Court File No. 34897

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

BETWEEN:

HOANG ANH PHAM

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

-and-

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, CANADIAN CIVIL LIBERTIES ASSOCIATION, CANADIAN COUNCIL FOR REFUGEES, and CRIMINAL LAWYERS' ASSOCIATION OF ONTARIO

Interveners

FACTUM OF THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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TABLE OF CONTENTS

PART I – STATEMENT OF FACTS

A. Overview

1. The British Columbia Civil Liberties Association ("the BCCLA") is a non-profit, non-partisan advocacy group. The BCCLA was founded to promote civil liberties, including adherence to due process and fundamental justice in criminal law. The BCCLA was granted leave to intervene in the within appeal by Order of Justice Cromwell dated 27 December 2012.

2. The BCCLA submits that failure to consider the immigration consequences of a sentence would deprive the court of information required to properly consider the relevant sentencing factors, and may result in a sentence which unjustly infringes an offender's rights and freedoms.

3. Immigration consequences must be taken into account by a sentencing judge in order to ensure that the offender is not punished more than necessary. A permanent resident convicted in Canada and sentenced to two years or more is almost certain to face deportation. For many permanent residents, deportation will be the most punitive impact of their sentence. In order to ensure that sentences are consistent with the principles of proportionality and restraint, the BCCLA submits that immigration consequences are relevant personal circumstances which should be taken into account as part of the individualized sentencing assessment.

4. The BCCLA takes no position on the facts as summarized by the parties.

PART II – POINTS IN ISSUE

5. The BCCLA agrees that this appeal raises the issues identified at paragraph 17 of the Appellant's factum. The BCCLA's submissions will address the first issue.

PART III - ARGUMENT

A. Permanent residents will face deportation if sentenced to two years or more

6. Given the punitive immigration consequences that flow from a criminal sentence, it is important that the immigration system be understood and considered in the sentencing process.

7. A permanent resident convicted of an offence in Canada and sentenced to two or more years of imprisonment is inadmissible to Canada, and will lose their permanent resident status and face deportation. On its face the *Immigration and Refugee Protection Act* provides for some discretion in the inadmissibility determination process, however in practice there is little opportunity for consideration of personal circumstances.

8. Because there is little discretion with respect to criminal inadmissibility and no practical alternatives to avoid removal or loss of status, deportation from Canada is an almost certain outcome for permanent residents sentenced to two years or more. For many permanent residents, deportation will be the most punitive impact of their sentence.

i. There is minimal discretion within the inadmissibility determination process to consider the personal circumstances of offenders

9. Permanent residents or foreign nationals who have been convicted of an offence punishable by a maximum term of imprisonment of at least 10 years, or of an offence for which a term of imprisonment of more than six months has been imposed, are inadmissible for serious criminality.[1] If found criminally inadmissible, the offender loses their permanent resident status and faces deportation.

10. A finding of inadmissibility does not automatically flow from a criminal conviction. *IRPA* sets out a three step process to find permanent residents inadmissible to Canada:

a. First, an officer writes a report known as a section 44(1) report stating that an individual is inadmissible. *IRPA* provides that an officer may write a 44(1) report once a person is convicted of an offence in Canada.[2]
b. Second, a Minister's Delegate decides pursuant to section 44(2) of *IRPA* whether the report will be referred to a review at an admissibility hearing.[3]
c. Finally, after the report is referred, a determination of inadmissibility is made by the Immigration Division.[4]

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[1] *Immigration and Refugee Protection Act,* SC 2001, c 27 ["*IRPA*"] at s. 36(1)(a)

[2] *IRPA* at s.44(1)

[3] *IRPA* at s.44(2)

11. The use of the word "may" in section 44 of *IRPA* suggests that officers have discretion to decide whether to write and refer section 44(1) reports. However, this discretion is limited. In almost all cases, the officer will write and refer the 44(1) report for a permanent resident inadmissible for serious criminality.

12. In cases involving permanent residents inadmissible for serious criminality, Citizenship and Immigration Canada specifically instructs officers that "it is important to have a formal record of the inadmissibility. This is best accomplished by preparing an A44(1) inadmissibility report."[5] Only in "rare instances" will an officer decide not to write a 44(1) report for an individual inadmissible for serious criminality.[6] The discretion not to write a 44(1) report is thus very limited.[7]

13. The CIC enforcement manual provides that officers can consider the personal circumstances of permanent residents, including humanitarian factors, when deciding whether to refer the report to a review.[8] This discretion is limited. It is not a "full-blown humanitarian and compassionate review", and the predominant consideration is the offence.[9] Furthermore, even

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[4] *IRPA,* at s.44(2)

[5] Citizenship and Immigration Canada, *ENF 5: Writing 44(1) Reports,* online: <http://www.cic.gc.ca/english/resources/manuals/enf/enf05-eng.pdf>, [*"ENF 5: Writing 44(1) Reports"*]; s. 8.3 [Intervener's Authorities, Tab 23]

[6] *ENF 5: Writing 44(1) Reports,* ss. 8.3 [Intervener's Authorities, Tab 23]

[7] The jurisprudence is unsettled with respect to the scope of this discretion. In *Correia v Canada (MCI)*, 2004 FC 782 at paras. 20, 22, 23, 27 [Intervener's Authorities, Tab 3] and *Richter v Canada (MCI)*, 2008 FC 806 at para. 12 (aff'd 2009 FCA 73) [Intervener's Authorities, Tabs 19 and 20] the Court finds a very limited discretion to consider only the facts relating to the conviction. In *Hernandez v Canada (MCI)*, 2005 FC 429 ["*Hernandez*"] at para. 42 [Intervener's Authorities, Tab 6], the Court finds that the discretion is broad enough to include consideration of the factors in the CIC Manual. In *Spencer v Canada (MCI)*, 2006 FC 990 at para. 12 [Intervener's Authorities, Tab 21] the Court finds that officers can consider the factors in the CIC Manual but are not required to do so. The factors set out in Enforcement Manual 5 for serious criminality are limited to factors pertaining to the offence and the individual's criminal history - see: *ENF 5: Writing 44(1) Reports,* ss. 8.3 [Intervener's Authorities, Tab 23].

[8] Citizenship and Immigration Canada, *ENF 6: Review of Reports under A44(1),* online: <http://www.cic.gc.ca/english/resources/manuals/enf/enf06-eng.pdf>, s. 19.2 [Intervener's Authorities, Tab 24]. In contrast, there is no discretion to consider the personal circumstances of foreign nationals at either the 44(1) or 44(2) stage: *ENF 5: Writing 44(1) Reports,* s. 8.1 [Intervener's Authorities, Tab 23], *Cha v Canada (MCI),* 2006 FCA 126 ["*Cha*"] at para. 35 [Intervener's Authorities, Tab 2].

[9] *Lee v Canada (MCI)*, 2006 FC 158 ["*Lee*"] at para. 50 [Intervener's Authorities, Tab 7]. The importance of the offence in the determination is made clear in the CIC manual *ENF 6: Review of Reports under A44(1)*, which states

this minimal level of discretion has been questioned by the Federal Court. Some Federal Court jurisprudence recognizes that officers may consider humanitarian and compassionate factors, while other jurisprudence suggests that officers do not have this discretion.[10] The likelihood of referral to an admissibility hearing is very high in cases of serious criminality.

14. Once the report is referred to an admissibility hearing, the Member of the Immigration Division has only one function: to determine whether or not the person has been convicted of an offence described by section 36(1)(a) of IRPA.[11] There is no discretion to consider personal circumstances or humanitarian factors. If the permanent resident is found inadmissible, the Member is required to issue a removal order.[12]

15. Permanent residents sentenced to less than two years have a right to appeal a removal order before the Immigration Appeal Division, which has the power to quash the deportation order, stay its operation subject to terms and conditions, or dismiss the appeal.[13] The Immigration Appeal Division can consider humanitarian and compassionate factors.[14] Once an appeal is initiated, the removal order becomes unenforceable until the appeal is disposed of. An offender does not lose his or her permanent resident status until their appeal is dismissed and their removal order comes into force.[15]

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at s. 19.2: "the fact that a conviction falls within A36(1) is itself an indication of its seriousness for immigration purposes" [Intervener's Authorities, Tab 24].

[10] *Correia,* at para. 29 [Intervener's Authorities, Tab 3] and *Leong v Canada (Solicitor General),* 2004 FC 1126 at para. 19 [Intervener's Authorities, Tab 8] find that the discretion does not include consideration of humanitarian factors. *Hernandez* at para. 42 [Intervener's Authorities, Tab 6] and *Lee* at paras. 50-52 [Intervener's Authorities, Tab 7] find that the discretion encompasses the factors in the manual which includes humanitarian factors, and *Faci v Canada (MPSEP)*, 2011 FC 693 at para. 63 [Intervener's Authorities, Tab 5] finds that the discretion can include humanitarian factors, but officers are not obligated to consider these factors.

[11] *Hernandez,* at para. 28 [Intervener's Authorities, Tab 6]; *de Lara v Canada (MCI),* 2010 FC 836 at para. 31 [Intervener's Authorities, Tab 4]

[12] *IRPA,* s.45(d)

[13] *IRPA*, ss.63(3), 66

[14] *IRPA*, s.67(1)(c)

[15] *IRPA*, ss. 46(1)(c), 49(1)(c)

16. If a stay is granted, the offender will be subject to terms and conditions.[16] The *Immigration and Refugee Protection Regulations* sets out a list of mandatory conditions, and in cases concerning criminality, board members frequently impose additional conditions.[17] The conditions are designed to promote rehabilitation and prevent recidivism. Failure to abide by the conditions can result in the cancellation of the stay of removal. While the stay of removal is in effect, the offender remains at risk of losing their status and facing removal.

17. Permanent residents sentenced to two or more years are denied the right to appeal to the Immigration Appeal Division.[18] Parliament has introduced Bill C-43, which would further reduce access to the Immigration Appeal Division. Under this Bill, only permanent residents sentenced to less than six months can bring appeals to the Immigration Appeal Division.[19] In this case, the removal order comes into effect immediately. The offender loses their permanent resident status and must leave Canada.[20] Once the offender loses their permanent resident status they also lose their health benefits and the right to work.[21]

18. As a result of the inadmissibility scheme in *IRPA,* permanent residents sentenced to two or more years imprisonment for an offence committed in Canada are almost certainly going to be found inadmissible, lose their permanent resident status and be subject to an enforceable removal order.

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[16] *IRPA,* s.68

[17] *Immigration and Refugee Protection Regulations,* SOR/2002-227 [*"IRP Regulations"*], s. 251. Mandatory conditions include reporting any change in address, obtaining travel documents and refraining from committing any criminal offences. Optional conditions can include restrictions on who the permanent resident can associate with, requirements to attend counseling or rehabilitation programs, and the obligation to report information such as employment, living arrangements and marital status. See: Citizenship and Immigration Canada, *ENF 19: Appeals before the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB),* online: <http://www.cic.gc.ca/english/resources/manuals/enf/enf19-eng.pdf>, s. 11.5 [Intervener's Authorities, Tab 25].

[18] *IRPA*, s. 64 (1)(2)

[19] Bill C-43, *Faster Removal of Foreign Criminals Act,* 1st Sess, 44th Parl, 2012 cl 24.

[20] *IRPA*, ss. 46(1)(c), 48, 49(1)(a)

[21] *IRP Regulations*, s. 196

ii. There are no effective alternatives for permanent residents who are inadmissible for serious criminality

19. In the jurisprudence addressing the limited discretion available in the inadmissibility process, the Federal Court and Federal Court of Appeal have commented that there are other mechanisms available for individuals to have their personal circumstances assessed, such as a humanitarian and compassionate application (H&C) and a pre-removal risk assessment (PRRA).[22] However, the utility of these options are limited. A successful PRRA does not restore status, and an offender will likely be removed before a decision is made on their H&C.

20. H&C applications allow foreign nationals to seek an exemption from the requirement to apply for permanent residence from outside Canada.[23] Offenders are only eligible to submit an H&C application after they have lost their permanent residence status. At this point, the removal order is in force and offenders are subject to immediate removal. However, H&C applications do not stay a person's removal, and the current average processing time of an H&C application is 32-40 months.[24] Offenders will likely be deported before their application is decided.[25] As a result, for most offenders, the H&C process will not result in consideration of the offender's personal circumstances before removal.

21. Persons inadmissible for serious criminality and sentenced to two or more years are not eligible to make a claim for refugee protection.[26] They can be sent back to face persecution.

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[22] *Cha*, at paras. 37, 40 [Intervener's Authorities, Tab 2]; *Lee*, at paras. 18, 19, 52 [Intervener's Authorities, Tab 2]

[23] *IRPA, s.25.*

[24] *IRP Regulations*, s. 233; Citizenship and Immigration Canada, *IP 5: Immigrant Applications in Canada made on Humanitarian and Compassionate Grounds,* online: <http://www.cic.gc.ca/english/resources/manuals/ip/ip05-eng.pdf>, s. 5.24 [Intervener's Authorities, Tab 26]. For processing times see: Citizenship and Immigration Canada, *Processing times: Permanent Residence – Other Applications: Humanitarian and Compassionate Cases,* online: <http://www.cic.gc.ca/english/information/times/perm-other.asp>, [Intervener's Authorities, Tab 28]

[25] An offender who has a date for deportation can apply for a deferral of their deportation pending determination of their application. The jurisdiction of removal officers to defer is extremely limited and a deferral will only occur in exceptional circumstances. The fact that a humanitarian and compassionate application has been made is generally not a basis for deferral. See: *Baron v Canada (MPSEP)*, 2009 FCA 81 at paras. 50-51 [Intervener's Authorities, Tab 1].

[26] *IRPA*, s. 101(2)(a). Permanent residents who are Convention Refugees retain their status as refugees even after their permanent resident status is revoked. In order to remove a Convention Refugee to the country where they fear persecution, the refugee must be found to be a danger to the public. This finding is made by an immigration officer who balances the refugee's risk upon return with the danger they pose. If a danger opinion is not issued, the refugee

However, persons who fear a risk to life, a risk of torture or cruel and unusual treatment can submit a PRRA, and their removal will be stayed until a decision is rendered on the PRRA.[27]

22. For inadmissible offenders, the PRRA application is limited to a consideration of whether the person faces a risk of torture, a risk to their life, or a risk of cruel and unusual treatment or punishment, there is no consideration of whether they face persecution.[28] If a PRRA officer finds a risk to life or a risk of torture, the case is referred to the Case Management Branch for an assessment of whether the offender is a danger to Canada.[29] If the offender is found to be a danger, the risk the offender faces is balanced against the danger they pose to Canadian society.[30]

23. These offenders can receive only limited protection from a PRRA. If the PRRA application is allowed the offender receives a temporary stay of removal, not permanent protection.[31] A successful PRRA does not restore the offender's permanent resident status. Long term permanent residents are, however, less likely to have risk factors within the ambit of s.97 due to the fact that they have resided in Canada for lengthy periods of time.[32]

24. The immigration regime ensures that permanent residents sentenced to two or more years are likely going to be removed from Canada. If a sentence of less than two years is imposed, permanent residents still face a risk of deportation and if they receive a stay of removal they are subject to conditions imposed by the IAD. These severe immigration consequences affect the punitive impact of a sentence as well as an offender's rehabilitative prospects.

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can remain in Canada but continues to be inadmissible, which is a barrier to obtaining permanent residency status. See: *IRPA*, s. 115(1)(2)(a).

[27] *IRP Regulations,* s. 232

[28] *IRPA,* ss. 97, 112(3)(b), 113(d)(i), 114(1)(b)

[29] Citizenship and Immigration Canada, *PP 3: Pre Removal Risk Assessment (PRRA),* online: <http://www.cic.gc.ca/english/resources/manuals/pp/pp03-eng.pdf>, at s. 9.4 [Intervener's Authorities, Tab 27]

[30] *IRPA*, s. 113(d)(i); *Placide v Canada (MCI),* 2009 FC 1056 at para. 77 [Intervener's Authorities, Tab 9]

[31] *IRPA*, ss. 114(1)(b), (2)

[32] Section 97(1)(b)(ii) of *IRPA* expressly excludes consideration of generalized risks faced by all of the population.

B. Immigration consequences of criminal sentences should be considered as part of an offender's personal circumstances

25. The jurisprudence on the relevance of immigration consequences in criminal sentencing has to date focused on the loss of important procedural rights in the *IRPA*. Leading cases such as *R v Hamilton* hold that immigration consequences may be a relevant factor to consider, but cannot result in a sentence outside of an otherwise fit range of sentence.[33] The focus of the jurisprudence has been on the availability of a 'de minimus' variation of a sentence to preserve the offender's right of appeal to the IAD.

26. The BCCLA supports the Appellant's position that if a sentence in the appropriate range would avoid the loss of the offender's IAD appeal rights, then that is the fit sentence. The BCCLA takes the position that immigration consequences are relevant beyond considering whether the sentence should be altered to preserve a right of appeal to the IAD. Immigration consequences are part of the particular circumstances of an offender, which are always a relevant factor for a sentencing judge to consider. Immigration consequences are relevant considerations in assessing the punitive impact of a sentence and an offender's rehabilitative prospects.

27. The fundamental principle of sentencing is proportionality. A sentence imposed "must reflect the seriousness of the offence, the degree of culpability of the offender, and the harm occasioned by the offence".[34] Sentences must promote one or more of the objectives identified in s. 718 of the *Criminal Code*:

> (a) to denounce unlawful conduct;
> (b) to deter the offender and other persons from committing offences;
> (c) to separate offenders from society, where necessary;
> (d) to assist in rehabilitating offenders;
> (e) to provide reparations for harm done to victims or to the community; and
> (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

28. This Court has recognized that sentencing is an individualized process, in which the trial judge can consider all the particular circumstances of the offender and the offence. The rationale

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[33] *R v Hamilton* (2004), 72 OR (3d) 1 (CA)

[34] *R v Priest* (1996), 110 CCC (3d) 289 (Ont CA), [1996] OJ No 3369 (QL) at para. 26 [Intervener's Authorities, Tab 16]

for this approach is based on the principle of proportionality, which "requires an examination of the specific circumstances of both the offender and the offence."[35] Sentencing judges frequently consider an offender's family status, job status, employment or education opportunities, and aboriginal heritage when determining the appropriate sentence.[36] These personal mitigating factors relate to an offender's rehabilitative prospects, and are relevant considerations in determining what sentence is necessary to promote deterrence or denunciation.

29. Personal factors are also relevant because they relate to the sentence's punitive impact. For example, in *R v Matheson*, the sentencing judge found that an offender who was convicted of trafficking would suffer a prejudicial effect if a conviction was registered against her, as a criminal record would prevent her from pursuing her career as a nurse.[37]

30. The immigration consequences of a criminal sentence are no less relevant to the particular circumstances of an offender then other personal factors such as employment status. Immigration consequences often result in offenders being separated from their families, and removed from supportive communities and needed social and health services. Long term permanent residents often face removal to places where they have little or no connection. The punitive impacts of immigration consequences are relevant even where the fit sentence is more than two years. The punitive immigration impacts affect what sentence is necessary to promote deterrence or denunciation, and will also have direct relevance to an offender's prospects for rehabilitation.

31. Sentencing judges have the discretion to consider any particular circumstance of the offender which relates to the sentencing principles and objectives. Immigration consequences of a criminal sentence can seriously affect the rights and freedoms of offenders. When these impacts are taken into account, the punitive impact of the sentence can be greater on a permanent

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[35] *R v Proulx*, 2000 SCC 5 at para. 82 [Intervener's Authorities, Tab 17]; *R v CAM*, [1996] 1 SCR 500 at para 92 [Intervener's Authorities, Tab 10]

[36] *R v Matheson,* 2007 NSPC 43 at para. 18 [Intervener's Authorities, Tab 14], *R v Hamilton* (2004), 72 OR (3d) 1 (CA) at para 142 [Intervener's Authorities, Tab 11], *R v Nur*, 2011 ONSC 4874 at paras. 32-35, 148 [Intervener's Authorities, Tab 15]; *R v Ipeelee*, 2012 SCC 13 at para. 60 [Intervener's Authorities, Tab 12]; *R v Jacko*, 2010 ONCA 452, at paras 87-88, 101 and 103 [Intervener's Authorities, Tab 13]

[37] *R v Matheson,* 2007 NSPC 43 at para 18 [Intervener's Authorities, Tab 14]

resident than a Canadian citizen. Offenders should never be punished more severely than is necessary to meet the relevant sentencing objectives and principles. The punitive immigration consequences of a sentence should be taken into account, together with the impact that deportation may have on the community and on the offender's rehabilitative prospects, in every individualized sentencing assessment. Otherwise, the rights and freedoms of offenders could be limited more than is necessary to meet sentencing objectives. This is so regardless of whether an offender retains a right to appeal to the IAD.

32. The fact that an offender faces immigration consequences does not dictate a particular sentence. Yet, the fact that an offender faces near certain removal from Canada is a relevant fact which relates directly to the sentencing objectives set out in s. 718 of the *Criminal Code*, as well as the underlying principles of proportionality and restraint. It is part of an offender's circumstances which should be considered in every individualized assessment of the offender and the offence.

PART IV - COSTS

33. The BCCLA seek no costs and respectfully ask that no costs are awarded against them.

PART V - ORDER SOUGHT

34. The BCCLA takes no position on the disposition of the appeal, but respectfully requests that it be determined in light of the submissions set out above.

35. The BCCLA respectfully requests leave to present oral arguments of no more than 10 minutes at the hearing of the appeal.

All of which is respectfully submitted this 10th day of January, 2013 at Toronto.

per **LORNE WALDMAN**
Of counsel for the Intervener,
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PART VI – TABLE OF AUTHORITIES

CASES	CITED AT PARAGRAPH(S)
Baron v Canada (MPSEP), 2009 FCA 81	20
Cha v Canada (MCI), 2006 FCA 126	13, 19
Correia v Canada (MCI), 2004 FC 782	12, 13
de Lara v Canada (MCI), 2010 FC 836	14
Faci v Canada (MPSEP), 2011 FC 693	13
Hernandez v Canada (MCI), 2005 FC 429	12, 13
Lee v Canada (MCI), 2006 FC 158	13, 19
Leong v Canada (Solicitor General), 2004 FC 1126	13
Placide v Canada (MCI), 2009 FC 1056	22
R v CAM, [1996] 1 SCR 500	28
R v Hamilton (2004), 72 OR (3d) 1 (CA)	25, 28
R v Ipeelee, 2012 SCC 13	28
R v Jacko, 2010 ONCA 452	28
R v Matheson, 2007 NSPC 43	28, 29
R v Nur, 2011 ONSC 4874	28
R v Priest (1996), 110 CCC (3d) 289 (Ont CA)	27
R v Proulx, 2000 SCC 5	28
Richter v Canada (MCI), 2008 FC 806	12
Richter v Canada (MCI), 2009 FCA 73	12
Spencer v Canada (MCI), 2006 FC 990	12

SECONDARY SOURCES	CITED AT PARAGRAPH(S)
Bill C-43, *Faster Removal of Foreign Criminals Act,* 1st Sess., 44th Parl., 2012	17
Citizenship and Immigration Canada, *ENF 5: Writing 44(1) Reports*, online: <http://www.cic.gc.ca/english/resources/manuals/enf/enf05-eng.pdf>	12, 13
Citizenship and Immigration Canada, *ENF 6: Review of Reports under A44(1),* online: <http://www.cic.gc.ca/english/resources/manuals/enf/enf06-eng.pdf>	13
Citizenship and Immigration Canada, *ENF 19: Appeals before the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB),* online: <http://www.cic.gc.ca/english/resources/manuals/enf/enf19-eng.pdf>	16
Citizenship and Immigration Canada, *IP 5: Immigrant Applications in Canada made on Humanitarian and Compassionate Grounds*, online: <http://www.cic.gc.ca/english/resources/manuals/ip/ip05-eng.pdf>	20
Citizenship and Immigration Canada, *PP 3: Pre Removal Risk Assessment (PRRA)*, online: <http://www.cic.gc.ca/english/resources/manuals/pp/pp03-eng.pdf>	22
Citizenship and Immigration Canada, *Processing times: Permanent Residence – Other Applications: Humanitarian and Compassionate Cases,* online: <http://www.cic.gc.ca/english/information/times/perm-other.asp>.	20

PART VII – STATUTES AND REGULATIONS RELIED ON

***Immigration and Refugee Protection Act*, SC 2001, c 27**

25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible or does not meet the requirements of this Act, and may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected	**25.** (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for (*a*) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	**36.** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants : *a*) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister. (2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28	**44.** (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre. (2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de

and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.	renvoi.
45. The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the following decisions: ... (*d*) make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.	**45.** Après avoir procédé à une enquête, la Section de l'immigration rend telle des décisions suivantes : ... *d*) prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire.
46. (1) A person loses permanent resident status ... (*c*) when a removal order made against them comes into force;	**46.** (1) Emportent perte du statut de résident permanent les faits suivants : ... *c*) la prise d'effet de la mesure de renvoi;
48. (1) A removal order is enforceable if it has come into force and is not stayed. (2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.	**48.** (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis. (2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent.
49. (1) A removal order comes into force on the latest of the following dates: (*a*) the day the removal order is made, if there is no right to appeal; (*b*) the day the appeal period expires, if there is a right to appeal and no appeal is made; and (*c*) the day of the final determination of the	**49.** (1) La mesure de renvoi non susceptible d'appel prend effet immédiatement; celle susceptible d'appel prend effet à l'expiration du délai d'appel, s'il n'est pas formé, ou quand est rendue la décision qui a pour résultat le maintien définitif de la mesure.

appeal, if an appeal is made.	
63. ... (2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them. (3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.	**63.** ... (2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête. (3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.
64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality. (2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years.	**64.** (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant. (2) L'interdiction de territoire pour grande criminalité vise l'infraction punie au Canada par un emprisonnement d'au moins deux ans.
66. After considering the appeal of a decision, the Immigration Appeal Division shall (*a*) allow the appeal in accordance with section 67; (*b*) stay the removal order in accordance with section 68; or (*c*) dismiss the appeal in accordance with section 69.	**66.** Il est statué sur l'appel comme il suit : *a*) il y fait droit conformément à l'article 67; *b*) il est sursis à la mesure de renvoi conformément à l'article 68; *c*) il est rejeté conformément à l'article 69.
67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, ...	**67.** (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : ... *c*) sauf dans le cas de l'appel du ministre, il

(*c*) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
68. (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case. (2) Where the Immigration Appeal Division stays the removal order (a) it shall impose any condition that is prescribed and may impose any condition that it considers necessary; (b) all conditions imposed by the Immigration Division are cancelled; (c) it may vary or cancel any non-prescribed condition imposed under paragraph (a); and (d) it may cancel the stay, on application or on its own initiative. (3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division. (4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.	**68.** (1) Il est sursis à la mesure de renvoi surpreuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales. (2) La section impose les conditions prévues par règlement et celles qu'elle estime indiquées, celles imposées par la Section de l'immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d'office ou sur demande. (3) Par la suite, l'appel peut, sur demande ou d'office, être repris et il en est disposé au titre de la présente section. (4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est révoqué de plein droit si le résident permanent ou l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays

do not have a country of nationality, their country of former habitual residence, would subject them personally (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or (b) to a risk to their life or to a risk of Cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée : a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant: (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationals — et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
101. (2) A claim is not ineligible by reason of serious criminality under paragraph (1)(*f*) unless (*a*) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed;	**101.** (2) L'interdiction de territoire pour grande criminalité visée à l'alinéa (1)*f*) n'emporte irrecevabilité de la demande que si elle a pour objet : *a*) une déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle un emprisonnement d'au moins deux ans a été infligé;
112. (3) Refugee protection may not result from an application for protection if the person	**112.** (3) L'asile ne peut être conféré au demandeur dans les cas suivants :

(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;	*b*) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
113. Consideration of an application for protection shall be as follows: (d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and (i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or	**113.** Il est disposé de la demande comme il suit: d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part: (i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,
114. (1) A decision to allow the application for protection has (*b*) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection. (2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(*d*) and the regulations, the grounds on which the application was allowed and may cancel the stay.	**114.** (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant. (2) Le ministre peut révoquer le sursis s'il estime, après examen, sur la base de l'alinéa 113*d*) et conformément aux règlements, des motifs qui l'ont justifié, que les circonstances l'ayant amené ont changé.
115. (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality,	**115.** (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la

membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment. (2) Subsection (1) does not apply in the case of a person (a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or-	personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée. (2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire : a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;

***Immigration and Refugee Protection Regulations*, SOR/2002-227**

196. A foreign national must not work in Canada unless authorized to do so by a work permit or these Regulations.	**196.** L'étranger ne peut travailler au Canada sans y être autorisé par un permis de travail ou par le présent règlement.
251. If the Immigration Appeal Division stays a removal order under paragraph 66(b) of the Act, that Division shall impose the following conditions on the person against whom the order was made: (a) to inform the Department and the Immigration Appeal Division in writing in advance of any change in the person's address (b) to provide a copy of their passport or travel document to the Department or, if they do not hold a passport or travel document, to complete an application for a passport or a travel document and to provide the application to the Department; (c) to apply for an extension of the validity period of any passport or travel document before it expires, and to provide a copy of the extended passport or document to the Department; (d) to not commit any criminal offences; (e) if they are charged with a criminal offence, to immediately report that fact in writing to the Department; and	**251.** Si la Section d'appel de l'immigration sursoit à une mesure de renvoi au titre de l'alinéa 66b) de la Loi, elle impose les conditions suivantes à l'intéressé : a) informer le ministère et la Section d'appel de l'immigration par écrit et au préalable de tout changement d'adresse; b) fournir une copie de son passeport ou titre de voyage au ministère ou, à défaut, remplir une demande de passeport ou de titre de voyage et la fournir au ministère; c) demander la prolongation de la validité de tout passeport ou titre de voyage avant qu'il ne vienne à expiration, et en fournir subséquemment copie au ministère; d) ne pas commettre d'infraction criminelle; e) signaler au ministère, par écrit et sans délai, toute accusation criminelle portée contre lui; f) signaler au ministère et à la Section d'appel de l'immigration, par écrit et sans délai, toute condamnation au pénal

(f) if they are convicted of a criminal offence, to immediately report that fact in writing to the Department and the Division.	prononcée contre lui.
232. A removal order is stayed when a person is notified by the Department under subsection 160(3) that they may make an application under subsection 112(1) of the Act, and the stay is effective until the earliest of the following events occurs: (*a*) the Department receives confirmation in writing from the person that they do not intend to make an application; (*b*) the person does not make an application within the period provided under section 162; (*c*) the application for protection is rejected; (*d*) [Repealed, SOR/2012-154, s. 12] (*e*) if a decision to allow the application for protection is made under paragraph 114(1)(*a*) of the Act, the decision with respect to the person's application to remain in Canada as a permanent resident is made; and (*f*) in the case of a person to whom subsection 112(3) of the Act applies, the stay is cancelled under subsection 114(2) of the Act.	**232.** Il est sursis à la mesure de renvoi dès le moment où le ministère avise l'intéressé aux termes du paragraphe 160(3) qu'il peut faire une demande de protection au titre du paragraphe 112(1) de la Loi. Le sursis s'applique jusqu'au premier en date des événements suivants : *a*) le ministère reçoit de l'intéressé confirmation écrite qu'il n'a pas l'intention de se prévaloir de son droit; *b*) le délai prévu à l'article 162 expire sans que l'intéressé fasse la demande qui y est prévue; *c*) la demande de protection est rejetée; *d*) [Abrogé, DORS/2012-154, art. 12] *e*) s'agissant d'une personne à qui l'asile a été conféré aux termes du paragraphe 114(1) de la Loi, la décision quant à sa demande de séjour au Canada à titre de résident permanent; *f*) s'agissant d'une personne visée au paragraphe 112(3) de la Loi, la révocation du sursis prévue au paragraphe 114(2) de la Loi.
233. A removal order made against a foreign national, and any family member of the foreign national, is stayed if the Minister is of the opinion that the stay is justified by humanitarian and compassionate considerations, under subsection 25(1) or 25.1(1) of the Act, or by public policy considerations, under subsection 25.2(1) of the Act. The stay is effective until a decision is made to grant, or not grant, permanent resident status.	**233.** Si le ministre estime, aux termes des paragraphes 25(1) ou 25.1(1) de la Loi, que des considérations d'ordre humanitaire le justifient ou, aux termes du paragraphe 25.2(1) de la Loi, que l'intérêt public le justifie, il est sursis à la mesure de renvoi visant l'étranger et les membres de sa famille jusqu'à ce qu'il soit statué sur sa demande de résidence permanente.