

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**CANADIAN ALLIANCE FOR SEX WORK LAW REFORM,  
MONICA FORRESTER, VALERIE SCOTT, LANNA MOOM PERRIN, JANE X,  
ALESSA MASON and TIFFANY ANWAR**

Applicants

and

**ATTORNEY GENERAL OF CANADA**

Respondent

and

**ATTORNEY GENERAL OF ONTARIO**

Intervener

and

**AMNESTY INTERNATIONAL CANADIAN SECTION (ENGLISH SPEAKING),  
ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA, AWCEP ASIAN  
WOMEN FOR EQUALITY SOCIETY, BLACK LEGAL ACTION CENTRE,  
BRIDGENORTH WOMEN'S MENTORSHIP & ADVOCACY SERVICES, BRITISH  
COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN ASSOCIATION OF  
REFUGEE LAWYERS, CANADIAN CIVIL LIBERTIES ASSOCIATION, PARENTS  
AGAINST CHILD TRAFFICKING COALITION, DEFEND DIGNITY, EGALE  
CANADA AND THE ENCHANTÉ NETWORK, EVANGELICAL FELLOWSHIP OF  
CANADA, MIGRANT WORKERS ALLIANCE FOR CANADA, ONTARIO COALITION  
OF RAPE CRISIS CENTRES, SEXUAL HEALTH COALITION, WOMEN'S  
EQUALITY COALITION, and WOMEN'S LEGAL EDUCATION AND ACTION FUND  
(LEAF)**

Interveners

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**FACTUM OF THE INTERVENER  
CANADIAN ASSOCIATION OF REFUGEE LAWYERS**

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August 10, 2022

**Jamie Liew** LSO# 53106L  
**Barrister & Solicitor**

39 Fern Ave  
Ottawa, ON K1Y 3S2  
Email: [jamie@jeyliew.com](mailto:jamie@jeyliew.com)  
Tel: (613) 808-5592  
Fax: 1-888-843-3413

**Molly Joeck** LSBC# 514704  
**Barrister & Solicitor**

Edelmann & Co  
905-207 West Hastings St.  
Vancouver, B.C. V6B 1H7  
Email: [molly@edelmann.ca](mailto:molly@edelmann.ca)  
Tel: 604-646-4694  
Fax: 604-648-8043

Lawyers for the Intervener  
Canadian Association of Refugee Lawyers (CARL)

TO:

**McCarthy Tétrault LLP**  
Suite 5300, Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

**H. Michael Rosenberg** LSO#58140U  
Email: [mrosenberg@mccarthy.ca](mailto:mrosenberg@mccarthy.ca)  
Tel: 416-601-7831

**Alana Robert** LSO# 79761P  
Email: [alrobert@mccarthy.ca](mailto:alrobert@mccarthy.ca)  
Tel: 416-601-8022

**Holly Kallmeyer** LSO#79560Q  
Email: [hkallmeyer@mccarthy.ca](mailto:hkallmeyer@mccarthy.ca)  
Tel: 416-601-7937

Lawyers for the Alliance,  
Monica Forrester, Valerie Scott, Lanna  
Moon Perrin, Jane X, and Alessa Mason

AND TO:

**Tara Santini** - Permitted to practice law in Ontario under Part VII of LSO By-Law 4  
Suite 312, 1100 rue Jeanne Mance  
Montréal, QC H2Z 1L7  
Email: [tarasantini@videotron.ca](mailto:tarasantini@videotron.ca)  
Tel: 438-333-0787

Lawyer for the Alliance

AND TO:

**Lockyer Posner Craig**  
Suite #103, 30 St. Clair Avenue West  
Toronto, ON M4V 3A1

**James Lockyer** LSO# 16359A  
Email: [jlockyer@lcp-law.com](mailto:jlockyer@lcp-law.com)  
Tel: 416-847-2560

Lawyer for Tiffany Anwar

AND TO:

**The Attorney General of Canada**  
Ontario Regional Office  
Department of Justice Canada  
120 Adelaide St. West  
Suite #400  
Toronto, Ontario, M5H 1T1  
Tel: 416-471-4093 / 647-920-4709

**Michael H. Morris** LSO# 34397W  
Email: [michael.morris@justice.gc.ca](mailto:michael.morris@justice.gc.ca)

**Gail Sinclair** LSO# 23894M  
Email: [gail.sinclair@justice.gc.ca](mailto:gail.sinclair@justice.gc.ca)

**Joseph Cheng** LSO# 45356W  
Email: [joseph.cheng@justice.gc.ca](mailto:joseph.cheng@justice.gc.ca)

Lawyers for the Respondent,  
Attorney General of Canada

AND TO:

**Ministry of the Attorney General for Ontario**

Crown Law Office

720 Bay Street, 10<sup>th</sup> Floor

Toronto, ON M7A 2S9

Tel: 416-326-4600 / 416-326-4656

**Deborah Krick** LSO #49590A

Email: [Deborah.krick@ontario.ca](mailto:Deborah.krick@ontario.ca)

**Meaghan Cunningham** LSO #48493K

Email: [Meaghan.cunningham@ontario.ca](mailto:Meaghan.cunningham@ontario.ca)

Lawyers for the Intervener,  
Ministry of the Attorney General for Ontario

AND TO:

**Miller Thomson LLP**

3000, 700 - 9th Avenue SW

Calgary, Alberta T2P 3V4

Tel: 403-298-2434 Fax: 403-262-0007

**Gerald Chipeur, Q.C.**

Email: [gchipeur@millerthomson.com](mailto:gchipeur@millerthomson.com)

**Tory Hibbitt**

Email: [thibbitt@millerthomson.com](mailto:thibbitt@millerthomson.com)

Counsel for the Intervener,  
Defend Dignity

AND TO:

**The Acacia Group**

**John Sikkema**, LSO# 67933S

Email: [john@acaciagroup.ca](mailto:john@acaciagroup.ca)

Tel: 613-221-5895

Counsel for the Intervener,  
The Evangelical Fellowship of Canada

AND TO:

**Canadian Civil Liberties Association**

400 – 124 Merton St.

Toronto, ON M4S 2Z2

Fax: N/A

**Cara Zwibel** LSO#: 50936S

Email: [czwibel@ccla.org](mailto:czwibel@ccla.org)

Tel: 416.646.1409

Counsel for the Intervener,  
Canadian Civil Liberties Association

AND TO:

**SHIBLEY RIGHTON LLP**

250 University Ave., Suite 700

Toronto, ON M5H 3E5

**Jacqueline L. King** LSO#35675A

Email: [jking@shibleyrighton.com](mailto:jking@shibleyrighton.com)

Tel: (416) 214-5222

**Matilda Lici** LSO#79621D

Email: [matilda.lici@shibleyrighton.com](mailto:matilda.lici@shibleyrighton.com)

Tel: (416) 214-5204

Counsel for the Intervener,  
BridgeNorth Women's Mentorship & Advocacy Services

AND TO:

**ST. LAWRENCE BARRISTERS LLP**

33 Britain Street, 2nd Floor

Toronto ON M5A 1R7

Fax: 647.245.8285

**Alexi N. Wood** LSO# 54683F

Email: [alexi.wood@stlbarristers.ca](mailto:alexi.wood@stlbarristers.ca)

Tel: 647.245.8283

**Laura MacLean** LSO# 81401A

Email: [laura.maclean@stlbarristers.ca](mailto:laura.maclean@stlbarristers.ca)

Tel: 647.245.2222

Counsel for the Intervener,  
Amnesty International, Canadian Section (English Speaking)

AND TO:

**The Association for Reformed Political Action (ARPA) Canada**

130 Albert Street, Suite 1705

Ottawa, Ontario K1P 5G4

**André Schutten**, LSO# 60842W  
Email: [andre@arpacanada.ca](mailto:andre@arpacanada.ca)  
Tel: 613-297-5172

**Tabitha Ewert**, LSO# 74278W  
Email: [tabitha@arpacanada.ca](mailto:tabitha@arpacanada.ca)  
Tel: 604-220-1258

Counsel for the Intervener,  
The Association for Reformed Political Action (ARPA) Canada

AND TO:

**Yan Muirhead LLP**  
1100 – 736 Granville Street  
Vancouver, British Columbia V6Z 1G3

**Nerissa Yan**  
Email: [nyan@ymlaw.ca](mailto:nyan@ymlaw.ca)  
Tel: (604) 283-8579

**Jennifer Flood**  
27th Floor, Three Bentall Centre  
595 Burrard Street  
Vancouver, British Columbia V7X 1J2

**Jennifer Flood**  
Email: [jflood@thor.ca](mailto:jflood@thor.ca)  
Tel: (604) 689-1261

Counsel for the Intervener,  
Asian Women for Equality

AND TO:

**The Black Legal Action Centre**  
221-720 Spadina Avenue  
Toronto, ON M5S 2T9

**Nana Yanful** LSO#: 66783B  
Email: [yanfuln@lao.on.ca](mailto:yanfuln@lao.on.ca)  
Tel: 416-597-5831

**GOLDBLATT PARTNERS LLP**  
20 Dundas Street West, Suite 1039  
Toronto ON M5G 2C2

**Saneliso Moyo** LSO#: 68844K

Email: [smoyo@goldblattpartners.com](mailto:smoyo@goldblattpartners.com)  
Tel: 416-979-4641

**Geetha Philipupillai** LSO#: 74741S  
Email: [gphilipupillai@goldblattpartners.com](mailto:gphilipupillai@goldblattpartners.com)  
Tel: 416-979-4252

Counsel for the Intervener,  
The Black Legal Action Centre

AND TO:

**KASTNER LAM LLP**  
55 University Avenue, Suite 1800  
Toronto, ON M5J 2H7  
Tel: 416-655-3044

**Danny Kastner** LSO #540190  
Email: [dkastner@kastnerlam.com](mailto:dkastner@kastnerlam.com)

**Akosua Matthews** LSO #65621V  
Email: [amatthews@kastnerlam.com](mailto:amatthews@kastnerlam.com)

**Ruth Wellen** LSO #79846U  
Email: [rwellen@kastnerlam.com](mailto:rwellen@kastnerlam.com)

Counsel for the Intervener,  
The British Columbia Civil Liberties Association

AND TO:

**GOLDBLATT PARTNERS**  
20 Dundas Street West, Suite 1039  
Toronto, Ontario M5G 2C2

**Adriel Weaver** LSO #54173P  
Email: [aweaver@goldblattpartners.com](mailto:aweaver@goldblattpartners.com)  
Tel: 416-979-6415

**Dan Sheppard** LSO#59074H  
Email: [dsheppard@goldblattpartners.com](mailto:dsheppard@goldblattpartners.com)

Counsel for the Interveners,  
Egale Canada and the Enchanté Network

AND TO:

**MILLARD & COMPANY LLP**  
366 Adelaide Street West, Suite 102

Toronto ON M5V 1R9  
Tel: 416-920-3030  
Fax: 416-920-2504

**Angela Chaisson** LSO#62131J  
Email: [angela@millardco.ca](mailto:angela@millardco.ca)

**Marcus McCann** LSO#68180D  
Email: [marcus@millardco.ca](mailto:marcus@millardco.ca)

Counsel for the Intervener,  
Ontario Coalition of Rape Crisis Centres

AND TO:

**RE-LAW LLP**  
Barristers and Solicitors  
1118 Centre St., Suite 207  
Vaughan, ON L4J 7R9  
Fax: 416-429-2016

**David Elmaleh** LSO #621711  
Email: [delmaleh@relawllp.ca](mailto:delmaleh@relawllp.ca)  
Tel : 416-398-9839

Counsel for the Interveners,  
Parents Against Child Trafficking Coalition, consisting of:  
Council of Women Against Sex Trafficking in York Region; the London Anti-Human Trafficking  
Coalition; Lifeworthy; Men Ending Trafficking Canada; Rising Angels Awareness & Restorative  
Care; Parents Against Child Trafficking-Markham (PACT); Parents Against Child Trafficking –  
Richmond Hill; and Parents Hope – Lifeworthy

AND TO:

**Migrant Workers Alliance for Change**  
720 Spadina Ave, Unit #223  
Toronto, ON M5S 2T9

**Vincent Wan Shun Wong** LSO#65767J  
Email: [vwwong@yorku.ca](mailto:vwwong@yorku.ca)  
Tel: 647-354-7371

Counsel for the Intervener,  
Migrant Workers Alliance for Change

AND TO:

**Janine Benedet, QC**



1822 East Mall  
Vancouver, BC V6T1Z1

**Janine Benedet, QC**

Email: [benedet@allard.ubc.ca](mailto:benedet@allard.ubc.ca)

Tel : 604-822-0637

**Barton Thaney LLP**

2438 Marine Drive, Suite 210  
West Vancouver, BC V7V 1L2

**Gwendoline Allison**

Email: [gwendoline.allison@bartonthaney.com](mailto:gwendoline.allison@bartonthaney.com)

Tel: 604-922-9282

Counsel for the Intervener,  
Women's Equality Coalition, consisting of:  
Vancouver Rape Relief Society, La Concertation Des Luttes Contre L'exploitation Sexuelle (La  
CLES); Aboriginal Women's Action Network (AWAN); Formerly Exploited Voices Now Educating  
(EVE) And Solidarity in Sisterhood (SIS)

AND TO:

**HIV & AIDS Legal Clinic Ontario**

1400 – 55 University Ave  
Toronto, ON M5J 2H7  
Fax: (416) 340-7248

**Robin Nobleman LSO#71014P**

Email: [noblemar@lao.on.ca](mailto:noblemar@lao.on.ca)

Tel: (416) 340-7790 ext. 4043

**Ryan Peck LSO#45497H**

Email: [peckr@lao.on.ca](mailto:peckr@lao.on.ca)

Tel: (416) 340-7790 ext. 4047

**Coalition des Organismes Communautaires Québécois de Lutte Contre le Sida**

1 Sherbrooke St. E.  
Montreal, QC H2X 3V8  
Fax: (514) 379-1059

**Léa Pelletier-Marcotte (329606-7)** Permitted to practice law in Ontario under Part VII of LSO By-  
Law 4

Email: [lea.pelletier-marcotte@cocqsida.com](mailto:lea.pelletier-marcotte@cocqsida.com)

Tel: (514) 844-2477 ext. 32

Counsel for the Interveners,  
Sexual Health Coalition, consisting of:

HIV & AIDS Legal Clinic Ontario; Coalition des Organismes Communautaires Québécois de Lutte Contre le Sida; and Action Canada for Sexual Health and Rights

AND TO:

**Women's Legal Education and Action Fund**

180 Dundas Street West, Suite 1420  
Toronto, ON M5G 1Z8

**Pam Hrick** LSO#65543L

Email: [pam.h@leaf.ca](mailto:pam.h@leaf.ca)

Tel: 416-595-7170 x 2002

**Jihyun Rosel Kim** LSO#70936J

Email: [r.kim@leaf.ca](mailto:r.kim@leaf.ca)

Tel: 416-595-7170 x 2003

**Stockwoods LLP**

Barristers

Toronto-Dominion Centre

TD North Tower, Box 140

77 King Street West, Suite 4130

Toronto, ON M5K 1H1

**Dragana Rakic** LSO#73015K

Email: [draganar@stockwoods.ca](mailto:draganar@stockwoods.ca)

Tel: 416-593-3496

Counsel for the Intervener,  
Women's Legal Education and Action Fund











































**33** The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

#### Human or international rights violations

**35** (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

- (a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;
- (b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*;
- (c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association;
- (d) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the *Special Economic Measures Act* on the grounds that any of the circumstances described in paragraph 4(1.1)(c) or (d) of that Act has occurred; or
- (e) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

#### Clarification

(2) For greater certainty, despite section 33, a person who ceases being the subject of an order or regulation referred to in paragraph (1)(d) or (e) is no longer inadmissible under that paragraph.

#### Serious criminality

**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;

(b) having been convicted of an offence outside Canada 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; or

(c) committing an act outside Canada that is an offence in the place where it was committed and 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.

### Criminality

(2) A foreign national is inadmissible on grounds of criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;

(b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or

(d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

### Application

(3) The following provisions govern subsections (1) and (2):

(a) an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;

(b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a record suspension has been ordered and has not been revoked or ceased to have effect under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;

(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;

(d) a determination of whether a permanent resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and

(e) inadmissibility under subsections (1) and (2) may not be based on an offence

(i) designated as a contravention under the *Contraventions Act*,

(ii) for which the permanent resident or foreign national is found guilty under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or

(iii) for which the permanent resident or foreign national received a youth sentence under the *Youth Criminal Justice Act*.

#### Organized criminality

**37** (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or

(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.

#### Application

(2) Paragraph (1)(a) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.



**Exception — application to Minister**

**42.1** (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

**Exception — Minister's own initiative**

(2) The Minister may, on the Minister's own initiative, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of a foreign national if the Minister is satisfied that it is not contrary to the national interest.

**Considerations**

(3) In determining whether to make a declaration, the Minister may only take into account national security and public safety considerations, but, in his or her analysis, is not limited to considering the danger that the foreign national presents to the public or the security of Canada.

**Inadmissible family member**

**42** (1) A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

- (a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or
- (b) they are an accompanying family member of an inadmissible person.

### *Report on Inadmissibility*

#### Preparation of report

**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.

#### Referral or removal order

(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 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.

#### Conditions

(3) An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.

#### Conditions — inadmissibility on grounds of security

(4) If a report on inadmissibility on grounds of security is referred to the Immigration Division and the permanent resident or the foreign national who is the subject of the report is not detained, an officer shall also impose the prescribed conditions on the person.

#### Duration of conditions

(5) The prescribed conditions imposed under subsection (4) cease to apply only when

- (a) the person is detained;
- (b) the report on inadmissibility on grounds of security is withdrawn;
- (c) a final determination is made not to make a removal order against the person for inadmissibility on grounds of security;
- (d) the Minister makes a declaration under subsection 42.1(1) or (2) in relation to the person; or

<p>(e) a removal order is enforced against the person in accordance with the regulations.</p>
<p><i>Loss of Status</i></p> <p>Permanent resident</p> <p><b>46</b> (1) A person loses permanent resident status</p> <p>(c) when a removal order made against them comes into force;</p>
<p>Temporary resident</p> <p><b>47</b> A foreign national loses temporary resident status</p> <p>(b) on a determination by an officer or the Immigration Division that they have failed to comply with any other requirement of this Act; or</p>
<p>Enforceable removal order</p> <p><b>48</b> (1) A removal order is enforceable if it has come into force and is not stayed.</p> <p>Effect</p> <p>(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and the order must be enforced as soon as possible.</p>
<p>No return without prescribed authorization</p> <p><b>52</b> (1) If a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances.</p>
<p>Arrest and detention with warrant</p> <p><b>55</b> (1) An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2).</p>

### Arrest and detention without warrant

(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,

(a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); or

(b) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

### Review of detention

**57** (1) Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention.

#### Further review

(2) At least once during the seven days following the review under subsection (1), and at least once during each 30-day period following each previous review, the Immigration Division must review the reasons for the continued detention.

### Release – Immigration Division

**58** (1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that

(a) they are a danger to the public;

(b) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);

(c) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality;

(d) the Minister is of the opinion that the identity of the foreign national — other than a designated foreign national who was 16 years of age or older on the day of the arrival that is the subject of the designation in question — has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information

for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity; or

(e) the Minister is of the opinion that the identity of the foreign national who is a designated foreign national and who was 16 years of age or older on the day of the arrival that is the subject of the designation in question has not been established.

#### Continued detention — designated foreign national

(1.1) Despite subsection (1), on the conclusion of a review under subsection 57.1(1), the Immigration Division shall order the continued detention of the designated foreign national if it is satisfied that any of the grounds described in paragraphs (1)(a) to (c) and (e) exist, and it may not consider any other factors.

#### Conditions

(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.

#### Right of Appeal

##### Competent jurisdiction

**62** The Immigration Appeal Division is the competent Division of the Board with respect to appeals under this Division.

#### Right to appeal — visa refusal of family class

**63** (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.

#### Right to appeal — visa and removal order

(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision to make a removal order against them made under subsection 44(2) or made at an admissibility hearing.

#### Right to appeal removal order

(3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision to make a removal order against them made under subsection 44(2) or made at an admissibility hearing.

Right of appeal — residency obligation

(4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.

Right of appeal — Minister

(5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.

No appeal for inadmissibility

**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.

Serious 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 six months or that is described in paragraph 36(1)(b) or (c).

Misrepresentation

(3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.

Ineligibility

**101** (1) A claim is ineligible to be referred to the Refugee Protection Division if

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).

Serious criminality

(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; or

(b) in the case of inadmissibility by reason of a conviction outside Canada, the conviction is 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.

### Pre-removal Risk Assessment

#### *Protection*

#### Application for protection

**112** (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

#### Restriction

(3) Refugee protection may not be conferred on an applicant who

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 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;

#### Consideration of application

**113** Consideration of an application for protection shall be as follows:

(d) in the case of an applicant described in subsection 112(3) — other than one described in subparagraph (e)(i) or (ii) — 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

*Immigration and Refugee Protection Regulations*, [SOR/2002-227](#), ss. 225-226, s. 228, s. 229

#### Exclusion order

**225** (1) For the purposes of subsection 52(1) of the Act, and subject to subsections (3) and (4), an exclusion order obliges the foreign national to obtain a written authorization in order to return to Canada during the one-year period after the exclusion order was enforced.

#### Exception

(2) For the purposes of subsection 52(1) of the Act, the expiry of a one-year period following the enforcement of an exclusion order, or a five-year period if subsection (3) applies, is a circumstance in which the foreign national is exempt from the requirement to obtain an authorization in order to return to Canada.

#### Misrepresentation

(3) A foreign national who is issued an exclusion order as a result of the application of paragraph 40(2)(a) of the Act must obtain a written authorization in order to return to Canada within the five-year period after the exclusion order was enforced.

#### Application of par. 42(1)(b) of the Act

(4) For the purposes of subsection 52(1) of the Act, the making of an exclusion order against a foreign national on the basis of inadmissibility under paragraph 42(1)(b) of the Act is a circumstance in which the foreign national is exempt from the requirement to obtain an authorization in order to return to Canada.

#### Deportation order

**226** (1) For the purposes of subsection 52(1) of the Act, and subject to subsection (2), a deportation order obliges the foreign national to obtain a written authorization in order to return to Canada at any time after the deportation order was enforced.

#### Application of par. 42(1)(b) of the Act

(2) For the purposes of subsection 52(1) of the Act, the making of a deportation order against a foreign national on the basis of inadmissibility under paragraph 42(1)(b) of the Act is a circumstance in which the foreign national is exempt from the requirement to obtain an authorization in order to return to Canada.

#### Removal order — certificate

(3) For the purposes of subsection 52(1) of the Act, a removal order referred to in section 80 of the Act obliges the foreign national to obtain a written authorization in order to return to Canada at any time after the removal order was enforced.



## Specified Removal Order

### Subsection 44(2) of the Act — foreign nationals

**228** (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

(a) if the foreign national is inadmissible under paragraph 36(1)(a) or (2)(a) of the Act on grounds of serious criminality or criminality, a deportation order;

(b) if the foreign national is inadmissible under paragraph 40(1)(c) of the Act on grounds of misrepresentation, a deportation order;

(b.1) if the foreign national is inadmissible under subsection 40.1(1) of the Act on grounds of the cessation of refugee protection, a departure order;

(c) if the foreign national is inadmissible under section 41 of the Act on grounds of

(i) failing to appear for further examination or an admissibility hearing under Part 1 of the Act, an exclusion order,

(ii) failing to obtain the authorization of an officer required by subsection 52(1) of the Act, a deportation order,

(iii) failing to establish that they hold the visa or other document as required under section 20 of the Act, an exclusion order,

(iv) failing to leave Canada by the end of the period authorized for their stay as required by subsection 29(2) of the Act, an exclusion order,

(v) failing to comply with subsection 29(2) of the Act as a result of non-compliance with any condition set out in paragraph 183(1)(d), section 184 or subsection 220.1(1), an exclusion order,

(vi) failing to comply with the requirement under subsection 20(1.1) of the Act to not seek to enter or remain in Canada as a temporary resident while being the subject of a declaration made under subsection 22.1(1) of the Act, an exclusion order, or

(vii) failing to comply with the condition set out in paragraph 43(1)(e), an exclusion order;

(d) subject to paragraph (e), if the foreign national is inadmissible under section 42 of the Act on grounds of an inadmissible family member, the same removal order as was made in respect of the inadmissible family member;

(e) if the foreign national is inadmissible on grounds of an inadmissible family member in accordance with paragraph 42(2)(a) of the Act, a deportation order; and

(f) if the foreign national is inadmissible under paragraph 35(1)(d) or (e) of the Act on grounds of violating human or international rights, a deportation order.

#### Direct back

(1.1) For the purposes of subsection 44(2) of the Act, and subject to subsection (4), if a foreign national is the subject of a report and the following circumstances apply, the report shall not be referred to the Immigration Division and the removal order made shall be an exclusion order:

(a) an officer directed the foreign national to return temporarily to the United States under section 41; and

(b) the foreign national is inadmissible under paragraph 41(a) of the Act for failing to establish that they will leave Canada by the end of the period authorized for their stay.

#### Subsection 44(2) of the Act — permanent residents

(2) For the purposes of subsection 44(2) of the Act, if a removal order is made against a permanent resident who fails to comply with the residency obligation under section 28 of the Act, the order shall be a departure order.

#### Eligible claim for refugee protection

(3) If a claim for refugee protection is made and the claim has been determined to be eligible to be referred to the Refugee Protection Division or no determination has been made, a departure order is the applicable removal order in the circumstances set out in any of subparagraphs (1)(c)(i) and (iii) to (v).

#### Reports in respect of certain foreign nationals

(4) For the purposes of subsections (1) and (1.1), a report in respect of a foreign national does not include a report in respect of a foreign national who

(a) is under 18 years of age and not accompanied by a parent or an adult legally responsible for them; or

(b) is unable, in the opinion of the Minister, to appreciate the nature of the proceedings and is not accompanied by a parent or an adult legally responsible for them.

Paragraph 45(d) of the Act — applicable removal order

**229** (1) For the purposes of paragraph 45(d) of the Act, the applicable removal order to be made by the Immigration Division against a person is

- (a) a deportation order, if they are inadmissible under subsection 34(1) of the Act on security grounds;
- (b) a deportation order, if they are inadmissible under paragraph 35(1)(a), (b) or (c) of the Act on grounds of violating human or international rights;
- (c) a deportation order, in the case of a permanent resident inadmissible under subsection 36(1) of the Act on grounds of serious criminality or a foreign national inadmissible under paragraph 36(1)(b) or (c) of the Act on grounds of serious criminality;
- (d) a deportation order, if they are inadmissible under paragraph 36(2)(b), (c) or (d) of the Act on grounds of criminality;
- (e) a deportation order, if they are inadmissible under subsection 37(1) of the Act on grounds of organized criminality;
- (f) an exclusion order, if they are inadmissible under subsection 38(1) of the Act on health grounds, unless subsection (2) or (3) applies;
- (g) an exclusion order, if they are inadmissible under section 39 of the Act for financial reasons, unless subsection (2) or (3) applies;
- (h) an exclusion order, if they are inadmissible under paragraph 40(1)(a) or (b) of the Act for misrepresentation, unless subsection (3) applies;
- (i) a deportation order, if they are inadmissible under paragraph 40(1)(d) of the Act for misrepresentation;
- (j) an exclusion order, if they are inadmissible under paragraph 41(a) of the Act for failing to comply with the requirement to appear for examination, unless subsection (2) or (3) applies;
- (k) a departure order, if they are inadmissible under paragraph 41(b) of the Act;
- (l) an exclusion order, if they are inadmissible under paragraph 41(a) of the Act for failing to establish that they have come to Canada in order to establish permanent residence, unless subsection (3) applies;

(m) an exclusion order, if they are inadmissible under paragraph 41(a) of the Act for failing to establish that they will leave Canada by the end of the period authorized for their stay, unless subsection (2) applies; and

(n) an exclusion order, if they are inadmissible under paragraph 41(a) of the Act for any other failure to comply with the Act, unless subsection (2) or (3) applies.

#### Eligible claim for refugee protection

(2) If a claim for refugee protection is made and the claim has been determined to be eligible to be referred to the Refugee Protection Division or no determination has been made, a departure order is the applicable removal order in the circumstances set out in paragraph (1)(f), (g), (j), (m) or (n).

#### Exception

(3) The applicable removal order in the circumstances set out in paragraph (1)(f), (g), (h), (j), (l) or (n) is a deportation order if the person

(a) was previously subject to a removal order and they are inadmissible on the same grounds as in that order;

(b) has failed to comply with any condition or obligation imposed under the Act or the *Immigration Act*, chapter I-2 of the Revised Statutes of Canada, 1985, unless the failure is the basis for the removal order; or

(c) has been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment or of two offences under any Act of Parliament not arising out of a single occurrence, unless the conviction or convictions are the grounds for the removal order.

#### Punishable by way of indictment

(3.1) For the purposes of paragraph (3)(c), an offence that may be prosecuted either summarily or by way of indictment is deemed to be an offence punishable by way of indictment, even if it has been prosecuted summarily.

#### Section 228 circumstances

(4) If the Immigration Division makes a removal order against a foreign national with respect to any grounds of inadmissibility that are circumstances set out in section 228, the Immigration Division shall make

(a) the removal order that would have been applicable under subsection 228(1) or (3) if the report had not been referred to the Immigration Division under subsection 44(2) of the Act; or

(b) in the case of a foreign national described in paragraph 228(4)(a) or (b), the removal order that would have been applicable under subsection 228(1) or (3) if the foreign national had not been described in that paragraph.

*Criminal Records Act*, [RSC, 1985, c C-47](#), s 4.

#### Restrictions on application for record suspension

**4** (1) Subject to subsections (3.1) and (3.11), a person is ineligible to apply for a record suspension until the following period has elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

(a) 10 years, in the case of an offence that is prosecuted by indictment or is a service offence for which the offender was punished by a fine of more than five thousand dollars, detention for more than six months, dismissal from Her Majesty's service, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of the [National Defence Act](#); or

(b) five years, in the case of an offence that is punishable on summary conviction or is a service offence other than a service offence referred to in paragraph (a).

#### Ineligible persons

(2) Subject to subsection (3), a person is ineligible to apply for a record suspension if he or she has been convicted of

(a) an offence referred to in Schedule 1; or

(b) more than three offences each of which either was prosecuted by indictment or is a service offence that is subject to a maximum punishment of imprisonment for life, and for each of which the person was sentenced to imprisonment for two years or more.

#### Exception

(3) A person who has been convicted of an offence referred to in Schedule 1 may apply for a record suspension if the Board is satisfied that

(a) the person was not in a position of trust or authority towards the victim of the offence and the victim was not in a relationship of dependency with him or her;

(b) the person did not use, threaten to use or attempt to use violence, intimidation or coercion in relation to the victim; and

(c) the person was less than five years older than the victim.

#### Offence referred to in Schedule 3

(3.1) A person who has been convicted only of an offence referred to in Schedule 3 may apply for a record suspension in respect of that offence before the expiration of the period referred to in subsection (1).

#### Other offences including at least one offence referred to in Schedule 3

(3.11) A person who has been convicted of an offence referred to in Schedule 3 and other offences may only apply for a record suspension after the expiration of the period referred to in subsection (1), without taking into account any offence referred to in Schedule 3.

#### Expiration according to law of sentence

(3.2) A person is ineligible to make an application for a record suspension referred to in subsection (3.1) or (3.11) until after the expiration according to law of any sentence imposed, other than the payment of any fine or victim surcharge, for any offence referred to in Schedule 3.

#### For greater certainty

(3.21) For greater certainty, subsection (3.2) does not apply to fines and victim surcharges imposed for both an offence referred to in Schedule 3 and for other offences, in which case a person is ineligible to make an application for a record suspension referred to in subsection (3.11) until after all fines and victim surcharges have been paid.

#### Fee not payable

(3.3) Despite anything in an order made under the *Financial Administration Act*, a person who makes an application for a record suspension referred to in subsection (3.1) is not required to pay any fee for services provided by the Board in respect of that application if the person has been convicted only of an offence referred to in that subsection.

#### Onus — exception

(4) The person has the onus of satisfying the Board that the conditions referred to in subsection (3) are met.

Onus — person referred to in subsection (3.1)

(4.1) The person referred to in subsection (3.1) has the onus of satisfying the Board that the person has been convicted only of an offence referred to in that subsection.

Information — application referred to in subsection (3.1)

(4.11) For the purpose of an application referred to in subsection (3.1), the Board may not require a person who makes the application to provide a certified copy of information contained in court records in support of the application unless the certified verification of the applicant's criminal records and information contained in the police records or Canadian Armed Forces records provided in support of the application are not sufficient to demonstrate that the person has been convicted only of an offence referred to in Schedule 3 and that the only sentence imposed for that offence was payment of a fine or victim surcharge or both.

Onus — person referred to in subsection (3.11)

(4.12) For the purpose of subsection (3.11), a person referred to in that subsection has the onus of satisfying the Board that the person has been convicted of an offence referred to in Schedule 3.

Amendment of Schedules 1 and 3

(5) The Governor in Council may, by order, amend Schedule 1 or 3 by adding or deleting a reference to an offence.

Exception — long-term supervision

**4.01** The period during which a person is supervised under an order for long-term supervision, within the meaning of subsection 2(1) of the [Corrections and Conditional Release Act](#), is not included in the calculation of the period referred to in subsection 4(1).

Record suspension

**4.1** (1) Subject to subsection (1.1), the Board may order that an applicant's record in respect of an offence be suspended, without taking into account any offence referred to in Schedule 3, if the Board is satisfied that

(a) the applicant, during the applicable period referred to in subsection 4(1), has been of good conduct and has not been convicted of an offence under an Act of Parliament; and

(b) in the case of an offence referred to in paragraph 4(1)(a), ordering the record suspension at that time would provide a measurable benefit to the applicant, would

sustain his or her rehabilitation in society as a law-abiding citizen and would not bring the administration of justice into disrepute.

Record suspension — person referred to in subsection 4(3.1)

(1.1) In the case of an application referred to in subsection 4(3.1), the Board shall order that the applicant's record in respect of that offence be suspended if the applicant has been convicted only of an offence referred to in that subsection and has not been convicted of a new offence under an Act of Parliament, other than an offence referred to in that subsection.

Exception to revocation

(1.2) A record suspension ordered under subsection (1.1) may not be revoked by the Board under paragraph 7(b).

Onus on applicant

(2) In the case of an offence referred to in paragraph 4(1)(a), the applicant has the onus of satisfying the Board that the record suspension would provide a measurable benefit to the applicant and would sustain his or her rehabilitation in society as a law-abiding citizen.

Factors

(3) In determining whether ordering the record suspension would bring the administration of justice into disrepute, the Board may consider

- (a) the nature, gravity and duration of the offence;
- (b) the circumstances surrounding the commission of the offence;
- (c) information relating to the applicant's criminal history and, in the case of a service offence, to any service offence history of the applicant that is relevant to the application; and
- (d) any factor that is prescribed by regulation.



<b>CANADIAN ALLIANCE FOR SEX WORK LAW REFORM et al.</b> Applicants	and	<b>ATTORNEY GENERAL OF CANADA</b> Respondent	Court File No.: <b>CV-21-00659594-0000</b>
			<p style="text-align: center;"><i>ONTARIO</i> <b>SUPERIOR COURT OF JUSTICE</b></p> <p style="text-align: center;">Proceeding commenced at TORONTO</p>
<small>[OBJ.]</small>			<p style="text-align: center;"><b>NOTICE OF MOTION OF THE PROPOSED INTERVENER, CANADIAN ASSOCIATION OF REFUGEE LAWYERS (Motion for Leave to Intervene)</b></p>
			<p><b>Jamie Liew</b> LSO# 53106L <b>Barrister &amp; Solicitor</b> 39 Fern Ave Ottawa, ON K1Y 3S2 Email: <a href="mailto:jamie@jcyliew.com">jamie@jcyliew.com</a> Tel: (613) 808-5592 Fax: 1-888-843-3413</p> <p><b>Molly Joeck</b> LSBC# 514704 <b>Barrister &amp; Solicitor</b> Edelmann &amp; Co 905-207 West Hastings St. Vancouver, B.C. V6B 1H7 Email: <a href="mailto:molly@edelmann.ca">molly@edelmann.ca</a> Tel: 604-646-4694 Fax: 604-648-8043</p> <p>Lawyers for the Proposed Intervener, the Canadian Association of Refugee Lawyers</p>