



# AB Law

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# PROVIDING LEGAL GUIDANCE TO NEWCOMERS IN YUKON: THE INTERSECTION OF IMMIGRATION LAW AND OTHER AREAS OF PRACTICE

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# OVERVIEW

This presentation will review the intersection of Immigration Law with:

- Employment Law
- Family Law
- Criminal Law



## EMPLOYMENT LAW AND IMMIGRATION

# INTAKE QUERIES



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What is the client's status in Canada?

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Does that status expire?

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When does it expire?

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Has it expired/close to expiring?

# YUKON EMPLOYMENT PROGRAMS



## **Yukon Nominee Program**

- Employer Eligibility Requirements:
  - Be a PR or citizen, operating with an office in the Yukon for over a year, not on exclusion list like hobby farm, taxi company, real estate.
- Employer Responsibilities:
  - not recover costs from employee,
  - pay for air fair and return if PR fails,
  - ensure suitable housing and help source it,
  - provide health care until employee is eligible for territorial coverage
- Advertise for PR or citizen first for 4 weeks in at least 3 places
- Short term or long-term employees

# YUKON EMPLOYMENT PROGRAMS



## **Yukon PNP Investor/Entrepreneur Program**

- High school diploma and 3 years entrepreneurial/managerial and 5 years work experience relevant to the business
- Intend to live in and manage the business in the Yukon
- No refugee status nor immigration denials from Canada at any time
- Net worth of \$500,000 with \$300,000 in liquid assets
- New business or purchase of an existing one in the listed strategic sectors including tech, manufacturing, natural resources, agriculture, tourism, cultural industries
- Must not be on the ineligible list of businesses including retail, restaurants, and most personal and professional services

# FEDERAL PROGRAMS

## LABOUR MARKET IMPACT ASSESSMENT (LMIA)



- LMAs are the authorization from the federal government enabling an employer to hire temporary foreign workers
- Some immigration programs require LMAs, others do not
- Step-by-step procedures must be followed
- Strict rules and enforcement of LMIA duties and obligations on employers
- Compliance audits

# FEDERAL PROGRAMS



## **LMIA exempt work permits:**

- Depends on country of origin of the worker
- Some job titles do not require LMIA
- Jobs that provide broad economic, cultural or other competitive advantages and provide reciprocal benefit
- CUSMA and other trade treaties
- Open work permit holders
- Intra-company transferees

# EMPLOYMENT AND IMMIGRATION



## Open Work Permits

e.g. Spousal Sponsorship

Related, CUAET

- Work for any employer (except those who are ineligible)

## Employer Specific/Closed Work Permits

e.g. Temporary Foreign Work Permits

- Employer Restrictions
- Days of Work
- Hours of Work
- Location of Work

# PERMANENT RESIDENT (PR) PROGRAMS



- Some skilled workers can enter Canada as permanent residents
- Essential to assess business needs and employee fit carefully to determine which workers should come through which TFW or PR programs
- New specific occupation PR streams being created regularly – both regionally and federally

# EMPLOYMENT AND IMMIGRATION



## Vulnerable Worker Open Permit

- Being abused OR at risk of abuse
- Temporary permit, has an expiry date, and cannot be renewed
- Application inside Canada only
- Must have a current VALID employer specific work permit
- No fees and is an online application
- Employer may be contacted for inspection

# EMPLOYMENT AND IMMIGRATION



A temporary foreign worker comes to you for non-immigration related legal services. What questions would you ask them about their status as a worker in Canada?



## FAMILY LAW AND IMMIGRATION

# SPOUSAL SPONSORSHIP



What are some reasons that a sponsored spouse may not disclose spousal violence?

# SPONSORSHIP: CHANGES IN CIRCUMSTANCES



- Sponsors remain financially responsible for an applicant even if their circumstances change e.g. divorce or separation

Q1. Is this a situation where there is or was an application for spousal sponsorship for PR?

Q2. What stage is the application at? In process or finalized? Client obtained PR?

Q3. If processed, is the undertaking still in effect? ( spouse = 3 years from the date the sponsored person became a PR, varies for other sponsorship arrangements)

# LEAVING A SITUATION OF VIOLENCE: PERMANENT RESIDENCE STATUS



- Status will not be removed by a sponsor, but can be compromised by sponsor's actions
- Person may be afraid to fully disclose violence due to fear of losing their status
- It may not be safe to enforce the sponsor's undertaking
- Five-year ban from sponsoring spouse/partner after gaining permanent residence

# LEAVING A SITUATION OF VIOLENCE: TEMPORARY STATUS



- Temporary residents can remain in Canada but must ensure their status won't expire
- Person cannot work or study without a permit (unless an exemption applies)
- Limited circumstances where visitors are permitted to work or study

# LEAVING A SITUATION OF VIOLENCE: NO STATUS



- If spousal/partner sponsorship application is still in processing, and relationship ends, the applicant will no longer be eligible for PR status
- Unless temporary status is obtained, person has no status in Canada. Steps must be taken to restore or obtain status
- Person may be removed from Canada and may not be able to come back

# TRP FOR VICTIMS OF FAMILY VIOLENCE



- A special permit to stay in Canada and ensure continued immigration status of the applicant while more permanent immigration arrangements are made
- Do not have to testify against an abuser to get temporary resident status
- Generally, 6 months of status granted, but can request longer
- No IRCC fees for the initial TRP



# PERMANENT RESIDENCE HUMANITARIAN & COMPASSIONATE APPLICATIONS



- Applicant must clearly describe the situation of family violence and mark their application envelope with "FV"
- Family violence is a factor that an immigration officer must consider
- It is important to provide plenty of evidence

# DIVORCE: IMMIGRATION STATUS



- Divorce may be illegal where the marriage was finalized
- Not obtaining a divorce can impact immigration status, can prevent a person from sponsoring in the future
- If not divorced, a sponsor's criminality may make other family members inadmissible to Canada

# DIVORCE: SPOUSAL & CHILD SUPPORT



- The entitlement and duration of both child and spousal support can be directly impacted by the presence of a Sponsorship Agreement
- One of the main policy objectives of committing a sponsor to provide for the applicant is to prevent dependence on the Canadian social welfare system





## CRIMINAL LAW AND IMMIGRATION

# INADMISSIBILITY



Some people are not allowed to come to or remain in Canada. They are defined as '**inadmissible**' under Canadian immigration law

There are many different reasons a person can be found to be inadmissible, such as for misrepresentation, security, criminal, financial, or medical reasons

# CRIMINAL INADMISSIBILITY - TYPES



## **Convictions OR offences committed inside OR outside of Canada**

- committing a wide variety of crimes, including driving while under the influence of drugs or alcohol
- security reasons, threat to Canada or Canadians
- human or international rights violations
- organized crime, including membership in an organization that takes part in organized criminal activity, people smuggling, or money laundering
- having a criminally inadmissible family member

# CRIMINAL INADMISSIBILITY



What are some questions that you may ask a foreign national or PR holder to determine whether they are criminally inadmissible under the *IRPA*?

# DETERMINING CRIMINAL INADMISSIBILITY



Criminal inadmissibility includes:

- Being **convicted of** an offence **inside Canada**,
- Being **convicted of** an offence **outside Canada** that is considered a crime in Canada,
- **committed an act outside of Canada** that is considered a crime in that country and would be punishable in Canada

Foreign convictions and law are 'equated' to Canadian law through careful analysis of the foreign law and the Canadian *Criminal Code*.

# IMMIGRATION AND REFUGEE PROTECTION ACT (IRPA)



## ***Immigration and Refugee Protection Act (S.C. 2001, c. 27)***

- 36(1): Serious criminality
- 36(2): Criminality
- 36(3)(a): Hybrid offences are considered indictable under immigration law

# IMMIGRATION AND REFUGEE PROTECTION ACT (IRPA)



## 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**.

# IMMIGRATION AND REFUGEE PROTECTION ACT (IRPA)



## Criminality

s. 36(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; 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 indictable offence** under an Act of Parliament.

# **IMMIGRATION AND REFUGEE PROTECTION ACT (IRPA)**



## **Hybrid Offences**

s. 36(3) (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;

# INADMISSIBILITY PROCEDURE



- A CBSA officer may write a **Procedural Fairness Letter** stating that they have inadmissibility concerns and are requesting information pertaining to the situation.
- A CBSA officer may write a **Section 44 report**. This is a request that a removal order be issued.
- A Section 44 report may trigger an **Admissibility Hearing** at the Immigration Division (ID) of the Immigration and Refugee Board of Canada.
- ID decisions: removal order issued or permission to remain in Canada granted.
- 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.

# DETERMINING CRIMINAL INADMISSIBILITY



## **Charges withdrawn or dismissed:**

- If the offence occurred **in** Canada, not inadmissible.
- If the offence occurred **outside** Canada, you may be inadmissible.

## **Absolute or conditional discharge:**

- If the offence occurred **in** Canada, not inadmissible.
- If the offence occurred **outside** Canada, may be inadmissible.

## **Pardon granted:**

- If the offence occurred **in** Canada, not inadmissible if pardoned under the *Criminal Records Act* in Canada.
- If the offence occurred **outside** Canada, may be inadmissible.

# OVERCOMING INADMISSIBILITY



- Responses to Procedural Fairness Letters
- Reconsideration Requests
- Sentencing Considerations
- Rehabilitation
- Temporary Resident Permits
- Immigration and Immigration Appeal Divisions
- Detention
- Pre- Removal Risk Assessments (PRRAs)
- Judicial Review at the Federal Court of Canada
- Exits and Reapplication Bars

## CONCLUSION

- Identify immigration issues early
- Add immigration questions to intake procedures
- Reach out to an immigration lawyer



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THANK YOU!

