Services (CIS) to abandon its long-standing position that same-sex marriages were not valid for U.S. immigration purposes.

By contrast, adult children of U.S. citizens, the siblings of U.S. citizens, and spouses and minor children of permanent residents are subjected to lengthy waits to achieve permanent resident status under the quota system. The definition of child includes biological children, stepchildren and adopted children that meet certain criteria. In a major change, the United States Supreme Court just struck down *The Defense of Marriage Act (DOMA).* This forced U.S. Citizenship and Immigration Services (CIS) to abandon its long-standing position that same sex marriages were not valid for U.S. immigration purposes. CIS had apparently been anticipating this possibility because it has already begun to approve permanent residence cases filed by same-sex spouses and overturn past denials issued on that basis.

First generation biological children born to Canadians abroad are Canadian by descent. They simply need to obtain a citizenship certificate to confirm their Canadian nationality. The same is often true for children adopted from another country by a Canadian parent. Other adoptive parents must first sponsor their adoptive child's immigration to Canada. Even where an adoptive parent is eligible to receive a direct grant of citizenship for an adoptive child, there may be reasons to choose the immigration process instead. For example, adoptive children from some countries would lose their foreign nationality by becoming Canadian. And subject to some exceptions, the first-generation limit on citizenship by descent will apply to an internationally adoptive person's children (if they are born outside of Canada) unless the adoptee obtains citizenship by way of naturalization.

Canada is a party to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation on Respect of Intercountry Adoptions*. Adoptions in Canada are handled by the provinces and territories, all of which have laws implementing the *Hague Convention.* Centralized adoption authorities must be satisfied that an international adoption follows the principles of the *Hague Convention* before it will be approved in Canada. The citizenship/immigration process cannot begin until an adoption process is complete.

U.S. Immigration Law With Respect to Adoption

U.S. immigration law does not recognize "common law" spouses.

The United States implemented the *Hague Convention on Adoption* effective on April 1, 2008, and U.S. citizens who wish to adopt orphan children residing abroad must navigate a process that involves authorized adoption agencies, state governmental agencies, the U.S. Citizenship and Immigration Services, the U.S. Department of State and, of course, the foreign government of which the foreign child is a citizen. U.S. citizens habitually resident in the U.S. may not file relative petitions on behalf of foreign children resident in a *Hague Convention* country after that date, but must exclusively follow the *Hague* protocol. In the United States, most adoptive parents retain the services of a properly registered adoption agency that is supposed to have the capability to steer them through the *Hague* protocol, but there are some instances where, especially during the early years after the U.S. adopted the *Hague Convention*, agencies did not follow the procedures. This resulted in great anguish on the part of families that encountered immigration problems.

Economic / Employment Cases — Who can I bring to Canada with me?

Dependent children, spouses and common-law partners are considered dependents of individuals applying to immigrate to Canada temporarily (as workers or students) or permanently. Except in the case of some low-skilled workers, these relatives can all accompany their family member to Canada. Stepchildren and adopted children can also accompany their parents to Canada provided adequate supporting documentation is adduced to confirm that any other parent consents to the stepchild moving to Canada, or the genuineness of the adoption. As an incentive to encourage highly-skilled foreign workers and foreign students to come to Canada, their spouses are eligible for "open" spousal work permits that authorize almost any type of employment in Canada.

The United States Perspective

Foreign nationals who secure U.S. work visas or achieve U.S. permanent resident can include spouses and children under the age of 21 (including stepchildren and properly adopted children) in their immigration cases. Due to the recent U.S. Supreme Court decision, this includes same-sex spouses for the first time. U.S. immigration law does not recognize “common law” spouses. The *DOMA* decision does not change that. In some work visa categories, the spouse can apply for an employment authorization document – in others this is not possible although the spouse may independently qualify for work authorization.

Conclusion

Immigrants heading to Canada and the United States would be well-advised to depart from the declarative certainty of Sister Sledge and make sure that before embarking on their immigration voyage that they know which family members they can bring with them.

Tax Issues for New Canadians

While there are many attractions to Canada, I cannot recall anyone attracted by a desire to experience our income tax system! Like most developed tax systems, ours can be extremely complex, and can impose results perceived as neither just nor equitable. Many tax issues are unique to new Canadians, while others are more likely to affect them.

Wherever I Lay My Hat…

Like many countries, Canada taxes on the basis of residency, and Canadian residents are taxable on all income earned, whether arising within or outside Canada.

The determination of residency can be an uncertain area. The tax courts look to “residential ties” to determine a person’s residency. Stronger residential ties include a dwelling place (owned or rented), the residency of a spouse and dependents (e.g. children), and the duration and frequency of trips to Canada. Weaker ties, more commonly examined where the major ties are either inapplicable or divided, include personal property (e.g. clothes, vehicle, furniture), social ties (e.g. club memberships, church), economic ties (e.g. investments, bank accounts, credit cards) and personal ties (e.g. health care, driver’s licence, voting, non-dependent relations). Provincial health care coverage generally requires residency in a province, making this a common question from skeptical CRA auditors. An Alberta resident covered by provincial health care is likely a Canadian resident as well. Canada Revenue Agency (CRA) form NR74 sets out many of the issues the CRA will consider in making a residency determination.

Canada Revenue Agency (CRA) Form NR74 sets out many of the issues the CRA will consider in making a residency determination.

Some individuals are deemed resident in Canada regardless of residential ties. These include many government employees such as members of the Armed Forces, as well as any person who is physically present in Canada for 183 days or more in the calendar year (commonly referred to as a “sojourner”).

I Just Got Here!

The sojourner is easily confused with a part-year resident. An individual who takes up residency in April will be in Canada more than 183 days in the year, while one arriving in September will not. The sojourner rules only apply to someone whose actual residency has not changed in the year. Where residency commences (or ends) in a calendar year, that person will be subject to tax on world-wide income for that portion of the year in which she was resident, and only on income from Canadian sources for the portion of the year when she was non-resident.

The date of change is also important for other reasons. For most part-year residents, eligibility for personal credits to reduce taxes is pro-rated for the period of residency. Someone commencing residency on December 1 would only qualify for 31/365 of the usual credits. There is an exception for an individual subject to Canadian taxes on “all or substantially all” (typically considered 90% or more by CRA) income for the year. For example, an immigrant who earned no income prior to arriving in Canada on September 1 would qualify for full credits, as all of their income is taxed here.

A person taking up residency is also considered to have purchased most of their property (some exceptions, like Canadian real estate, exist) at its value immediately prior to taking up residency. Effectively, this resets the cost of the property at its value on immigration, exempting gains (or losses) occurring from Canadian taxation while the owner is not a resident.

Let’s Make a Deal!

An immigrant may also be subject to taxation in his country of origin, possibly resulting in two countries taxing the same income. Most countries have a network of income tax treaties which govern how taxing rights are divided, and intended to minimize double taxation. In Canada, treaties override domestic law in all cases of conflict. Treaties commonly address “tiebreaker” rules to ensure an individual is not considered resident in multiple countries.
Most treaties also address income taxed in both countries, requiring one country to provide tax relief for taxes paid to the other.

As well, treaties may provide that certain income is taxable only in the country of source, or the country of residency. Income exempt from Canadian taxation must still be reported on an income tax return, but is deducted from taxable income. Such income remains part of “net income”, which determines eligibility for some social benefits, such as the Canada Child Tax Benefit and the GST Credit, or the Social Benefits Repayment which can “claw back” employment insurance and old age security.

Some income is not exempted from tax, but the maximum tax which can be charged is restricted. This is common for passive income sources like dividends, interest and royalties.

Most treaties also address income taxed in both countries, requiring one country to provide tax relief for taxes paid to the other. Most commonly, this takes the form of a “foreign tax credit” where the country in which the income is earned has the first right of taxation, and the other country reduces its own taxes by the tax paid to the first country. This is intended to restrict the total cost to the greater of the two countries’ taxes. Canadian tax legislation provides for foreign tax credits regardless of whether a treaty imposes that requirement.

Tell Me All About It!

Many income payers are required to report to the CRA, filing T4 slips reporting wages and T5 slips reporting interest or dividends, for example. Income from foreign sources seldom has similar reporting. To address this, Canadian residents are required to file disclosure forms related to “specified foreign property” (SFP) and some other foreign assets.

…the costs of moving to Canada are not deductible…

The most common filing is required where the person owns SFP having an aggregate cost in excess of $100,000 (in Canadian funds) at any time in the taxation year. Generally, such property reflects investments, such as foreign bank or securities accounts, shares or debt of foreign corporations or other entities, foreign real estate and interests, and foreign trusts like mutual funds. Property used in active business outside Canada, used primarily only for personal use (e.g. a vacation home), and property requiring disclosure under other provisions falls outside the SFP provisions.

These filings are not, however, required to be filed for the year a person first becomes a Canadian resident, nor if the property was not owned while the person was a non-resident of Canada.

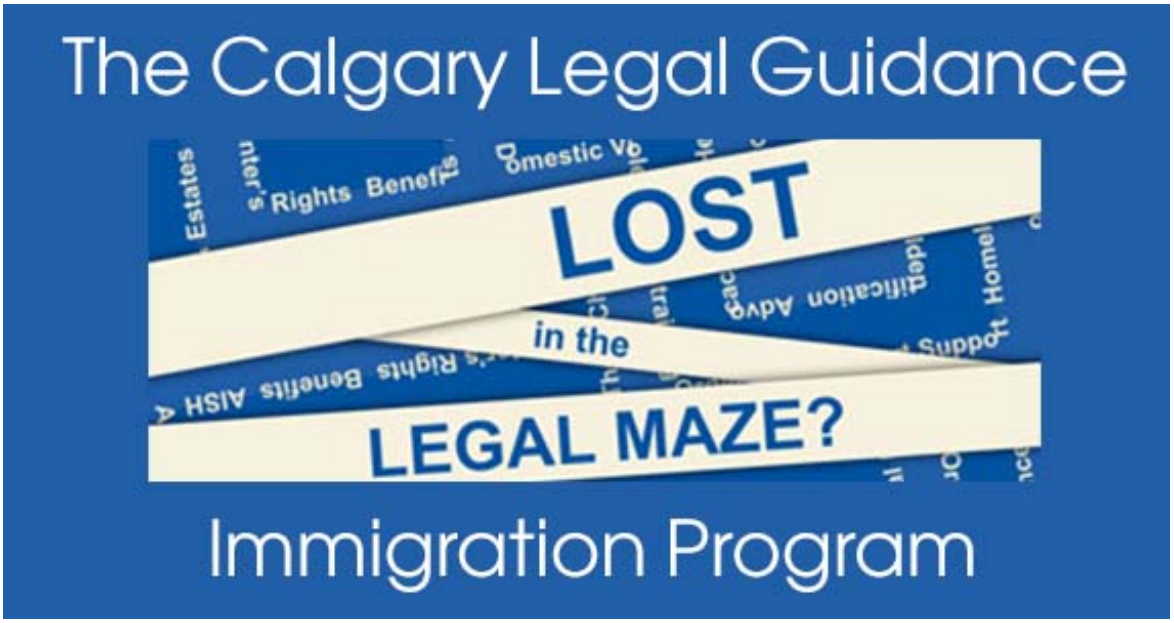
Moving Expenses

Normally, the Canadian income tax rules permit an individual to claim the cost of moving to take up employment or operate a business. Unfortunately for new Canadians, such a deduction is not available for moves commencing or ending outside Canada unless the individual was a resident of Canada both before and after the move. As a result, the costs of moving to Canada are not deductible in this manner.

Is That All There Is?

This is a very general summary of Canadian tax rules specifically relevant to new Canadians. Numerous other general and specific provisions exist which can impact new and existing Canadians to varying degrees. Additional information can be obtained online from the Canada Revenue Agency, including information for new Canadians specifically. Unfortunately, the Canadian tax system too often provides a poor welcome indeed to new Canadians. It is small consolation that longtime Canadians also commonly consider it unwelcoming.

Calgary Legal Guidance Immigration Program



Navigating the complex web of immigration laws in Canada can be a challenging task for even the most seasoned legal counsel. Now imagine trying to steer through these complex processes alone, after arriving in a foreign country with little money and limited English skills. With cuts to Legal Aid, drastic legislative reforms and very few services for those newcomers with limited financial means, it is a near impossible task for many recent immigrants. In many cases, proceeding without legal advice or guidance can have devastating consequences.

Recognizing the need to provide *pro-bono* legal services to low-income immigrants and refugees, Calgary Legal Guidance (CLG) started a new immigration program in March 2012. Since opening our doors, the immigration project has assisted several hundred clients and families with a variety of immigration and refugee issues. CLG's mandate goes beyond providing only summary advice, which often sets us apart from many other poverty law immigration programs.

All too often, a person fleeing persecution has a compelling story and a legitimate claim, but loses at their hearing due to poor preparation or a misunderstanding of what evidence is needed.

A significant component of the program is refugee work. We have represented refugee claimants fleeing persecution in their home country at hearings before the Immigration and Refugee Board. It is extremely important for those seeking refugee status to receive as much assistance as possible in preparing for their hearings, because the legal requirements to be considered as a *Convention* Refugee are onerous and difficult for the layperson to understand. All too often, persons fleeing persecution has a compelling story and a legitimate claim, but loses at their hearings due to poor preparation or a misunderstanding of what evidence is needed. For this reason, CLG is committed to ensuring that any client who comes through our doors wanting to make a refugee claim is provided with as much information and preparation for the hearing as possible, even if we cannot provide full representation for the hearing.

We have also prepared Federal Court applications, and assisted with applications for permanent residence, work permits and temporary resident visas. For those clients without a clear path to permanent residence, such as failed refugee claimants and victims of domestic violence whose partners have withdrawn their spousal sponsorship applications, we have filed several applications for permanent residence based on humanitarian and compassionate grounds. In addition, many of our clients are trying to reunite with their families who remain overseas. Some have not seen their spouses or children for several years. We also work with live-in caregivers, temporary foreign workers, and those without status in Canada.

A Humanitarian and Compassionate application allows a person to ask for an exemption from the normal requirement to apply for permanent residence in Canada.

CLG has celebrated some recent successes in the program, including a positive decision in a difficult refugee case. Some of our very first clients, who came to us soon after we opened our doors, have also just been granted permanent residence based on Humanitarian and Compassionate grounds. A Humanitarian and Compassionate application allows a person to ask for an exemption to the normal requirement to apply for permanent residence in Canada. A person might find themselves in Canada under circumstances beyond their control, where returning to their home country would cause an unusual, undeserved and disproportionate hardship. For example, one client came to Canada as a child several years ago, but his refugee claim was not successful. However, due to Canada placing a Temporary Suspension of Removals (TSR) on this client's country of origin because it is so dangerous to go back there, he was not able to be removed and has been in immigration limbo since that time.

In another all too common example, a woman will arrive in Canada sponsored by a Canadian spouse through the family class sponsorship application, only to find that the relationship quickly turns abusive. The woman is then placed in a difficult situation: she can either remain in the relationship until the application is processed in order to secure her permanent status in Canada, or leave the relationship. In the second scenario, the sponsorship process stops once the marital breakdown occurs, and the woman may find herself without status in Canada.

As with most of the Immigration lawyers across Canada, CLG has had to adapt its services in response to laws and policies that change on a daily basis. While we are not strictly an advocacy organization, we advocate for our clients to the best of our ability in light of these changes. This could mean working closely with the client to meet tight deadlines, ensuring that the client is aware of upcoming changes to the law, or, more recently, facilitating a client's participation in litigation challenging aspects of the new laws.

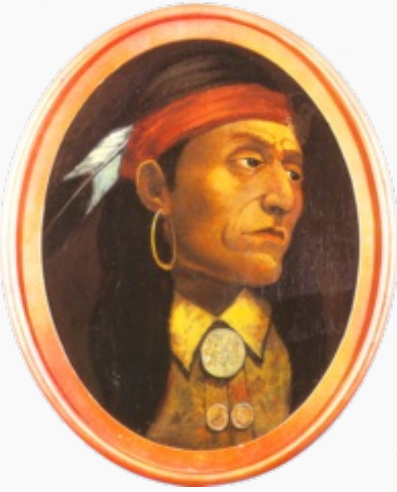
In addition, our clients often face other complex legal problems that may or may not affect their immigration status. Fortunately, through CLG's other programs, including:

- Domestic Violence Legal Intervention and Family Law;
- Criminal Law;
- Homeless Outreach;
- Social Benefits Advocacy; and
- Elder Law

CLG is able to assist low-income newcomers and immigrants facing additional types of legal challenges. The work we do in the immigration program is challenging and fascinating, often sad, yet always rewarding. To date, we have assisted clients who come from 51 different countries, and each one has a unique story to tell. The immigration program currently consists of four in-house staff, supported by a dedicated team of volunteers. The work we do in the immigration program is challenging and fascinating, often sad, yet always rewarding. To date, we have assisted clients who come from 51 different countries, and each one has a unique story to tell. Although the program does not have the resources to provide full representation to everyone, we believe that every client who walks through the door should be able to leave with something of value, whether it is brief summary advice or a referral to another agency.

CLG as an organization started over 40 years ago, as a small, primarily student-run, legal clinic. Since then, CLG has expanded to 25 staff – including lawyers, students, advocates and administrative professionals. However, we still rely heavily on our volunteer base – without the support from the legal community we would not be able to reach so many people. In that regard, CLG runs free legal clinics on-site every weekday evening. The immigration program works closely with various immigrant serving agencies, including the Calgary Immigrant Women's Association, Centre for Newcomers and Immigrant Services Calgary, to run free legal advice clinics and deliver public legal education workshops.

The Proclamation of 1763: Britain's Approach to Governing in the New World



Chief Pontiac

The *Royal Proclamation* of 1763 resulted directly from the Seven Years' War (1756-1763) between Britain and France. This conflict was in the nature of a world war with fighting principally in North America, the Caribbean, and India. With the *Treaty of Paris* of 1763 which ended the hostilities, Britain emerged victorious and a world power. However, Britain's dominance in North America created new problems for her which she unsuccessfully attempted to solve through the *Royal Proclamation* of 1763.

During this war, General James Wolfe defeated the French General, the Marquis de Montcalm, on the Plains of Abraham in 1759 and the British completed the submission of New France with the capitulation of Montreal in 1760. However, the war continued in the Caribbean and India. Consequently, there was a hiatus between the fall of New France and the peace conference which settled the conflict. Thus, until this "world war" ended, Britain established a military government of occupation to rule over her newly acquired territories in North America, since she was uncertain whether she would retain these lands at the peace conference at the war's end. The British military regime did not ensure peace in the region.

In the North American theatre of war, both the British and French had been supported by aboriginal allies. With the defeat of the French, the First Nations lost their bargaining position between the two European rivals. The allies of the British had been promised better deals in trade after the war, but instead, British traders raised their prices and displayed less interest in curbing liquor sales. In addition, the British immediately cut off "gift" distributions when trading for furs. The British no longer saw the practice as necessary because they had gained a monopoly in the fur trade and generally regarded the practice of "gift" distribution as bribery. The aboriginal peoples saw the gift-giving ceremonies differently. They regarded them as a renewal of the alliance between the two nations—the British and the particular Aboriginal nation in question—- and the price by which the First Nations allowed the British to use their lands. Also, the First Nations had come to rely on the guns and ammunition which formed part of these trading sessions. In addition, although Article 40 of the capitulation of the French at Montreal guaranteed, especially Britain's allies, protection for the lands they inhabited, Britain's military regime and the British colonial governments along the American seaboard found this provision difficult to enforce.

In the North American theatre of war, both the British and French had been supported by aboriginal allies. With the defeat of the French, the First Nations lost their bargaining position between the two European rivals.

The First Nations saw the Seven Years' War as a conflict between two European powers; the aboriginal peoples only fought as allies of either the English or French. They had not been conquered; this was their land and they had allowed Europeans to come and settle under certain conditions, such as gift distribution. Discontent began to grow. In response, a British plan to control the European traders by restricting trade to posts and to eliminate rum failed. Into this troubled situation stepped a remarkable native leader, Pontiac, an Ottawa chief. Although this charismatic leader had fought for the French, he quickly moved to establish good relations with the British after the fall of Montreal. When British promises did not materialize, localized Aboriginal uprisings occurred which Pontiac exploited and unified into a native revolt in the summer of 1762, which gave First Nations control of most of the Old Northwest.

Long before these uprisings, the British had recognized the pressures on the land west of their colonies along the Atlantic coast. The British moved to correct the situation with a series of proclamations. The first issued in 1761 focused on several British colonies along the east coast of North America, including Nova Scotia. There were to be no sales of Amerindian lands without official authorization and settlers unlawfully established on Indians' lands were to be evicted. When complaints came from First Nations that this proclamation was not being accepted, the substance of the proclamation and a clarification was issued in 1762, only to become a dead letter quickly. Then, the British King issued The *Royal Proclamation* of 1763. The *Proclamation,* which followed eight months after the Peace of Paris settlement ended the Seven Years' War, was an attempt to provide a provisional arrangement to resolve aboriginal matters, but also to provide a civil administration for the newly acquired territory of New France. In the peace negotiations at Paris, Britain obtained Florida from the Spanish, and all of New France from the French, except for the islands of St. Pierre and Miquelon. West of the Mississippi remained in Spanish hands. Under the *Proclamation,* Britain attempted to redress the First Nations' grievances by reducing the former boundaries of New France and creating a small province of Quebec straddling the St. Lawrence River. All the remaining territory was closed to European settlers by designating it as "Indian territory". This newly created territory would protect her Indian allies from European encroachment.

The British government hoped to enforce this *Proclamation* policy with military posts on the interior boundary line, dividing the white settlers from the native peoples on a north-south axis. This was impractical since there were already white settlers in the interior and the military posts had no financial support once the *Stamp Act* had been repealed. Thus, the whole interior policy was thrown out in 1768. The British simply had no money or resolve to send the military into the area to protect the aboriginal peoples from determined white settlers moving into the "Indian territory" rather than going north to settle in the new province of Quebec or Nova Scotia.

Under the *Proclamation*, Britain attempted to redress the First Nations' grievances by reducing the former boundaries of New France and creating a small province of Quebec straddling the St. Lawrence River.

From the outset, the *Royal Proclamation* of 1763 appeared to be a "dead document" incapable of resolving the difficulties with the First Nations or providing for a satisfactory system of governance for the new province of Quebec. By muddling through for over ten years in total disregard to the *Proclamation*, the British finally confronted the problems flowing from the *Proclamation* by statute. The *Quebec Act of 1774* changed the government of the province of Quebec and extended the province of Quebec eastward along the north shore of the St. Lawrence, but also annexed the region north of the Ohio upon which the fur traders of Montreal set such store. The "Indian territory" as such disappeared.

Some authorities claim that the *Royal Proclamation* of 1763 was pre-empted by the *Quebec Act* of 1774. They insist that the *Proclamation* did not recognize pre-existing aboriginal title to land. However, the *Quebec Act* did not abrogate "any rights or freedoms that have been recognized by the *Royal Proclamation of* October 7, 1763…." By imbedding those "rights and freedoms" in the Canadian Constitution through the *Constitution Act, 1982, section 25 (a)*, significant parts of the *Royal Proclamation of* 1763 are as alive today as they were 250 years ago. The question for Canadians today is: do First Nations' rights and freedoms originate with the *Royal Proclamation* or do they pre-exist the *Proclamation*? Only the courts or political agreement can make that decision definitively.

Although these questions have not been definitively resolved, court cases have begun to clarify some of the issues surrounding Aboriginal land claims. The first significant court case following Confederation involving aboriginal rights was *St. Catherine's Milling v. The Queen* in 1888. The Judicial Committee of the Privy Council upheld the Supreme Court of Canada's decision that aboriginal title over land was granted by the Crown through the *Royal Proclamation*. In effect, Amerindians had no legal ownership to the land but could treat with the Crown for the extinction of their right of occupancy. The logical consequence of this decision was that if First Nations refused the Crown's wishes in securing land, the federal government could go ahead with settlement and displace the aboriginals if necessary. The Privy Council did not accept the view that the *Royal Proclamation* had been superseded by the *Quebec Act* of 1774; rather, the legality of the *Proclamation* was upheld and all the rights Amerindians possessed stemmed from the *Royal Proclamation*.

…significant parts of the *Royal Proclamation* of 1763 are as alive today as they were 250 years ago.

In more recent times, the courts have been more nuanced with respect to the issue of Aboriginal title although they accept the Crown's underlying title as a given. For example, in *Calder v. Attorney General (of British Columbia)* in 1973, the Supreme Court of Canada ruled that Aboriginal title might have existed before contact, but had been overruled by white man's laws. Where Aboriginal rights existed, they were dependent upon the goodwill of the Sovereign. Then, in the 1984 case of *Guerin v. The Queen*, the Court went further and acknowledged the pre-existence of Aboriginal rights before colonization and their survival afterward. The *Guerin* case recognized the federal government's fiduciary responsibility towards Amerindians, a direct consequence of the Crown reserving to itself the right to acquire Amerindian lands in the *Royal Proclamation* of 1763. In that role, the government thus assumed responsibility to always act in the best interest of the Indians.

The *Delgamuukw v. British Columbia* case in 1997 was the most comprehensive decision about Aboriginal title in the twentieth century. The lower courts in British Columbia had ruled in 1991 that the discovery and occupation of the lands of this continent by European nations gave rise to the right of sovereignty. The Supreme Court of Canada overturned this decision and ruled that the case should be retried since oral tradition had not been given sufficient weight. In response to this decision, which left in limbo the question whether Aboriginal title still existed, the federal government developed its comprehensive claims process to extinguish Aboriginal title in exchange for rights and benefits clearly outlined in such settlements.

Although there is more clarity with respect to Aboriginal title, the *Nisga'a Final Agreement Act* (*Nisga'a treaty*) of 2000 demonstrates that consensus has not yet been achieved. This treaty has met with strong opposition from both within and outside the First Nations' community. Thus, the *Royal Proclamation* of 1763, a policy designed to bring peace and order to Britain's North American territories, is still a document which is very controversial and alive in Canadian judicial and political circles today.

The Royal Proclamation and its Approach to Competing Cultures

The October 7, 1763 *Royal Proclamation*, as its 250th anniversary approaches, is justifiably hailed as the genesis of first peoples' singular, identified status within the Canadian constitutional structure. That core thesis, and the substantive provisions with respect to protection of first peoples' lands, despite a frequently perilous history, endure to the present day, and likely are more robust than has ever been the case in the past.

The *Proclamation* also dealt, of course, with Quebec, by then a cultural and political reality of more than two centuries' standing. The *Proclamation's* approach to this other cornerstone of the Canadian federation was decidedly different, and has experienced a different evolutionary history. "The several Nations or Tribes of Indians with whom We are connected, and who live under our Protection" were readily acknowledged to be of strategic importance, and thus were accorded a specific recognition and protection. On the other hand, Quebec (geographically defined, as roughly, the St. Lawrence River Valley) was generically lumped in with East Florida, West Florida, and Grenada, as a jurisdiction, for the interim, to have "Enjoyment of the Benefit of the laws of our Realm of England". It was ultimately destined for a governance structure in a model like that of the American colonies, with a legal framework "as near as may be agreeable to the Laws of England".

The *Proclamation* also dealt, of course, with Quebec, by then a cultural and political reality of more than two centuries' standing.

The *Proclamation,* dealing ostensibly with Quebec only as an undifferentiated geographic entity, must be read against a profoundly significant subtext: the August 13, 1763 commission to James Murray as Governor of Quebec, and, in particular, the instructions to him. Murray was enjoined to not overtly oppose Roman Catholicism (thus hewing to the letter, if not the spirit, of the *Treaty of Paris*), but to implement the "Test Oath", thus effectively barring Roman Catholics from public service office; and to promote conversion to the Church of England. The jurisdiction of Rome over the Roman Catholic Church of Quebec was abrogated, and French Canadian subjects were to be required to take an oath of loyalty to the English Crown, failing which they would be banished. So, in combination with the sweeping away of French civil and criminal law, two primary elements of Quebec as a distinct society and culture were subjected to direct, immediate attack.

Thus, we can observe that the multicultural significance of the *Proclamation* and its context, insofar as it related to Quebec, was that the incoming sovereign recognized their unique aspects implicitly, in the effort to abrogate them. As reflected in the instructions to Governor Murray, it was the expectation that there would be a rapid substantial influx of English immigrants into Quebec, and that the French population would recognize the superiority of English institutions and readily embrace them. These two factors would lead to rapid assimilation of the French population, and dilution of their cultural and societal identity. Thus, the *Proclamation*, in and of itself, as it related to the Quebec French population, cannot be regarded as a seminal event in the history of Canadian multiculturalism, at least in terms of the values and intent it expresses. French law, language, culture and religion were recognized, but largely as decidedly inconvenient, hopefully short-term, realities, to be briskly overcome in the interests of facilitating Quebec's development as a proper British colony, just like all the rest of the British North American possessions.

However, the implementation – or, more properly, the lack of same – of the British Crown's objectives as expressed in the *Proclamation,* and in the instructions to Governor Murray, and his successor (from 1768), Guy Carleton – profoundly informed the subsequent development of Canadian multiculturalism.

The anticipated surge of British immigrants did not materialize, and it is generally estimated that, in the years immediately following the *Proclamation*, French inhabitants outnumbered those of British origin by a 100-1 ratio in a total population slightly exceeding 50,000. Governor Murray, and Carleton after him, recognized that the assimilation objective was not attainable, and that failure to accommodate, to some degree, the aspirations of the enormous French majority, would result in civil chaos, at minimum. Nonetheless, the tiny minority of British merchants pressed strongly for the implementation of representative government, as they styled it – but the French inhabitants would be excluded from the political process. The history of a deeply troubled relationship had begun.

Governor Murray, and Carleton after him, recognized that the assimilation objective was not attainable, and that failure to accommodate, to some degree, the aspirations of the enormous French majority, would result in civil chaos…

Murray and Carleton both delayed any steps toward an elected assembly on the terms sought by the British minority, Carleton going so far as to express reservations about the quality and character of the (very few) men of the eligible class. Efforts to supplant the French civil law with British common law were also strikingly unsuccessful, and not only from the perspective of the cultural resistance of the French. The British system soon demonstrated itself (wondrous to relate) as slow, cumbersome, opaque and expensive. Carleton recommended formal reinstatement of French civil law.

Successive British reports (Solicitor General Wedderburn, 1772; Advocate General Marriott, 1774) were in nearly diametric opposition in their recommendations. Marriott unhelpfully referred to the French inhabitants as indolent and ignorant, and sought (rather indolently and ignorantly, it would seem, given the post-*Proclamation* experience to that point) to again prop up the now-spectral assimilation plan. More realistic views prevailed. The partial reset reflected in the 1774 *Quebec Act* bowed to the inevitable: restrictions on the practice of Catholicism and the liabilities attaching to such practice were reduced, and the thorny issue of representative government was deferred, largely by being ignored. The French were, for the most part, mollified. Their cultural distinction had been accorded a recognition which, if grudging, was nonetheless amplified and taking on some modest trappings of permanence; and the stage was set for yet another seismic change to the Quebec politico-cultural landscape. Great upheavals were afoot to the South.

The thirteen American colonies declared independence on July 4th, 1776, and they sought to enlist the inhabitants of Quebec. The latter opted for the devil they knew, having deep reservations about their prospects in this new, turbulent embryonic nation, and declined the invitation. The short-term aftermath of the American Revolution led to the wave of British immigration that other processes had not produced. The United Empire Loyalists, now decidedly unwelcome in the American colonies, flooded into Quebec, bringing with them a new critical mass in terms of numbers, and much more insistent expectations of representative government. This led, inevitably and relatively rapidly, to the 1791 *Constitutional Act* and the division of Quebec into Upper Canada and Lower Canada. The geography was largely determined by the settlement patterns of the respective cultures, and that rough congruence of territory with culture has fundamentally defined the development of the Canadian federation.

Immigrate or Emigrate: A Life-Long Journey

> *I migrated. That is, I moved from point A to point B and "never the twain shall meet"—Rudyard Kipling from The Ballad of East and West.*

Did I emigrate or did I immigrate? Did I move away or did I reach my destination? The topic of immigration is full of paradoxes that take a lifetime to satisfy. Immigration is a journey.

Some factors push you away— war, famine, or poverty. Prosecution for race or religion. A hankering for freedom. Some factors pull you—a better job, a beautiful girl you want to marry, the green grass on the other side of the fence.

Emigration affects the people "back home." Some think, "Good riddance, you traitor. Is it that much better over there?" Or they miss you; it's as if they had to bury you already.

Immigration affects your new community. People make you feel welcome or they want to send you back. Both sentiments are never far from the surface.

And you? Will you keep your identity and honour your culture from point A, or will you integrate and do in your new Rome as the Romans do? How long will you hold on to your roots, your language, your food, your traditions? Will you stay in touch with fellow migrants or ignore them? Can you adapt and learn the strange new language and customs? Your children don't have to adapt; they are the new people and that leads to generational conflicts.

And so you escaped, but where will you die? Will you return because you made a bad decision? Point B doesn't understand you but point A doesn't want you anymore. Or you feel good in both places and you can't make up your mind. You want the best of both.

Built by immigrants, Canada is a young country that understands and respects the newcomers, whatever luggage they carry.

Did the Roman Empire disappear because of a lack of immigrants or by being flooded by too many of them? Even Edward Gibbon in his masterful book, *The History of the Decline and Fall of the Roman Empire*, is of two minds on that subject.

Immigration changes societies and it changes continents. How many continents were affected by the slave trade, a forced form of migration? No one writes better about that terrible journey than Hugh Thomas in his masterpiece, *The Slave Trade*. With the discovery of the new worlds came colonists, another form of migration. Did they paint on a blank canvas or de-possess an existing society? And the Jewish people are forever linked with their exodus or involuntary departure from a homeland and their consequent Diaspora or *hegira*— dispersal all over the world with the eternal thought to return. A burden, indeed.

The beauty of Canada—one of its many beauties—is its support for this journey. Built by immigrants, Canada is a young country that understands and respects the newcomers, whatever luggage they carry. And while Canada wrestles with the many paradoxes, we wrestle together and thus this country grows and develops in the place where I feel good. Seneca wrote, *ubi bene, ibi patriam*—where you feel good, there's your fatherland.

Canada is my home.

This article was originally published in the Fall 2012 issue of The Scrivener, and is reprinted with permission.

Alberta Law Libraries: An Overview

Alberta Law Libraries is joining LawNow as a regular contributor with information about the assistance they can give.

Alberta Law Libraries (ALL) is a network of law libraries across the province existing to provide research support and information services to the legal community (including the Judiciary, Members of the Bar, Crown Prosecutors and Justice Department employees), self represented litigants and all Albertans. Eleven of our courthouse libraries are open to the public during regular courthouse hours.

In our libraries you will find resources to help you research legal issues. We have primary (the law) and secondary (commentary) resources in both print and electronic formats. This collection is available to all Albertans for use in the library.

Why would I go to the law library?

Good question! Let's say that you have been dismissed by your employer in a way that you think is improper. In the library, you can find laws that regulate employment, books and articles on wrongful dismissal, and decisions by the courts on issues similar to yours. In addition to the information resources we offer, you may use the library computers, printers and photocopiers for your research.

Our team is happy to help you navigate legal research including the use of electronic databases, using our online catalogue, and finding books or other resources. We can also direct you to additional agencies that may be of help. As well, you may email your questions to our "Ask a Law Librarian" service directly from the Alberta Law Libraries website. Members of the bar can also access additional reference and research services.

Whatever your legal information needs may be, we can provide you with a calm, confidential & professional environment away from the intensity of court. For more information about Alberta Law Libraries, check out our website and follow us on Twitter (@ABLawLibraries)

We look forward to working with you!

Random Alcohol and Drug Testing as a Complex Human Rights Issue

At the moment in Canada, there are some legal cases dealing with unions, privacy and random drug testing. The Supreme Court of Canada (SCC) recently decided a case on the issue. See: *Communications, Energy and Paperworkers Union of Canada Local 30 v Irving Pulp and Paper Mill*, 2013 SCC 34 ("*Irving*"). There is also ongoing litigation on a similar issue in Alberta (see: *Communications, Energy and Paperworkers Union, Local 707 v Suncor Energy Inc*, 2012 ABCA 307 (*Suncor*)) and interest in the issue of random testing in British Columbia (see: CBC News "Random drug testing continues at Teck mines despite ruling").

In the *Irving* case, the Union brought a grievance challenging the mandatory random alcohol testing aspect of a policy that was unilaterally implemented by Irving at its paper mill in New Brunswick. Under the policy, ten percent of the employees who were in safety-sensitive positions were to be randomly selected over the course of a year for breathalyser testing. If there was a positive result for alcohol, there could be significant discipline meted out against the employee, including dismissal.

When the matter was first dealt with by an arbitration board, it weighed the employer's interest in random alcohol testing against the harm of the policy to employees' privacy interests. A majority concluded that the random testing policy was unjustified because there was an absence of evidence of alcohol use in the workplace.

The employer appealed, and the New Brunswick Court of Queen's Bench set aside the finding of the arbitration board, holding that it was unreasonable, because of the dangerousness of the workplace (note: the worksite was ruled by the arbitration board to be "dangerous" and subsequent courts accepted this ruling). The New Brunswick Court of Appeal dismissed an appeal.

A majority of the SCC allowed the Union's appeal, with the judgment being written by Justice Rosalie Abella. This case turned on the scope of management rights under a collective agreement, especially in view of the fact that the policy was unilaterally imposed. The majority held that the policy must be consistent with the collective agreement and be reasonable.

The SCC noted that there is substantial case law with respect to the unilateral exercise of management rights in a safety context. While it may be argued that dangerous unionized workplaces should be outside the reach of collective bargaining, the reality is that negotiations of workplace conditions have historically and successfully included a case-by-case balancing of public safety concerns with protecting privacy. This has resulted in a "balancing of interests" proportionality approach. Thus, an employer can impose a rule with disciplinary consequences, only if the need for the rule outweighs the harmful impact on the employees' privacy rights. Arbitrators have found consistently that when a workplace is dangerous, an employer can test an individual employee if there is reasonable cause to believe that the employee was impaired while on duty, was involved in a workplace accident or incident, or was returning to work after treatment for substance abuse.

While the dangerousness of the workplace is highly relevant, this just begins the proportionality exercise. Dangerousness has never been found to be an automatic justification for the unilateral imposition of unrestricted random testing with disciplinary consequences. The arbitration board had found that the expected safety gains to the employer were ranging from uncertain to minimal, while the impact on employee privacy was severe. The board concluded that eight alcohol-related incidents at the mill over a 15-year period did not rise to the level of workplace alcohol abuse required to be considered dangerous. Thus, the employer had not demonstrated sufficient safety concerns that would justify universal random testing. This meant that the employer had exceeded the scope of its rights under the collective agreement.

Justice Abella did note that there may be dangerous workplaces where random drug testing may be justified if it is proportionate in view of both legitimate safety concerns and privacy interests.

The minority of the SCC held that the board had unreasonably required evidence of a "significant" or "serious" problem, while the consensus of arbitrations had required evidence of "a" problem. They also noted that there is no support for a requirement that the evidence of alcohol use be tied or causally linked to an accident, injury or near-miss history at the plant. Thus, the decision of the board fell outside the range of defensible reasonable outcomes with regard to the facts and the law.

In perhaps an ironic comparison, if a person in a non-unionized setting is disciplined for drug or alcohol use on the job, or is refused a job because of a positive pre-employment drug test, he or she can only claim discrimination on the basis of a disability if it is demonstrated that the he or she is *addicted.* Thus, casual or weekend use cannot be used as a defence in a human rights case. See, for example *Alberta (Human Rights and Citizenship Commission) v Kellogg, Brown and Root (Canada) Company*, 2007 ABCA 426. The Alberta case focuses on a "risk-based" approach in drug testing cases (rather than the "balancing approach" used in *Irving*) in which the focus is on the dangerous nature of the workplace and whether testing is rationally connected to a need to eliminate safety risks in a hazardous work environment.

Whatever happened to … Crocker vs. Sundance

Introduction

Crocker v. Sundance Northwest Ltd (1985) 20 D.L.R. (4th) 552 (Ont. C.A) is one of the most interesting negligence cases in Canada in the last quarter century. It is a unanimous decision from six judges of the Supreme Court of Canada that covered a tragic scenario on a ski hill. The case has numerous issues relating to thrilling, but dangerous, adventure activities and extreme sport competitions, the role of alcohol and legal assignment of responsibility for it, and contract waivers not to sue in the event of an injury. The outcome provides a basis for a lively debate on how far the law ought to protect people from their own foolish actions.

The Canadian Ski and Snowboard industry has more than 300 resorts catering to some 4.3 million participants in alpine and Nordic skiing each year. Maintenance and growth in market share in this industry arise from novel marketing promotions that target young, daring skiers.

Sundance owned and operated a number of tourist destinations, including hotels, restaurants, and ski hills, including a small ski resort near Thunder Bay. As part of an annual "Sundance Spring Carnival," the resort had been promoting inner tube races for several years as a means of generating interest in the resort. The events were designed to generate a party atmosphere: representatives from beer companies such as Molson were in attendance as a part of the promotion. The competition consisted of two participants racing down Hanson Hill, a mogul covered ski slope, on over-sized, inflated inner tubes as crowds of spectators cheered them on. The objective was to reach the finish line as quickly as possible with both members of the team still in the tube. While injuries had occurred in the past, no consideration had been given to altering the event.

Facts

William Crocker was a 29-year-old beginner skier. His membership in the Sundance Ski Resort allowed him unlimited access to Sundance's facility for the winter season. A "heavy drinker," he was a fixture at the resort's bar.

Crocker said he did not read the Release, although it was essentially the same as the one on his season's pass. Crocker later said he was not aware that he was signing a legal document like a Release of Liability. He thought it was just part of the registration form.

On the afternoon of March 19th 1980, Crocker and his friend Rick Evoy had been skiing for just over an hour before taking a drink at the resort bar. At the bar, they watched a short promotional video of the previous year's tubing competition. This video inspired them to register in the $200 tubing competition taking place three days hence. They paid the $15 fee to register, and signed and initialed the entry form and a Release (also called a waiver).

Crocker said he did not read the Release, although it was essentially the same as the one on his season's pass. Crocker later said he was not aware that he was signing a legal document like a Release of Liability. He thought it was just part of the registration form. Sundance did not tell him what specific provisions were in the Release, nor was he asked to verify that he understood its contents. The Release read:

I hereby release Sundance Northwest Resorts Limited, any of their agents, from any and all damages sustained and consequences of loss, injury or damage to any personal property, from any or all actions, causes of actions, claims and demands of any nature including, without limiting the generality of the above, all and any recourses resulting from any decision of Sundance Northwest Resorts Limited or their agents.

Three days later, Crocker and Evoy met for breakfast. Crocker mixed a 40 ounce bottle of rye whisky with two cola bottles, much of which they consumed shortly after their arrival at the ski hill. They continued to drink throughout the day, including during the pre-event meeting held for participants, where they were reminded of the risk associated with the event.

Crocker and Evoy had ingested a large quantity of alcohol by the time they made their way to the top of Hanson Hill. They were furnished with a single tube to share the descent. One of the moguls they struck launched them off their tube. Although Crocker was cut above his eye and Evoy cut his finger, they managed to finish the heat in first place and qualify for the second heat.

After the first race, Mr. Crocker met the driver of a Molson beer van who offered him a taste of brandy. "I took the bottle and took two great big slugs of it straight. I can hardly remember going back up the hill," Crocker would later testify. He then went to the ski resort bar with Evoy. With an obvious cut above his eye and his snow-filled bib on, Crocker ordered and received a drink, then a second, from the bar.

The resort owner, John Beals, spotted Crocker. Beals queried Crocker on his injuries and his current mental and physical capacity and suggested to Crocker that he might not be in any state to compete in the tubing competition, particularly if the cut above his eye impaired his vision.[2] Crocker disagreed, becoming belligerent and defensive, insisting on his right to participate.

The two men returned to the summit for the second race. Crocker fell and bumped his tube, sending it down the hill before the start of the race. Having witnessed Crocker's intoxication, the resort manager and race marshal, Ms. Durno, told Crocker "that it would be a good idea if he did not continue the competition" but Crocker intended to conquer the hill and claim the $200 prize. Durno, feeling that she had done everything she could to dissuade Crocker from competing, and believing a signed Release was in place, allowed him to compete in the second heat.

The steep moguls were too much for these two drunken men. This time they crashed hard. Crocker was ejected from the tube, flew through the air and landed on his head. He broke his neck and was instantly rendered a quadriplegic.

The Negligence Lawsuit

Crocker sued Sundance to compensate him for his serious injuries. The trial judge found in favour of Crocker in the amount of $200,000. Both Crocker and Sundance appealed to the Ontario Court of Appeal, which overturned the trial judge.

Eight years later, the Supreme Court of Canada restored the trial ruling. The Court said there was a proximate relationship requiring Sundance to take care to prevent foreseeable harm to Crocker. The Sundance Spring Festival was a promotional event that charged a fee to compete and earned money at the bar from selling Crocker alcohol. Accordingly, the resort owed Crocker a reasonable measure of care to prevent him from harming himself. He was engaged in a dangerous event but was able to buy drinks at the resort's bar wearing his competitor's bib. At different times and locations, Beals and Durno could each see Crocker was in a vulnerable condition participating in a dangerous competition. They allowed him to compete. Sundance's negligence in setting up this inherently dangerous competition and allowing Crocker to compete drunk caused his injuries.

The Court said there was a proximate relationship requiring Sundance to take care to prevent foreseeable harm to Crocker.

Did Crocker voluntarily assume this risk of injury when he contractually signed away his rights to sue Sundance in that Release? The Court said Crocker did not, either by word or conduct, voluntarily assume either the physical risks or the legal risk involved in competing, given that his mind was clouded by alcohol at the time. The Release Crocker signed did not relieve Sundance of liability for its negligent conduct because the ski resort failed to draw his attention to it. It did not ensure that he even read the Release.

Perhaps Crocker contributed to his injury by his own negligence? Crocker chose not to read or ask about what he signed and initialed. He chose to get drunk and recklessly compete in a dangerous competition. He stubbornly waved off two interventions that would have prevented his injuries if he had withdrawn from the race.

The Supreme Court of Canada concluded Crocker's own bad behaviour counted for 25% of the total legal responsibility and his compensatory damages were offset by that amount to arrive at a final net award of $200,000.

Update on the Parties

Crocker spoke to the *Globe and Mail* after the judgment of the Supreme Court. He sighed, "I put my faith in the system, and the system worked for me. It's been a long time, eight years, three months and five days but I feel as if 10,000 pounds have been lifted off my shoulders."[2] Crocker was able to leave the care of a nursing home, but he is still restricted by his injuries and must use a wheelchair.

The Supreme Court of Canada concluded Crocker's own bad behaviour counted for 25% of the total legal responsibility and his compensatory damages were offset by that amount to arrive at a final net award of $200,000.

Sundance ski resort was sold to the Government of Ontario for $540,000 in 1983 to be used solely as a training ground for ski jumpers and Nordic skiing.[3] The facility was renamed "Big Thunder" and was considered one of the best ski jumping facilities in North America, but it *closed* in 1996 and has remained abandoned ever since.

In the early 1990s, John Beals developed the Nor'Wester Hotel and Conference Centre to promote the Thunder Bay area as a tourist destination. The hotel is now owned and operated by Best Western. He is a restaurateur in Thunder Bay.

Notes:

[1] Court of Appeal decision at para 64.

[2] Fraser G. (1988) *Resort judged 75% liable for drunken inner-tube ride,* Globe and Mail July 1st, Retrieved from http://global.factiva.com.ezproxy.lib.ucalgary.ca/ha/default.aspx

[3] Globe and Mail (1983) *Ontario purchases ski-jumping hill,* May 11th, retrieved from http://global.factiva.com.ezproxy.lib.ucalgary.ca/ha/default.aspx

Working Abroad

It's a familiar rite of passage. Get a diploma, get a backpack (Canadian flag optional), get a plane ticket and head off to explore the world.

Ready to go? Here's some information to help you get on your way.

International Experience Canada (IEC), a program managed by Foreign Affairs, Trade and Development Canada (FATDC), provides young Canadians with the opportunity to spend up to a year travelling and working in different countries around the world. Canada currently has bilateral youth mobility arrangements or agreements in place with 32 countries, on 5 continents. A chart outlining travel and work destinations available through IEC is available online.

As youth mobility arrangements are continually being negotiated with other countries, the list of destinations is subject to change, and if a country of choice does not appear on the list, it is worth checking back to see if there have been updates. The age range for most participating countries is from 18-35 but some do set lower age limits and it is important to check application requirements for each country. Many countries set a specified limit for entry via youth mobility programs and may post annual deadlines for applications.

Working holidays can be a great way to fund an extended trip abroad. Typically, the amount of money earned is enough to supplement savings in order to help with travel expenses or to finance additional excursions or cultural experiences. Working holidays are an option in 30 countries. This program is primarily intended for people on an extended holiday and who may look for work on a casual or temporary basis in order to help fund their stay. Depending on the country, there may be specific restrictions placed on where you can work (for example, in Japan working in bars, cabarets, nightclubs etc. is off limits to working holiday participants) and for how long (in Australia working holiday participants can only work up to six months with each employer). Application times, fees and approvals vary from country to country and there may be specific financial or insurance requirements. Check the websites of each participating country for full details as to their individual requirements.

Participation in the Young Professionals stream affords an opportunity for eligible individuals to gain valuable experience within their area of expertise. The option is available in 22 countries and is for those who are seeking international work experience, training and career development. As with working holidays, different countries have different rules and it is important to review the relevant governmental websites. One frequently seen requirement is the need for a pre-arranged contract of employment at the time of applying for a visa (France, the Netherlands and Spain are just three examples where this requirement applies). There can be other rules and limitations, so it is important to check and see which work/travel program best matches your own situation.

Students interested in an international co-op (internship) placement can choose from a list of 21 destination countries. As with the young professionals program, having prior employment arrangements is generally required. The International Youth Internship Program (IYIP) also provides internships for Canadian graduates (ages 19 to 30 inclusive) via the Career Focus stream of the Government of Canada's Youth Employment Strategy (YES).

There are a number of IEC-recognized private and non-profit enterprises that also facilitate arrangements for travelling and working abroad, including some countries with which Canada does not currently have youth mobility arrangements in place, such as South Africa, China and the USA (see SWAP Working Holidays for example).

Organizations such as International Rural Exchange Canada focus on placements within a specific sector, in this case, farming and horticulture. Those interested in teaching English in Japan, Korea or Taiwan can find information at travel.gc.ca, the Government of Canada's website for Canadians travelling or living abroad.

Would-be travelers who don't meet the requirements of International Experience Canada or who may be interested in a country not on IEC's list of destinations may still be able to live and work abroad. To learn more, start by contacting the embassy or consulate of the destination country. The federal government's Office of Protocol provides up-to-date information on foreign representatives in Canada, including addresses and contact details. Note that permission to work must be obtained before entry and that a work permit will be required in almost all cases.

Other alternatives may exist if you are entitled to another citizenship through birth, marriage, ancestry or naturalization. Be aware that holding dual citizenship does not guarantee the right to work in the other country and that there may be additional obligations that come from maintaining more than one nationality. Dual Citizenship: What You Need to Know, an FATDC publication, outlines some of the things to think about with regard to dual citizenship. Commonwealth citizens with U.K. ancestry may be able to apply for permission to live and work in the United Kingdom if they meet all of the requirements, including providing evidence to show that at least one grandparent was born in the U.K.

Not from Canada but interested in checking out all that this country has to offer? If you are 18-35 and you are from a country that has a youth mobility arrangement with Canada, then you may be eligible to access a work permit under the International Experience Canada. See the IEC website For Non-Canadians – Travel and Work in Canada.

Over 35? Working in Canada may still be an option under one of Citizenship and Immigration Canada's programs. Visit CIC's Work in Canada for information on working in Canada as a foreign worker.

Bon voyage!

Bill C-10: The Government's Tough Stance Against Criminal Record Holders

Bill C-10

On September 20, 2011, then Justice Minister Rob Nicholson tabled Bill C-10, an omnibus crime bill titled the *Safe Streets and Communities Act*. The Bill proposed to make fundamental changes to many components of Canada's criminal justice system, including the pardon process. In March of 2012, Bill C-10 was passed into law. Outlined below are the major changes made to Canada's pardon system:

- Replacing the name "Pardon" with "Record Suspension";
- Increasing the ineligibility period to apply for a record suspension for a minor or summary conviction from **3 to 5 years**;
- Increasing the ineligibility period to apply for a record suspension for an indictable offence from **5 to 10 years**;
- Quadrupling the cost of getting a federal pardon from $150 to $631;
- Rendering persons convicted of child sex offences permanently ineligible for a record suspension;
- Rendering persons with three or more convictions for indictable offences permanently ineligible for a record suspension.

About Record Suspensions

Statistics show that roughly 13 per cent of Canadians have a criminal record—usually minor offences which can create barriers for mobility, employment, and travel. There is a certain stigma associated with a criminal record, but what we do not often realize is that many criminal record holders have been convicted only of a misdemeanor offence. For example, Justice Canada estimates that about 600,000 Canadians have records for marijuana possession ("Statistics." *In depth Marijuana*. CBC News Online, 26 May 2003), a fairly minor offence, but one that can create problems for employment or travel.

A criminal record will not be removed automatically. A person with a criminal record must make an application under the *Criminal Records Act* of Canada for their record suspension. The *Act* is meant to help people with past offences who are now rehabilitated. A record suspension is an acknowledgement from the federal government that a person with a criminal conviction(s) has demonstrated good conduct so that the conviction(s) should no longer reflect adversely on the person's character. The Parole Board of Canada (PBC) is the government body that has complete control over granting, refusing, or revoking a record suspension. Once granted, a record suspension allows individuals who have completed their sentence to have their criminal record kept separate from other criminal records contained in the Canadian Police Information Centre (CPIC). As a result, all information pertaining to the convictions will be removed from CPIC so they no longer appear in a criminal records search. While a record suspension applies only to records kept with federal departments, most provincial and municipal law enforcement agencies will restrict access to their records once notified that a record suspension has been granted.

Pardons, or record suspensions, as they are now called, play an important role in rehabilitating persons with a criminal record and reintegrating them into society. But the legislative changes to the *Criminal Records Act* (CRA) have had a huge impact on Canadians seeking to exercise their rights. The radical changes have led Parole Board of Canada to significantly tighten their requirements for record suspensions. These new, tougher restrictions for record suspensions mean higher fees, longer wait times, and bureaucratic delays.

Azmairnin Jadavji of Pardon Services Canada, a national company which specializes in record suspensions and waiver applications, is concerned with how these changes are impacting his clients' rights under the CRA to seal their records. "The new law and regulations are mean-spirited and contrary to Canadian principles of giving people a fair chance to redeem themselves and integrate as productive members of our society," he explains.

The Impact of the Legislative Changes

An article published earlier this year by The Canadian Press, and contributed to by Pardon Services Canada, has revealed how dramatic these legislative changes have been. By issuing a request through the *Access to Information Act*, the authors of the article were able to obtain statistics indicative of the changing practices of the Parole Board. Since the new law came into force, applications for criminal record suspensions have plummeted by more than 40 per cent. The Canadian Bar Association has stated: "This bill will change our country's entire approach to crime at every stage of the justice system. It represents a huge step backwards; rather than prioritizing public safety, it emphasizes retribution above all else. Furthermore, it appears that the Parole Board is using strict procedural rules to reject the smaller number of applications received. Of the 15,871 applications filed between March and December of 2012, only 8,631 were accepted by the Parole Board for processing. This means that more than 45 per cent of applications were rejected for various, mostly clerical, reasons.

When an application is first submitted to the Parole Board of Canada, it has to be screened in order to determine if it contains all the required components—this includes court documents, local police checks, fingerprints, etc. If any of the documentary requirements are missing, the application is returned to the applicant, along with instructions of what else is needed for processing of the application to occur. According to Pardon Services Canada's own records, applications filed prior to March of 2012 were understandably returned for reasons such as incorrect court documents or local police checks done in the wrong jurisdiction. Minor discrepancies in the application were sorted out with the assistance of the investigating officer.

Recently, however, applications are being denied by the Parole Board for far more minor reasons. The Parole Board's aggressive tightening of the acceptance criteria is resulting in denying rehabilitated Canadians recourse to the legislated relief under the *Criminal Records Act*.

The Canadian Bar Association has stated: "This bill will change our country's entire approach to crime at every stage of the justice system. It represents a huge step backwards; rather than prioritizing public safety, it emphasizes retribution above all else. It's an approach that will make us less safe, less secure, and ultimately, less Canadian."

With this new, more expensive system in place, Canadians looking for a record suspension will have to invest more money into the process—and the risk of rejection is higher than ever before. The Parole Board maintains that their new fee system will "secure the resources needed to efficiently and effectively deliver pardon services". But higher fees and longer processing times are clearly neither efficient nor effective.

Volunteerism Fuels Class Action at the Landlord Tenant Board

> *"I couldn't raise my children here, there were mice, cockroaches… every day. I accepted this as part of my life for too long. What changed was a light went on in my head, and I realized that this was not right."*
>
> *- Fatima*

Fatima is one of nearly 25 low-income tenants who decided to take their corporate landlord to court. She is a resident of Ottawa South's Herongate community, a neighborhood of mostly high rise apartment complexes which has an earned reputation for substandard housing and petty crime. Residents here often make complaints that their apartments and townhouses are unfit for habitation and that their landlords often fail to make the necessary repairs or treat mice and cockroach infestations.

In January of 2012 CBC Marketplace ran an investigative report on one of the Herongate neighborhood's biggest landlords, Transglobe REIT. Titled, "Trouble for Rent" the CBC alleged that Transglobe engaged in systemic negligence in the management of their properties. Transglobe's tenants complained that their requests for repair were often ignored. These complaints varied, from minor issues like a broken tile, to very serious problems such as mold in a child's bedroom. The reporters visited a Herongate resident's apartment and were shown two broken windows. The reporters simply shook their heads when they learned that the woman had complained repeatedly to management. After the CBC report, not much changed for Herongate's residents. In fact, most tenants said that things got worse.

At the same time George Brown and Ottawa ACORN were organizing behind the scenes for what would prove to be a more effective campaign. ACORN is a not-for- profit organization that had been organizing tenants to press both the City and the landlords for healthier homes and greater accountability. ACORN's Ottawa chapter is headed by Jill O'Rielly, a community organizer with almost limitless energy. George Brown is an Ottawa-based lawyer and former city councillor reminiscent of Studs Terkel's "roll up your sleeves" community work. George enlisted the help of two young lawyers, Derek Shroeder and Oriana Polit, and a small group of University of Ottawa law students, to force Transglobe and Herongate's other landlords to repair their properties by bringing them to court.

In January of this year the volunteer group held its first legal clinic at the Herongate Community Centre. More than forty tenants braved the cold to tell the group of law students their stories of mice, cockroaches, filthy carpets, bed bugs, burst pipes, leaking roofs, month-long floods, fires, and insults. These stories were meticulously documented and evidence such as photos and work orders were carefully collected. Beginning in May the group began to steadily file T2 and T6 applications to the Landlord Tenant Tribunal.

The *Residential Tenancies Act* allows tenants to file tenant's rights applications (T2 and T6) if the landlord has breached their obligations under the *Act* to keep the unit in a good state of repair. If the Landlord Tenant Tribunal decides that the unit's disrepair has reduced its value they will order the Landlord pay an abatement, which acts as a rent refund. This presiding Board member has discretion over what the amount will be, but it will generally vary depending on the severity of the breach and how long it has affected the tenant.

In June the hearings began. The different landlords were represented by experienced paralegals who were often tough negotiators and masters at delaying the process. The group of young students quickly learned lessons on fighting adjournments, providing disclosure, and thinking on our feet. Twenty tenants have thus far been represented and a great majority of them have had successful outcomes via mediation, abatement awards, and orders for repair made by the Board.

The process has been far from perfect. Many tenants were unable or unwilling to pay the $45.00 filing fee, while others were frustrated with the slow process in getting claims before the tribunal, and the procedural elements that prevented them from speaking up during a hearing when they wanted to. Each tenant, though, showed a visible sense of empowerment at some point in the process. Fatima explained it as her “light bulb moment”, while others had their moments when they told their story to someone who was truly listening, when they became aware of their rights under the *Act*, or when they faced their landlords in administrative court. The exercise has been empowering for the first year law students involved as well. First year students often have the passion and enthusiasm but find that there is little opportunity to use their emergent skills towards a good cause. Currently ACORN is working to build stronger relationship with the University of Ottawa to draw more volunteer law students. After all, the key ingredient of this whole process was the dedication and hard work of volunteers.