

# MIGRANTS KNOW YOUR RIGHTS

**FACING IMMIGRATION ARREST,  
DETENTION, AND DEPORTATION**

FEBRUARY 2021

# MIGRANTS KNOW YOUR RIGHTS - FACING IMMIGRATION ARREST, DETENTION, AND DEPORTATION

**February 2021**

International Human Rights Program, University of Toronto  
Butterfly (Asian and Migrant Sex Workers Support Network)  
Immigration Legal Committee (No One Is Illegal Toronto)

Funding generously provided by the Law Foundation of Ontario; the authors are solely responsible for all content.

This guide may be cited as follows: International Human Rights Program, Butterfly & No One Is Illegal Toronto, “Migrants Know Your Rights – Facing Immigration Arrest, Detention, and Deportation” (2021).

The guide was developed through close consultation with community partners and drafted by Liam Turnbull, Vincent Wong, Marissa Hum, Elene Lam, and Macdonald Scott.

Editors: Ashley Major and Prasanna Balasundaram

Graphic design: Lorraine Chuen

*Note: This guide provides general legal information and does not provide legal advice. Please talk to a lawyer or advocate if legal help is required.*

Licensed under the Creative Commons BY-SA 4.0 (Attribution-ShareAlike Licence)

The Creative Commons Attribution-ShareAlike 4.0 license under which this report is licensed lets you freely copy, distribute, remix, transform, and build on it, as long as you:

- Give appropriate credit;
- Indicate whether you made changes; and
- Use and link to the same CC BY-SA 4.0 licence.



# TABLE OF CONTENTS

<b>1. INTRODUCTION</b>	<b>5</b>
1.1 Disclaimer	5
1.2 Purpose of the guide	6
1.3 Importance of understanding arrest, detention, and deportation systems	7
1.4 Limits of relying on legal rights	7
1.5 What is the CBSA?	7
1.6 What is the IRB?	8
<b>2. WHO IS AT RISK OF IMMIGRATION ARREST, DETENTION, AND DEPORTATION?</b>	<b>10</b>
2.1 Falling out of status	10
2.2 Immigration arrests with and without a warrant	13
2.3 Permanent residents	15
2.4 Practical tips	16
<b>3. HOW WILL I KNOW IF I AM FACING DEPORTATION AND HOW CAN I REGULARIZE STATUS?</b>	<b>18</b>
3.1 How to check status	18
3.2 What is a Removal Order?	19
3.3 How to regularize or retain status	20
<b>4. WHAT IS THE DEPORTATION PROCESS AND WHAT SHOULD I DO IF I AM BEING DEPORTED?</b>	<b>24</b>
4.1 Deportation process flowchart	24
4.2 Safety plan in case of arrest	25
4.3 Reporting to CBSA	26
4.4 Practical tips	28
<b>5. WHAT IF I AM ARRESTED AND PUT IN IMMIGRATION DETENTION?</b>	<b>29</b>

5.1 Detention process flowchart	29
5.2 Grounds for immigration detention	30
5.3 Rights when you are arrested and detained	31
5.4 What to expect in detention	32
5.5 Getting out of detention	36
5.6 Practical tips	38
<b>6. WHAT ARE SOME RESOURCES AND SUPPORT THAT I CAN REACH OUT TO?</b>	<b>40</b>
6.1 Legal aid	40
6.2 Migrant support organizations	44
6.3 Further Considerations	46
<b>7. APPENDICES</b>	<b>47</b>
7.1 Safety plan checklist	47
7.2 Summary of practical tips	47
<b>8. GLOSSARY AND KEY TERMS</b>	<b>49</b>

# 1. INTRODUCTION

This guide provides legal information for migrants navigating processes of immigration arrest, detention, and deportation. It provides general guidance so that you can know your legal rights while living in Canada and practical tips for engaging with the country's immigration detention and deportation processes.

This guide may be helpful for you if any of the following apply:

- You are a service provider offering support or advice to migrant workers;
- You are a temporary resident (e.g. migrant worker, international student, under sponsorship);
- You are a non-citizen with potentially precarious immigration status;
- You are an asylum seeker or failed asylum claimant;
- You are a non-citizen who does not have any status in Canada; or
- You wish to support individuals to whom the above circumstances are applicable.

## Other Useful Migrant Legal Rights Guides

- [Migrants Know Your Rights!](#) (2012, No One is Illegal Toronto)
- [Immigration consequences of criminal dispositions and sentencing](#) (2016, Community Legal Education Ontario Legal Aid Ontario)

## 1.1 Disclaimer

This document provides general legal information and does not provide legal advice. Please consult a lawyer or legal aid clinic for legal advice specific to your situation. Some examples and response data may have omitted identifying data in order to protect the confidentiality and privacy of those involved.

## **If You Need Legal Representation, You Can Contact...**

### **Legal Aid Ontario**

**Toll free phone number:** 1-800-668-8258

**Web:** <https://www.legalaid.on.ca/more/corporate/contact-legal-aid-ontario>

### **Law Society of Ontario (LSO) Lawyer Referral Service**

**Phone number:** 1-855-947-5255

**Web:** <https://lsrs.lso.ca/lsrs/welcome>

**For legal aid in other provinces, you can refer to the federal government's directory:**

<https://www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html>

## **1.2 Purpose of the guide**

This guide builds off of previous 'Migrants Know Your Rights' guides<sup>1</sup> to provide updated, current legal information on the rights of those with precarious immigration status who are or may be at risk of being caught in the deportation process in Canada.

Specifically, you can find information in this guide on:

- Who is at risk of immigration arrest, detention, and deportation;
- How to know if you are facing deportation and how you can regularize status;
- What the deportation process is and what you should do if you are being deported;
- What to do if you are arrested and put in immigration detention;
- Practical tips to create safety plans and reduce your risk of detention; and
- Additional supports and resources that you can reach out to.

The contents of the guide were developed in consultation with migrant community organizations as well as affected individuals themselves.

---

<sup>1</sup> For instance, see Immigration Legal Committee's past "Migrants Know Your Rights!" Guide, available online (PDF) at: [toronto.nooneisillegal.org/sites/default/files/KYR%20ENGLISH%20PDF%20FINAL\\_0.pdf](https://toronto.nooneisillegal.org/sites/default/files/KYR%20ENGLISH%20PDF%20FINAL_0.pdf) <<https://perma.cc/26K4-B5V4>] [Immigration Legal Committee, "Migrants Know Your Rights!"].

### 1.3 Importance of understanding arrest, detention, and deportation systems

You should be aware of how immigration arrests, detentions, and deportations take place, and your rights in these situations. This will help you to better protect yourself and your loved ones by allowing you to more easily navigate processes and prepare yourself for risks. You can also learn how to put appropriate plans in place, gain practical tips that you can use in your day-to-day life, and know what resources and supports are available should the need arise. If you believe that you are facing significant risk, please consult a lawyer and get legal advice about your specific situation.

### 1.4 Limits of relying on legal rights

Knowing one's legal rights, the state of the laws, and helping others advocate for their rights is important. However, this does not change the fact that the current legal framework in this country ensures that individuals with uncertain/precarious immigration status are at constant risk of immigration arrest, subsequent detention, and potential deportation by immigration authorities – which in turn serves as a silencing mechanism and a form of political suppression. Migrants are more likely to face exploitative conditions at work and in their lives more generally. They also have difficulties accessing employment, education, and crucial health and social services. Permanent resident status is also increasingly difficult to obtain due to policies put forward by successive Canadian governments.

These realities underscore the importance of going beyond the current state of the law and organizing, mobilizing, creating personal or community safety plans, resisting immigration detention and deportation, and creating a political and legal system where all migrants have their basic rights and human dignity protected and respected. Laws should not be conflated with justice, nor should law be the only site for struggle for social change.

### 1.5 What is the CBSA?

The Canadian Border Services Agency (CBSA) is the government agency that is in charge of enforcing immigration laws (such as the *Immigration and Refugee Protection Act* – “IRPA” – and the *Immigration and Refugee Protection Regulations* – “IRPR”).<sup>2</sup> CBSA officers have the power to arrest and detain individuals who are in violation of immigration laws, including if they are in Canada without valid status. They are also able to issue arrest warrants and deportation orders for your removal from Canada. Although CBSA officers have broad powers and discretion, they are *not* police officers – they have different legal powers and do *not* enforce criminal laws.<sup>3</sup>

CBSA is different from Immigration, Refugees, and Citizenship Canada (IRCC). The IRCC is a civilian body that administers the immigration system and makes immigration decisions but does not *enforce* the laws. You may have interactions with both IRCC and CBSA at the same time.

---

<sup>2</sup> See Government of Canada, “Home - Canadian Border Services Agency” (Date modified: 01 May 2020), online: <[www.cbsa-asfc.gc.ca/menu-eng.html](http://www.cbsa-asfc.gc.ca/menu-eng.html)> [<https://perma.cc/JKZ3-JPFE>]; *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA]; *Immigration and Refugee Protection Regulations* (Consolidation), SOR/2002-227, at s 179-182 [IRPR].

<sup>3</sup> See [Section 2.2](#) and [Section 4.3](#) of this guide for further information on CBSA's legal powers.

## 1.6 What is the IRB?

The Immigration and Refugee Board (IRB) is Canada’s largest administrative decision-making tribunal and the primary body that decides on issues concerning immigration and refugee law.<sup>4</sup>

### Divisions of the Immigration and Refugee Board (“IRB”):

- Immigration Division
- Immigration Appeal Division
- Refugee Protection Division
- Refugee Appeal Division

FAQ: <https://irb-cisr.gc.ca/en/faq/Pages/index.aspx>

The IRB is further broken down into smaller divisions that manage specific areas of immigration and refugee law. Each division is obligated to provide interpreters for all proceedings.<sup>5</sup> These divisions are the Immigration Division, Refugee Protection Division, Immigration Appeal Division, and the Refugee Appeal Division. The following is a description of each Division and what it is responsible for:

#### **Immigration Division:**

- Hears detention reviews;
- Holds cancellation of immigration status hearings<sup>6</sup>;
- Holds admissibility hearings<sup>7</sup>;
- Procedures can sometimes be very loose and informal;
- It’s a good idea to have legal counsel, or if not, have a trusted contact to attend proceedings with you.<sup>8</sup>

---

<sup>4</sup> See Immigration and Refugee Board of Canada, “Immigration and Refugee Board of Canada” (Date modified: 15 May 2020) online: <[irb-cisr.gc.ca/en/Pages/index.aspx](https://irb-cisr.gc.ca/en/Pages/index.aspx)> [<https://perma.cc/6NN5-TSW8>]. The powers of the IRB are set out in sections 151 – 186 of the IRPA, *supra* note 2.

<sup>5</sup> See Immigration and Refugee Board of Canada, “Interpreter Handbook” (October 2017), online (PDF): <[humaneimmigration.com/wp-content/uploads/2018/06/05-Interpreter-Handbook-Immigration-and-Refugee-Board-of-Canada.pdf](https://humaneimmigration.com/wp-content/uploads/2018/06/05-Interpreter-Handbook-Immigration-and-Refugee-Board-of-Canada.pdf)> [<https://perma.cc/Q98S-D9YH>] at section 2.1.

<sup>6</sup> IRPA, *supra* note 2, at ss 33-43.

<sup>7</sup> See Immigration and Refugee Board of Canada, “Immigration and Refugee Board at a glance” (Date modified: 17 June 2019), online: <[irb-cisr.gc.ca/en/information-sheets/Pages/irbGlance.aspx](https://irb-cisr.gc.ca/en/information-sheets/Pages/irbGlance.aspx)> [<https://perma.cc/2TX2-L9HL>] [Immigration and Refugee Board of Canada].

<sup>8</sup> If these individual representatives charge you money, they must be either a member of the law society of the relevant province or territory, a member of the Immigration Consultants of Canada Regulatory Council, or (in Quebec only) a Notary Public. Legal aid can fund a lawyer in some provinces and territories for these hearings (this means the lawyer would be free; legal aid will also not share your information with immigration authorities).



### **Immigration Appeal Division:<sup>9</sup>**

- Hears appeals from the Immigration Division;
- Hears spousal sponsorship appeals;
- More formal tribunal than the Immigration Division – has more strict procedural rules.

### **Refugee Protection Division:<sup>10</sup>**

- Hears refugee and protected person claims;
- Can reject claims for refugee protection or grant refugee status;
- Cessation and vacation proceedings where you can lose your protected person status.

### **Refugee Appeal Division:<sup>11</sup>**

- Hears appeals from the Refugee Protection Division;
- Can reverse or confirm the decision of the Refugee Protection Division or send the case back for a new decision.

---

<sup>9</sup> See Immigration and Refugee Board of Canada, “Immigration Appeals” (Date modified: 05 July 2018), online: <[irb-cisr.gc.ca/en/information-sheets/Pages/FactladSai.aspx](http://irb-cisr.gc.ca/en/information-sheets/Pages/FactladSai.aspx)> [<https://perma.cc/SFQ6-9Q3B>]; see also Immigration and Refugee Board of Canada, *supra* note 7.

<sup>10</sup> See Immigration and Refugee Board of Canada, *supra* note 7; see also Government of Canada, “Refugee Protection Division Rules” (Date modified: 28 May 2020), online: <<https://laws-lois.justice.gc.ca/eng/regulations/sor-2012-256/FullText.html>> [<https://perma.cc/S5RJ-HQ7K>].

<sup>11</sup> See Government of Canada, “Refugee Appeal Division” (Date modified: 17 May 2019), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/canada-role/refugee-appeal-division.html>> [<https://perma.cc/3ZV6-ACXE>]; Immigration and Refugee Board of Canada, *supra* note 7; see also Government of Canada, “Refugee Appeal Division Rules” (Date modified: 28 May 2020), online: <<https://www.laws-lois.justice.gc.ca/eng/regulations/SOR-2012-257/FullText.html>> [<https://perma.cc/5CPC-QEPK>].

## 2. WHO IS AT RISK OF IMMIGRATION ARREST, DETENTION, AND DEPORTATION?

If you fall out of status and/or are deemed 'inadmissible' under *IRPA*, you can be subjected to immigration arrest, detention, and eventually deportation.

### 2.1 Falling out of status<sup>12</sup>

These are some of the most common ways that you may fall out of status or otherwise become inadmissible in the eyes of Canadian immigration:

#### **You can fall out of status / become inadmissible due to reasons such as:**

- Overstaying your visa
- Voluntary repatriation
- Losing your refugee application and appeal
- Criminal convictions
- Lacking a temporary visa

#### **Overstaying your visa:**<sup>13</sup>

If you are not from a visa-exempt country and overstay your visa, you could lose your status and be put in immigration detention. It is important to check your visa dates closely and ensure you apply for extensions early. Local CBSA officers have ways of checking whether you overstayed your visa and may arrest and detain you if they reasonably suspect that you are overstaying. They can call CBSA headquarters to check your 'global case management file' in order to confirm your entry and exit dates to/from Canada and use that information to argue you overstayed.<sup>14</sup>

---

<sup>12</sup> Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "Inadmissibility (ENF1)" (04 September 2013), online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf01-eng.pdf>> [<https://perma.cc/3GEW-8A4Q>] at 3, 4, 5, 6 [Operation Manual, "ENF1"].

<sup>13</sup> See *IRPA*, *supra* note 2 at s 41 (with regard to the consequences of 'non-compliance' of immigration law).

<sup>14</sup> For further information on the global case management system, see Government of Canada, "Privacy Impact Assessment Summary – Global Case Management System (GCMS) - Phase II" (Date modified: 10 February 2012), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/access-information-privacy/privacy-impact-assessment/global-case-management-system-2.html>> [<https://perma.cc/JL3T-WKZ8>].

If you are from a visa-exempt country, you can only stay for up to six months (unless your passport stamp or your travel document says differently). Before your time is up, you either need to leave Canada or renew your visitor status from within Canada.<sup>15</sup> People typically fall out of status this way by having their applications for extension denied or forgetting to apply *before* their permit expires.

Technically, you must have at least a temporary resident visa (“TRV”) or a temporary resident permit (“TRP”) to remain in Canada temporarily (unless you fall into a special exception). A work permit or study permit *is not the same* as a TRV or TRP, but typically are issued together. It is possible in certain scenarios to have a work/study permit without underlying status and be allowed to remain, but these situations are rare.<sup>16</sup> The main takeaway is that if you have a work/study permit despite not having a valid TRV or TRP, you may not be safe from immigration arrest, detention, and deportation.<sup>17</sup>

### **Voluntary Repatriation:**<sup>18</sup>

If you are granted refugee or protected person status by Canada and you return to your country of origin, you may risk losing your status (even *after* you received PR status) if it is determined that you voluntarily returned there, re-acquired their nationality (for instance, by applying for a passport), re-established yourself there, or if the reasons for seeking protection originally no longer exist. This is because Canada believes a “genuine” refugee would not be able to return to the country where they fear persecution or danger, so returning to that country means you no longer need Canada’s protection.<sup>19</sup> The consequences of such a determination can be severe, including being found inadmissible and being deported.

### **Criminal Inadmissibility:**<sup>20</sup>

If you are convicted of a crime, you could lose your immigration status. Whether you lose your status depends on how “serious” the crime is, the specific crime committed, and the type of status you possess (e.g. temporary status, permanent resident status). For instance, someone with permanent

---

<sup>15</sup> For further information on visitor visas, see [Section 3.3](#) of this guide (“3.3 How to Get Status”).

<sup>16</sup> For instance, CBSA may in some cases not start deportation proceedings if you have a strong claim for being granted PR status on Humanitarian and Compassionate grounds. Depending on your specific situation, the Minister of Immigration, Refugees and Citizenship may grant you permanent resident status on ‘Humanitarian and Compassionate grounds’ if you would not otherwise qualify for permanent resident status. For more information, see [Section 3.3](#) of this guide (“3.3 How to Get Status”).

<sup>17</sup> See Government of Canada, “Temporary resident permits: Work and study permits” (Date modified: 17 September 2015), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/work-study-permits.html> [https://perma.cc/2Z2G-LN9D].

<sup>18</sup> See IRPA, *supra* note 2 at s 108; *Protecting Canada’s Immigration System Act*, SC 2012, c 17, ss 18-19 (2012 amendments).

<sup>19</sup> See United Nations High Commissioner for Refugees, “Handbook – Voluntary Repatriation: International Protection” (Geneva: 1996), online: [www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html](http://www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html) [https://perma.cc/5BMX-E6T4].

<sup>20</sup> See IRPA, *supra* note 2 at ss 33-43. For a summary of the criminal inadmissibility process, see Canadian Council for Refugees, “Permanent residents and criminal inadmissibility” (July 2018), online: <https://ccrweb.ca/en/permanent-residents-and-criminal-inadmissibility>.

resident status could lose that status if they receive a prison sentence of over 6 months for a given crime, or if the crime itself carries a maximum prison sentence of 10 (or more) years.<sup>21</sup> On the other hand, someone without permanent resident status could lose their immigration status if they are convicted of an ‘indictable’/‘hybrid’ offence<sup>22</sup> or two different offences that arose from separate events, even if they are minor.<sup>23</sup>

‘Serious criminality’/‘criminality’ is determined based on the nature of the offence and the type of punishment for the crime (e.g. the length of the prison sentence).<sup>24</sup> Individuals that are found criminally inadmissible and deported will not be allowed to return to Canada unless they have an ‘Authorization to Return to Canada’ (“ARC”).<sup>25</sup>

Whether you are a permanent resident or a foreign national, you should always consult with counsel about immigration consequences to criminal pleas or convictions.

The following table summarizes some of the potential consequences of being convicted for a criminal offence for individuals with different statuses:

CANADIAN CITIZENSHIP	PERMANENT RESIDENCE (PR)	TEMPORARY RESIDENCE (TR)	NON-STATUS
<ul style="list-style-type: none"> <li>Arrest, detention, prosecution</li> <li>Imprisonment, fines</li> <li>Criminal record</li> </ul>	<ul style="list-style-type: none"> <li>Arrest, detention, prosecution</li> <li>Imprisonment, fines</li> <li>Criminal record</li> <li>Depending on severity, may lose PR status and be deported</li> </ul>	<ul style="list-style-type: none"> <li>Arrest, detention, prosecution</li> <li>Imprisonment, fines</li> <li>Criminal record</li> <li>Depending on severity, may lose TR status and be deported (lower threshold than PR)</li> </ul>	<ul style="list-style-type: none"> <li>Arrest, detention, prosecution</li> <li>Imprisonment, fines</li> <li>Criminal record</li> <li>Most likely deportation, even if not convicted</li> <li>Likely to be turned over to CBSA for processing</li> </ul>

<sup>21</sup> *Ibid* at s 36(1).

<sup>22</sup> In Canada, there are ‘indictable’ offences and ‘summary’ offences. Summary offences are less serious and often carry shorter prison sentences and fines. Indictable offences are more serious and carry heavier punishments, including mandatory minimum prison sentences in some cases. ‘Hybrid’ offences will be treated as indictable offences for immigration purposes – see IRPA, *supra* note 2 at s 36(3)(a). For more information, see Department of Justice, “Criminal offences” (Date modified: 24 July 2015), online: <[www.justice.gc.ca/eng/cj-jp/victims-victimes/court-tribunaux/offences-infractions.html](http://www.justice.gc.ca/eng/cj-jp/victims-victimes/court-tribunaux/offences-infractions.html)> [<https://perma.cc/9MGT-XQ3K>].

<sup>23</sup> See IRPA, *supra* note 2 at s 36(2).

<sup>24</sup> See Government of Canada, “Assessing inadmissibility due to serious criminality following *Tran v. Canada*” (Date modified: 14 November 2019), online: <[www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standar-d-requirements/tran.html](http://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standar-d-requirements/tran.html)> [<https://perma.cc/N73U-JWNP>].

<sup>25</sup> For more information on the ‘Authorization to Return to Canada’ process, see Government of Canada, “Authorization to return to Canada” (Date modified: 27 March 2020), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/reasons/authorization-return-canada.html>> [<https://perma.cc/6QFD-ULY6>] [Government of Canada, “Authorization to return to Canada”].

## 2.2 Immigration arrests with and without a warrant

A CBSA officer can issue an arrest for someone who is believed to be ‘inadmissible’ or lack status under *IRPA*.<sup>26</sup> CBSA officials are only allowed to arrest individuals for immigration reasons. Police officers, however, can also arrest you for immigration reasons if there is an arrest warrant for you, or the police have other non-immigration grounds to arrest you.<sup>27</sup>

In reality, if police officers suspect you do not have proper immigration status, have broken the conditions of your visitor visa, work permit or study permit, or violated other immigration rules, they may try to detain you, call CBSA, and turn you over to them.<sup>28</sup> Many immigration-related arrests in Canada are made by local police. Other government officials, such as local municipal by-law officers, generally do not have any power to arrest you.<sup>29</sup> Police and other law enforcement often take advantage of the grey zone in which there are no legal grounds to detain, until CBSA shows up.

### **When a warrant for arrest is needed:**

Depending on the situation, an immigration arrest could take place with or without a warrant.<sup>30</sup>

### **A warrant is needed to arrest you when:**

- You are within the privacy of your own home<sup>31</sup>;
- You are a foreign national, but you are a ‘protected person’ under *IRPA*<sup>32</sup>;
- You are a permanent resident (although CBSA does not need a warrant to detain at a port of entry)<sup>33</sup>;

---

<sup>26</sup> *IRPA*, *supra* note 2 at s 55.

<sup>27</sup> See Butterfly, “Who is who: Identifying law enforcers” (July 2017), online: <[https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754\\_748f9f3d7c9a4139b999f5b4a26b9f7a.pdf](https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754_748f9f3d7c9a4139b999f5b4a26b9f7a.pdf)> [<https://perma.cc/ZAS3-SUK5>] at 2 [Butterfly, “Who is who”].

<sup>28</sup> See Abigail Deshman, “To Serve Some and Protect Fewer: The Toronto Police Services’ Policy on Non-Status Victims and Witnesses of Crimes” (2009) 22:8 *J L & Soc Pol’y* 209 at 219-220.

<sup>29</sup> See Butterfly, “Upholding and promoting human rights, justice and access for migrant sex workers - Part 1: Guide for Service Providers” (October 2017), online: <[https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754\\_3284af1908704da0935a4cf60e66abf3.pdf](https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754_3284af1908704da0935a4cf60e66abf3.pdf)> [<https://perma.cc/WPM4-UNV4>] at 22 [Butterfly, “Upholding and promoting human rights- Part 1”].

<sup>30</sup> See Citizenship and Immigration Canada, “ENF 7 Investigations and Arrests” (May 2003) at 34, 38, 39 [“ENF 7”].

<sup>31</sup> See Community Legal Education Ontario (CLEO), “In what urgent situations can the police enter my home?” (October 2019), online: <<https://www.cleo.on.ca/en/publications/polpower/what-urgent-situations-can-police-enter-my-home>> [<https://perma.cc/L5S2-LH32>]; See also Immigration Legal Committee, “Migrants Know Your Rights!”, *supra* note 1 at 3.

<sup>32</sup> *IRPA*, *supra* note 2, at s 55(2); Gordon Maynard, “Arrest and Detention” (May 2013), online: <[http://www.cba.org/CBA/cle/PDF/IMM13\\_paper\\_maynard.pdf](http://www.cba.org/CBA/cle/PDF/IMM13_paper_maynard.pdf)> [<https://perma.cc/4NOS-VST8>] at s 2 [Maynard].

<sup>33</sup> See *Bedada v. Canada (Solicitor General)*, 2007 FC 121 (CanLII), <<http://canlii.ca/t/1qflp>>; see also *X (Re)*, 2014 CanLII 94241 (CA IRB), <<http://canlii.ca/t/gktb0>>; *IRPA*, *supra* note 2, at s 55; Maynard, *supra* note 32 at s 2.

- You fail to report to the CBSA<sup>34</sup>; or
- You fail to attend admissibility hearings<sup>35</sup>.

**You can be arrested by CBSA *without* a warrant when:**

- You are without valid immigration status<sup>36</sup>;
- You are working in Canada without a valid work permit<sup>37</sup>;
- CBSA officials/police have reasonable grounds to believe that you lack status, or are inadmissible and pose a danger to the Canadian public under IRPA<sup>38</sup>;
- If you are a temporary resident or student and CBSA decides you are unlikely to show up for examinations or hearings<sup>39</sup>, you pose a danger to the public, or they believe they can't identify you<sup>40</sup>;
- You incorrectly identify yourself to officials, and/or your identity cannot be established<sup>41</sup>; or
- You are charged with a criminal offence, or the police have reasonable grounds to believe you committed (or are about to commit) a serious crime<sup>42</sup>.

---

<sup>34</sup> For a discussion of how arrest warrants may be issued for individuals who fail to report to the CBSA, see *Ivlev v. Canada (Public Safety and Emergency Preparedness)*, 2010 CanLII 38259 (CA IRB), <<http://canlii.ca/t/2bk4k>>.

<sup>35</sup> *Ibid*. An arrest warrant was eventually issued for Sergey Ivlev since he did not show up for his admissibility hearing.

<sup>36</sup> Immigration Legal Committee, "Migrants Know Your Rights!" *supra* note 1 at 5.

<sup>37</sup> *Ibid* at 6.

<sup>38</sup> *Ibid* at 6, see also *Canada (Public Safety and Emergency Preparedness) v. Ismail*, 2014 FC 390 (CanLII), [2015] 3 FCR 53, <<http://canlii.ca/t/q6mxd>> at paras 29 and 45; IRPA, *supra* note 2 at s 55(2); *Ibid* at 6.

<sup>39</sup> See *Sibomana v. Canada*, 2019 FC 945 (CanLII), <<http://canlii.ca/t/j1z1r>> at para 37; *Larson v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2005 FC 986 (CanLII), <<http://canlii.ca/t/1l7d2>> at para 18.

<sup>40</sup> Steps to Justice, "I am not a Canadian citizen. Can immigration authorities detain me?" (15 May 2019), online: <<https://stepstojustice.ca/questions/refugee-law/i-am-not-canadian-citizen-can-immigration-authorities-detain-me>> [<https://perma.cc/288A-CLYL>].

<sup>41</sup> See *Canada (Minister of Citizenship and Immigration) v. Mwamba*, 2003 FC 1042 (CanLII), <<http://canlii.ca/t/1fzn0>> at para 14; see also *R. c. Patel*, 2018 QCCQ 7262 (CanLII), <<http://canlii.ca/t/hvk62>>; See also Immigration Legal Committee, "Migrants Know Your Rights!", *supra* note 1 at 5.

<sup>42</sup> See generally: Steps to Justice, "The police have arrested me without a warrant. What should I do?" (02 November 2018), online: <<https://stepstojustice.ca/questions/criminal-law/police-have-arrested-me-without-warrant-what-should-i-do>> [<https://perma.cc/2ZTK-WD3Y>]; See also Butterfly, "Guide for Service Providers: 'A Pathway to End Violence Against Migrant Sex Workers: Access, Safety, Dignity and Justice'" (2020), online: <[https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754\\_d680b25295cb40bdbbcc03f34a88c267.pdf](https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754_d680b25295cb40bdbbcc03f34a88c267.pdf)> [<https://perma.cc/GZU2-3ENM>] at 35 [Butterfly, "Pathway to End Violence"].

## **CBSA's 'Reasonable Belief' That You Violated Immigration Law:**

Generally CBSA may only arrest you on immigration grounds if they have a 'reasonable belief' that you violated immigration law or stay conditions.<sup>43</sup> However, as discussed above in [Section 1.5](#), the CBSA has broad discretionary power to enforce Canada's immigration laws and it may be difficult to formally challenge whether an immigration arrest was in fact reasonable.

## **2.3 Permanent residents<sup>44</sup>**

Individuals with permanent resident status have greater protection than those with temporary or no status, but are still at risk of immigration arrest, detention, and deportation in certain cases. They can be found inadmissible under *IRPA* for the following reasons:

### **Reasons that permanent residents can be found inadmissible under IRPA:**

- On security grounds
- Due to human/international rights violations
- Serious criminality
- Organized criminality
- Misrepresentation

There is often no right of appeal on these inadmissibility grounds except for misrepresentation or on minor criminality grounds where you were not sentenced to 6 months or more of imprisonment.<sup>45</sup>

### **On security grounds:<sup>46</sup>**

This means you would be inadmissible because your presence in the country is deemed a national security threat by Canada. Examples of behaviour that affects national security include: acts of espionage, terrorism, violence that can endanger the public, or being involved in an organization that is deemed to have engaged in these acts.

---

<sup>43</sup> See Butterfly, "Upholding and promoting human rights, justice and access for migrant sex workers: Part 3 - Legal information for migrant sex workers" (October 2017), online: <[https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754\\_506c23f7470e459f802c842381a1b1eb.pdf](https://576a91ec-4a76-459b-8d05-4ebbf42a0a7e.filesusr.com/ugd/5bd754_506c23f7470e459f802c842381a1b1eb.pdf)> [<https://perma.cc/PQW2-32UM>] at 3; *Canada (Public Safety and Emergency Preparedness) v. Ismail*, 2014 FC 390 (CanLII), [2015] 3 FCR 53, <<http://canlii.ca/t/q6mxd>> at para 29, 45; *IRPA*, *supra* note 2 at s 55(2); See also Immigration Legal Committee, "Migrants Know Your Rights!", *supra* note 1 at 6.

<sup>44</sup> See Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "Inadmissibility (ENF1)" (04 September 2013), online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf01-eng.pdf>> [<https://perma.cc/3GEW-8A4Q>] at 3, 4, 5, 6; see also Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "ENF 23 Loss of permanent resident status" (23 January 2015), online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf23-eng.pdf>> [<https://perma.cc/MFQ3-LHJL>].

<sup>45</sup> *IRPA*, *supra* note 2 at s 64.

<sup>46</sup> *Ibid* at s 34(1).

### **Violation of human/international rights:<sup>47</sup>**

You could be found inadmissible if you broke international human rights laws through your actions. This includes very serious crimes such as acts of genocide, war crimes, or crimes against humanity.

### **Serious criminality:<sup>48</sup>**

Committing crimes that Canada deems particularly serious in nature could lead to a finding of inadmissibility. This includes offences committed while in Canada that have a *maximum* prison sentence of 10 years or more, convictions that have resulted in a prison sentence of 6 months or more, and offences committed outside Canada which carry a maximum prison sentence of 10 years or more (whether in that country or, if the act occurred in Canada, would result in that type of offence which carries that prison sentence length).

### **Organized criminality:<sup>49</sup>**

These include transnational criminal offences like human trafficking, money laundering, the smuggling of persons/goods, or being involved in an organization that commits these offences<sup>50</sup>.

### **Misrepresentation:<sup>51</sup>**

This includes acts where you withhold material facts that are relevant to your status under *IRPA*, misrepresenting (directly or indirectly) such facts, or being sponsored by an individual who has engaged in these acts of misrepresentation.

## **2.4 Practical tips<sup>52</sup>**

If you are in a situation where you may be at risk of immigration arrest, detention, or deportation, make efforts to find a legal representative and/or seek legal advice as soon as possible. Additionally, here are some practical considerations below to keep yourself as informed and safe as possible:

### **Consider whether you should carry ID on your person:**

Depending on your specific situation, it may be a good idea to carry ID when you leave your home. However, if you currently have a warrant for your arrest, ID will generally not help you reduce the risk of arrest and detention. For those with status or at least without a warrant outstanding, not having identification may lead to a situation where you attract further investigation from law enforcement and potentially a fine or imprisonment (particularly if you are driving or riding a bike). You may want to

---

<sup>47</sup> *Ibid* at s 35(1).

<sup>48</sup> *Ibid* at s 36(1).

<sup>49</sup> *Ibid* at s 37.

<sup>50</sup> This can include people who just helped to smuggle others into Canada, such as if you assisted with crewing a boat that is bringing refugees to Canada.

<sup>51</sup> *IRPA*, *supra* note 2 at s 40.

<sup>52</sup> 'Practical tips' do not constitute legal advice; see [Section 1.1](#) "Disclaimer" for more information.



leave your ID (or copy of your ID) with someone you trust who you can contact if you are arrested or put it somewhere safe and let someone know where that important documentation is.

**Protection of personal information:**

There are certain things you can do to protect your personal information. You have the right to ask exactly what information you need to disclose, why the information is needed, how the information will be used, and if it will be shared with others.<sup>53</sup> Typically, identifying information includes your name, date of birth, and address. You can refrain from sharing any further information than what is needed.<sup>54</sup>

If you work for a service provider or organization, you must obtain prior and informed consent before sharing the personal information of the individuals that you support; your organization should also explain the risks and potential consequences to individuals of sharing their personal information before they do so.<sup>55</sup> You should not apply your own assumptions to a person's situation but see it from their viewpoint and respect their agency. Service providers should not police clients, but support and inform them.

**Truthfulness:**

Based on *IRPA*, a person who has made an application for immigration status must answer all questions truthfully<sup>56</sup>, including on any immigration application.<sup>57</sup> This has been interpreted to include when a person has been arrested or detained and is 'applying' to be released.

---

<sup>53</sup> See *IRPA*, *supra* note 2 at s 16; Butterfly, "Pathway to End Violence", *supra* note 42 at 13, 23.

<sup>54</sup> Butterfly, "Pathway to End Violence", *supra* note 42 at 13, 23.

<sup>55</sup> *Ibid* at 13, 23.

<sup>56</sup> *IRPA*, *supra* note 2 at s 16(1).

<sup>57</sup> *Ibid* at s 16(1).

# 3. HOW WILL I KNOW IF I AM FACING DEPORTATION AND HOW CAN I REGULARIZE STATUS?

## 3.1 How to check status<sup>58</sup>

You are able to check your immigration/refugee status online, including your place in any of your immigration/refugee applications, through Canada's IRCC website.<sup>59</sup> If you do not have an online account, you may create one through the website. Checking online on the IRCC portal<sup>60</sup> is usually more effective than calling immigration's number (1-888-242-2100).<sup>61</sup> Using the portal, IRCC will forward the question to the appropriate office, while the clerks at the call line only have access to what is on your computer file (which is relatively minimal).<sup>62</sup>

**To check the status of your immigration/refugee application(s):**

<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-status.html>

Alternatively, you can check the standard processing times for your specific application type here:

<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html>

### **Existing Immigration/Refugee Status:**

You can see on the IRCC website after logging into your account whether you have existing documentation proving your immigration status (rather than starting a new application).<sup>63</sup> This could include copies of your existing work permit or study permit, proof that you are a permanent resident or refugee claimant, or proof that you have a particular visa (e.g. a visitor visa).<sup>64</sup> You can also make

---

<sup>58</sup> Steps to Justice, "2. Find out your immigration status" (accessed 30 March 2020), online: <<https://stepstojustice.ca/steps/family-law/2-find-out-your-immigration-status>> [perma.cc/Y7S7-PPF2] [Steps to Justice, "Immigration Status"].

<sup>59</sup> Government of Canada, "Immigration and Citizenship" (Date modified: 19 March 2020), online: <<https://www.canada.ca/en/services/immigration-citizenship.html>> [perma.cc/SMH7-QDVN].

<sup>60</sup> Government of Canada, "IRCC Webform" (Date modified: 14 November 2018), online: <[secure.cic.gc.ca/enquiries-renseignements/canada-case-cas-eng.aspx?\\_ga=2.179401956.1591196388.1522176277-554100599.1522176277](https://secure.cic.gc.ca/enquiries-renseignements/canada-case-cas-eng.aspx?_ga=2.179401956.1591196388.1522176277-554100599.1522176277)> [perma.cc/6MWI-D8SU].

<sup>61</sup> Government of Canada, "Immigration, Refugees and Citizenship Canada Client Support Centre services" (8 May 2020), online: <[www.canada.ca/en/immigration-refugees-citizenship/corporate/contact-ircc/client-support-centre.html](https://www.canada.ca/en/immigration-refugees-citizenship/corporate/contact-ircc/client-support-centre.html)> [perma.cc/P8M2-JPXF].

<sup>62</sup> *Ibid.*

<sup>63</sup> Steps to Justice, "Immigration Status", *supra* note 57.

<sup>64</sup> *Ibid.*

applications for temporary or permanent resident status either online or through the mail, including extensions of temporary status and work and study visas.

### **Application Status:**

Once processing of your specific application has begun, you will often be able to view the status of your application.<sup>65</sup> Alternatively, if you are not able to check your application status (e.g. checking online is unavailable for your specific application), you can view the standard processing times for your application type to estimate the time it will take to have your application assessed.<sup>66</sup>

### **Access to Information and Privacy Act Requests (ATIPs):**

For more detailed information, you may file an ATIP request with the relevant government of Canada department.<sup>67</sup> For example, if you wish to get the full file and notes on your immigration status and related applications and interviews, you can file an ATIP with IRCC. There may be a significant time delay between your request and the government's response (usually at least several months). ATIPs actually refer to information requests made under two separate acts. They give you access to government records for departments under the act and cost \$5.

Privacy Act requests can only be made by individuals in Canada for personal information held by government institutions. They do not have a fee.

## **3.2 What is a Removal Order?<sup>68</sup>**

If you receive a Removal Order, it means that you cannot legally remain in Canada and must leave the country. Depending on your situation, your removal order may be effective immediately, or after a negative decision if you had made an appeal.

There are three types of Removal Orders which are issued by either the CBSA or IRCC. These are (from most minor to most severe): Departure Orders, Exclusion Orders, and Deportation Orders.

---

<sup>65</sup> Government of Canada, "Check your application status" (Date modified: 23 March 2020), online: <[www.canada.ca/en/immigration-refugees-citizenship/services/application/check-status.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-status.html)> [<https://perma.cc/UE9Y-3KQJ>] ["Check your application status"].

<sup>66</sup> Government of Canada, "Check processing times" (Date modified: 24 March 2020), online: <[www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html)> [<https://perma.cc/6EPF-PQVH>].

<sup>67</sup> You may file an ATIP online at <<https://atip-aiprp.apps.gc.ca/atip/welcome.do>>.

<sup>68</sup> IRPR, *supra* note 2 at ss 223-226; See Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "ENF 10 Removals" (24 February 2017), online: <[www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf10-eng.pdf](http://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf10-eng.pdf)> [<https://perma.cc/2SM5-GH65>] [Operation Manual, "ENF 10"]; Canada Border Services Agency, "Arrests, detentions and removals: Removal from Canada" (Date modified: 2020-02-03), online: <[www.cbsa-asfc.gc.ca/security-secure/rem-ren-eng.html](http://www.cbsa-asfc.gc.ca/security-secure/rem-ren-eng.html)> [<https://perma.cc/4445-7252>].

## **Departure Order**

With a Departure Order, you will be ordered to leave Canada within 30 days after the order takes effect. You must also confirm your departure with the CBSA at your port of exit. If you leave Canada and follow these procedures, you may return to Canada in the future provided you meet the entry requirements at that time.

If you leave Canada after 30 days or do not confirm your departure with the CBSA, your Departure Order will automatically become a Deportation Order. In order to return to Canada in the future, you must obtain an Authorization to Return to Canada (“ARC”).<sup>69</sup>

## **Exclusion Order**

With an Exclusion Order, you will be ordered to leave Canada and cannot return to Canada for one year. If you wish to return within a year, you must apply for an ARC. If an exclusion order has been issued for misrepresentation, you cannot return to Canada for five years. If the CBSA paid for your removal from Canada, you will be obligated to repay that cost to be eligible to return.<sup>70</sup>

## **Deportation Order**

If you are issued a Deportation Order, you will no longer be legally allowed to remain in the country. It means that you will be forced to leave whether you pay for a way to leave on your own, or alternatively you are arrested, detained, and subsequently deported from Canada by the government themselves. A Deportation Order is the most severe of the three removal orders, as you will be permanently barred from returning to Canada and cannot return unless you apply for an ARC. If the CBSA paid for your removal from Canada, you must also repay that cost before you are eligible to return.<sup>71</sup>

There will be a ‘form number’ on your removal order which will indicate if it is a deportation order, departure order, or exclusion order. Be sure to double check what kind of removal order you have to assess what steps to take.

## **3.3 How to regularize or retain status**

There are various ways to regularize or retain immigration or refugee status in Canada. Regularizing status refers to actions taken to legalize an individual’s status within a country. While each person’s immigration situation is unique and should be discussed with a qualified immigration lawyer or consultant, the following outlines some common tips and methods.

---

<sup>69</sup> For more information on the ‘Authorization to Return to Canada’ process, see Government of Canada, “Authorization to return to Canada”, *supra* note 25 (Date modified: 27 March 2020), online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/reasons/authorization-return-canada.html>> [<https://perma.cc/6QFD-ULY6>].

<sup>70</sup> Operation Manual, “ENF 10”, *supra* note 68 at s 49.2.

<sup>71</sup> *Ibid* at s 49.4.

## **Ensuring that you follow all steps/requirements to keep/renew your status:<sup>72</sup>**

It is generally easier retaining status than regularizing when you are out of status. Therefore, you should make all efforts to follow the necessary steps needed to follow the conditions of your particular status and to preserve the possibility of renewing it in the future. For instance, if a work permit is ‘closed’ in that it only allows you to work for one particular employer, working with a different employer could result in the invalidation of your work permit.<sup>73</sup> You should pay careful attention to the specific requirements of your particular visa as well as the steps you will need to take if you wish to renew it in the future. If you are planning to renew, apply early.

## **Visitor Visas (Extension):<sup>74</sup>**

If you already have a visitor visa, you can extend your status as a visitor through applying for a ‘Visitor Record’. A ‘Visitor Record’ is not a new visitor visa; it will instead extend your ability to stay in Canada as a visitor and create a new expiration date for your visitor visa. You will need to apply for it before your current visitor visa’s expiration date; as stated in [Section 2.1](#), visitor visas are generally 6 months in length.<sup>75</sup> The government recommends individuals to apply 30 days prior to the visa’s expiration date. The processing time is about 100 days if you apply online.<sup>76</sup> The application fee is \$100.

**To apply for a ‘Visitor Record’ to extend the expiration date of your visitor visa, you can go to:**

<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/account.html>

If you apply before the expiration date, you will be granted “implied status” – meaning that you will have status until a decision is made on your extension application. The success of your application could depend on many factors, such as if you can demonstrate that you have the ability to financially support yourself (including money earned without a valid work permit).

## **Refugee and Protected Persons Claims:<sup>77</sup>**

You can claim refugee status if you are 1) outside the country that you are from/habitually live in 2) have a “well-founded fear of persecution” in that country due to your race, religion, political actions, nationality, or membership in a particular social group and 3) you are unable or unwilling to receive

---

<sup>72</sup> Ideas for this section were developed through consultation with migrant communities in Toronto in August, 2019.

<sup>73</sup> Butterfly, “Upholding and promoting human rights- Part 1”, *supra* note 29 at 25.

<sup>74</sup> See Government of Canada, “Extend your stay in Canada” (Date modified: 23 March 2020), online: <[www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/extend-stay.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/extend-stay.html)>.

<sup>75</sup> See Government of Canada, “Visitor visa: About the document” (Date modified: 20 March 2020), online: <[www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/about-visitor-visa.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/about-visitor-visa.html)> [<https://perma.cc/EET7-5PZG>].

<sup>76</sup> You can start an application to extend your visitor status by visiting: <[www.canada.ca/en/immigration-refugees-citizenship/services/application/account.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/application/account.html)>.

<sup>77</sup> Ideas for this section were developed through consultation with migrant communities in Toronto in August 2019.

help from that country (i.e. they are unable/unwilling to protect you from this persecution) due to your fear.<sup>78</sup>

Additionally, you can still qualify as a refugee even if you did not originally leave your home country due to some fear. If you instead developed a 'well-founded fear of persecution' while away from your home country and have that fear *right now*, you can make a claim known as a *sur place* claim. You cannot make a refugee claim if you are under an active removal order.<sup>79</sup>

You may apply as a person in need of protection if you face danger of torture, risk to your life, or risk of cruel and unusual treatment or punishment if you return to your home country.

If you are not sure whether you qualify as a refugee or a person in need of protection or would like further legal advice, you can consult Section 6 of this guide.

**If you think you may qualify as a refugee or protected person in Canada, you can start your claim at an Immigration, Refugees and Citizenship Canada (IRCC) office or at an authorized port of entry to Canada. You must also complete all of the forms from the application package, which you can access at:**

<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/applying-refugee-protection-canada.html>

### **Humanitarian and Compassionate Grounds:**

In exceptional situations, if you would not otherwise qualify for immigration/refugee status, you could apply to be granted permanent resident status by IRCC on 'Humanitarian and Compassionate grounds' ("H&C").

In assessing your application, IRCC may consider many different factors, including whether you will face hardship or other harmful consequences in your home country if you were forced to leave Canada, if you are settled in Canada (such as through having financial or family ties), and the effect of your removal from Canada on any involved children's best interests. Showing that you can support yourself financially without social assistance is an important factor in an H&C application. To that end, being gainfully employed or running a business could be a positive factor.

### **An H&C looks broadly at many different factors to assess the case:**

- Ties and establishment to Canada
- Best interests of children affected
- Host country conditions
- Health
- Family, including violence and consequences of family separation
- Other exceptional circumstances

<sup>78</sup> IRPA, *supra* note 2 at s 96.

<sup>79</sup> *Ibid* at s 99(3).

You cannot have a refugee claim that is still pending when applying for H&C. Before applying, you should consult the IRCC's application package and a qualified immigration lawyer or consultant.<sup>80</sup>

### **Spousal Sponsorship:<sup>81</sup>**

You may be eligible to apply for immigration status if you are the spouse, common-law partner, or conjugal partner of a Canadian citizen or permanent resident as they could apply to sponsor you in becoming a permanent resident; this includes same-sex partnerships as well. Any prospective spousal sponsor would need to be able to support you financially and ensure that you will not need government social assistance while living as a permanent resident. It takes approximately a year for IRCC to process the application.

It is important to prepare documentation and answer questions together with your spouse. The IRPA does not allow for relationships that are not genuine or entered into for the primary purpose of acquiring status.<sup>82</sup> Immigration officials are therefore very sensitive to indicators of a bad faith application and inconsistencies between spouses and family/friends regarding dates and details.

Having children can be a large factor in the success of your application, and whether your spousal relationship is deemed as 'legitimate' or not by the IRCC. 'Dependent children' can also be sponsored for permanent resident status; the application fee is around \$150, and the processing times will vary from country to country.<sup>83</sup>

### **Further information on eligibility requirements and the application process for spousal sponsorship can be found on:**

<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/spouse-partner-children.html>

---

<sup>80</sup> You can access the IRCC's application package online at:

[www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/humanitarian-compassionate-considerations.html](https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/humanitarian-compassionate-considerations.html).

<sup>81</sup> Government of Canada, "Sponsor your spouse, partner or child" (Date modified: 13 November 2019), online: [www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/spouse-partner-children.html](https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/spouse-partner-children.html).

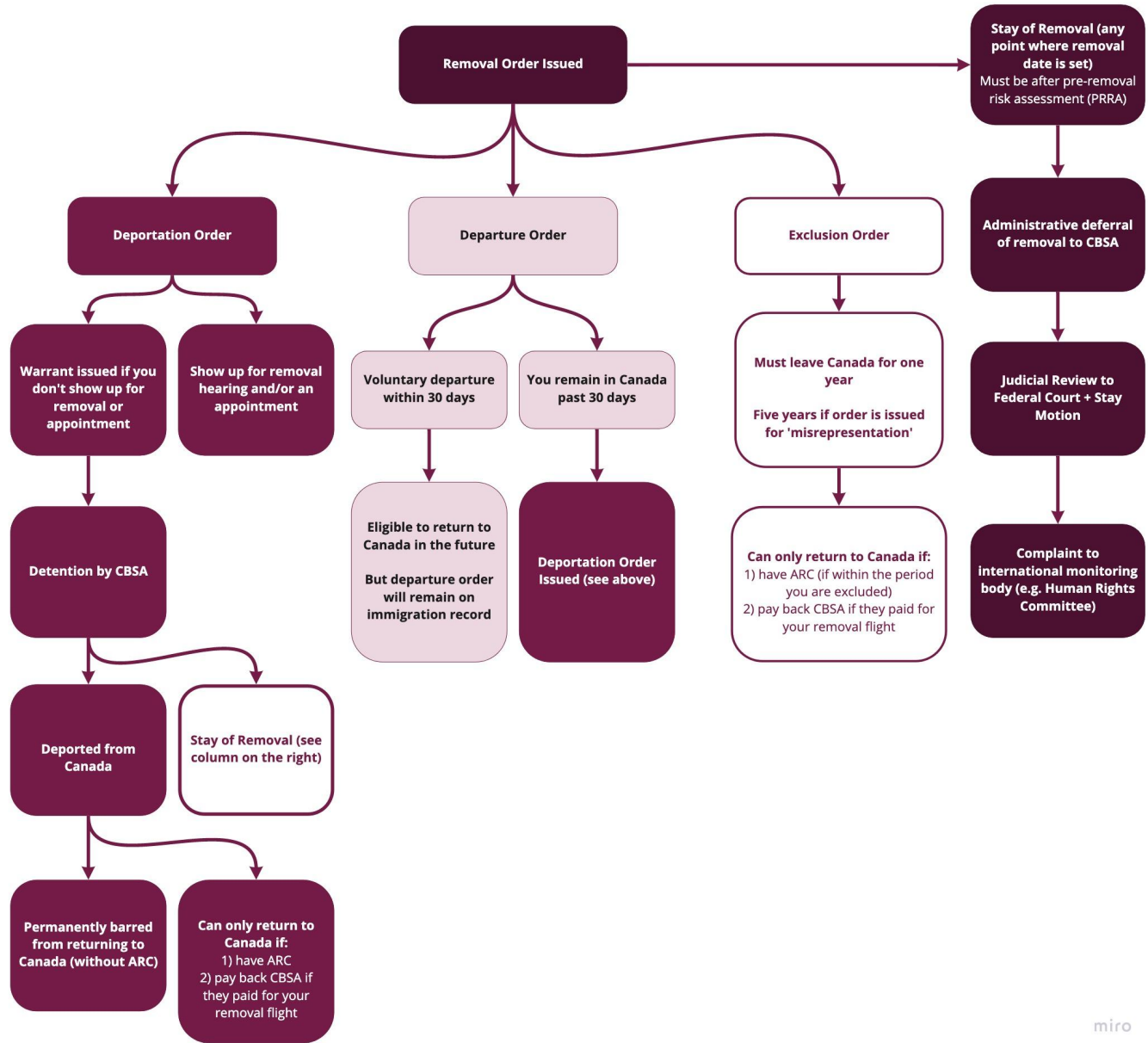
<sup>82</sup> IRPA, *supra* note 2 at s 4(1).

<sup>83</sup> Government of Canada, "Sponsor your spouse, partner or child" (Date modified: 13 November 2019), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/spouse-partner-children.html>.

# 4. WHAT IS THE DEPORTATION PROCESS AND WHAT SHOULD I DO IF I AM BEING DEPORTED?

## 4.1 Deportation process flowchart<sup>84</sup>

\*Note: This flowchart does not include avenues to regularize or extend status (e.g. visa renewals, refugee/protected person claims, H&C, family sponsorship), which can generally be initiated at any point in the process. See [Section 3.3](#) of this guide for more detailed treatment:



miro

<sup>84</sup> This flowchart was informed/developed by relying on Operation Manual, “ENF 10”, *supra* note 68.



## 4.2 Safety plan in case of arrest<sup>85</sup>

It is important to have a safety plan in case you are arrested. If you are not prepared and do not have a plan, it could be extremely difficult for you to manage your affairs and have support during/after your arrest.

Assign someone that you trust and rely on to provide you with support in the event that you are arrested. You could give this person a key to your house so that they could look after your pets, kids, plants, or manage any other necessary household tasks, or retrieve important documents for your case if your arrest leads to detention (or provide a way for accessing this information through a secure online method).<sup>86</sup> Given that this is someone who you trust, you could also tell them your immigration status beforehand so that they know of the risks you face and the support that you may need from them.<sup>87</sup> Ideally, this person should be a permanent resident or Canadian citizen, able to attend your bail/detention review hearing and post your bond, and someone who you could live with if you post bond.<sup>88</sup> They may ask both of you a lot of questions to prove you have a genuine relationship.

If this is not possible, consider reaching out to migrant-friendly support organizations that could provide support and contact your loved ones in case you are arrested and detained. Having a strong support network that can keep in touch with you and rally together to get you out of detention is beneficial and empowering for all.

You should also do what is necessary to prepare on your own. Memorize the names and numbers of contacts that are important to you in case you do not have access to your belongings while arrested; this could include a trustworthy 'representative' (see above), family members, friends, an immigration lawyer or consultant, members of community and faith organizations, and so on.

Most importantly, make sure that you know your rights yourself in the event that someone tries to arrest you. Know your current status and the specific risk of immigration arrest and detention.

### When making your 'safety plan' to prepare for your possible arrest in the future, consider the following:



Finding a trustworthy person who can attend any hearings and post your bond, giving them a spare key and informing them of your immigration status and client ID



Memorizing the numbers/names of important contacts



Having a plan for someone to care for your children and/or other dependents

<sup>85</sup> Butterfly, "Who is who", *supra* note 27 at 9.

<sup>86</sup> Advice on this component of potential safety plans was developed through consultation with migrant communities in Toronto in September, 2019.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

### 4.3 Reporting to CBSA

You may or may not need to report to the CBSA in order to comply with Canadian immigration law, such as to meet the requirements of your particular visa or the conditions of your 'alternative to detention' arrangement.<sup>89</sup> In some cases, particularly for persons still awaiting immigration applications, with expired status, or otherwise precarious status, CBSA may require you to periodically report to them. As stated in [Section 1.5](#), it is important to remember that CBSA officers have the power to arrest and detain individuals who violate immigration laws, but do not have the power to enforce criminal laws.

#### **How to respond if CBSA requests new information from you:**<sup>90</sup>

The CBSA may require you to report changes to personal information (e.g. a change in address) or request your presence at particular locations (e.g. the airport). In general, any immigration 'investigation' should not be arbitrary; there needs to be a reasonable basis for the CBSA officer to conduct any particular investigation.

CBSA may require you to provide your new address before you move (in writing); this means you need to go to a local CBSA office, fill out a form and show your new address before you move.<sup>91</sup> In addition, the CBSA Immigration Processing Centre (IPC) may request additional information from you in the form of a letter if they need more information to determine your admissibility to Canada and/or make a decision with regard to your immigration status; you would need to respond to the CBSA within 30 days of the letter's issuance.<sup>92</sup>

#### **Phone reporting:**<sup>93</sup>

In certain situations, individuals with precarious status will be required to report periodically (usually monthly) to the CBSA by phone. This procedure used to involve reaching a live agent, but now is largely facilitated by voice recognition software.<sup>94</sup> Failure to report by phone may result in consequences, such as the initiation of removal proceedings by the Minister or the issuance of an arrest warrant. Speak carefully and clearly as everything that you say will be put on record. If you call using a cell phone, your GPS location may be recorded.

---

<sup>89</sup> See Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "ENF 34 Alternatives to Detention Program" (22 June 2018), online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf34-eng.pdf>> at 5 [Operation Manual, "ENF 34"].

<sup>90</sup> See Operation Manual, "ENF 10", *supra* note 68; "ENF 7", *supra* note 30 at 34, 38, 39.

<sup>91</sup> First-hand experience with the CBSA in this regard was provided during consultations with migrant communities in Toronto in January 2020.

<sup>92</sup> See Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "ENF 29 Alternative Means of Examination Programs" (17 June 2005), online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf29-eng.pdf>> at 10, 20.

<sup>93</sup> Operation Manual, "ENF 34", *supra* note 89 at 5.

<sup>94</sup> Immigration.ca, "CBSA Turning to Voice Recognition to Help Limit Immigration Detention" (17 January 2018), online: <<https://www.immigration.ca/cbsa-turning-voice-recognition-help-limit-immigration-detention>>.

### ***In-person reporting:***<sup>95</sup>

When you are reporting to the CBSA in person with regard to voluntary removal from Canada or to meet other CBSA-imposed conditions, you should consider the following:

- Make sure you go with somebody (whether it be a friend, family member, interpreter, legal representative, or other form of support);
- Ask for an interpreter, if necessary;
- Always say you will meet and follow their conditions, and show up to any scheduled appointments/sessions (they will record your attendance in their system);
- Avoid discussing your fear or reluctance in returning to your home country during these reporting sessions, as it may increase the risk of being detained as a flight risk;
- Have the relevant documentation ready;
- Inform them if you change your address or phone number;
- If you are asked to sign a document and are not sure about it, insist that you bring it back to your lawyer to speak about it first.

### ***Search and seizure:***<sup>96</sup>

Under *IRPA*, immigration officials have the power to search you and seize your belongings if they believe (on reasonable grounds) that your belongings were obtained or are being used fraudulently/improperly, or if conducting the search and/or seizing the belongings will ensure compliance with *IRPA* and its objectives. The CBSA has, in effect, broad discretion to seize your belongings when they see fit, so long as it is 'reasonable' to do so. In that light, they may have the authority to seize your phone or your other belongings when you are reporting to the CBSA. If you feel your documents or belongings have been removed in an unlawful way, contact counsel.

---

<sup>95</sup> See Operation Manual, "ENF 34", *supra* note 89 at 5.

<sup>96</sup> Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "ENF 12 Search, Seizure, Fingerprinting and Photographing" (25 October 2018), online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf12-eng.pdf>> at 6; *IRPA*, *supra* note 2 at s 140.

## 4.4 Practical tips

You can follow some practical tips below in order to better understand and navigate the deportation process, as well as to minimize your risk of immigration arrest and detention:<sup>97</sup>

### **Law enforcement at your home:**<sup>98</sup>

If an officer comes to your front door at home, how can you respond? First, you may want to see if they are wearing a uniform or are a plainclothes officer. Next, you may want to know what kind of officer they are to determine their powers.

You have privacy rights and may refuse entry, unless they have the necessary warrants. You can first determine whether they do in fact have the necessary warrants by asking them if they 1) have an immigration arrest warrant and 2) have a warrant that allows them to enter your home (known as both a 'Feeney Warrant' or a 'Special Entry Warrant').

If they do not have *both* of these warrants, or there are mistakes on the warrants, your name is not on the warrants, or there is some other issue with either warrant, they are not legally allowed to enter your home and you have the right to refuse them entry (i.e. politely ask them to leave). When asking them for these warrants, it is also important that you do *not* open your door as they may force themselves in if you give them the chance. You can instead request for the warrants to be put in a mailbox or slipped under your door; if that is not possible, then you could *slightly* open the door to receive the warrants. Be aware that although this is totally within your rights, if you are detained by immigration it may be used as evidence that you were not cooperative and may be a flight risk.

### **Phone passwords:**

Make sure to put a password on your phone to protect your privacy; this could prevent officers from reading your text messages, seeing sensitive photos, or other information on your phone that could negatively affect your immigration/refugee status.<sup>99</sup> This may be particularly important to avoid law enforcement targeting others and for those working in the sex industry.

### **Prolonged detention:**

If you are detained or arrested by the CBSA, they can hold you if they are not sure of your identity or you don't have citizenship or permanent residency<sup>100</sup>. This means you have to make a decision: do you answer their questions and hope they release you, or do you remain silent? You have the right to counsel under section 10(b) of the *Canadian Charter of Rights and Freedoms*, so if you can access a lawyer or counsel, you should talk to them before answering questions.

---

<sup>97</sup> These 'practical tips' do not constitute legal advice; see [Section 1.1](#) "Disclaimer" for more information.

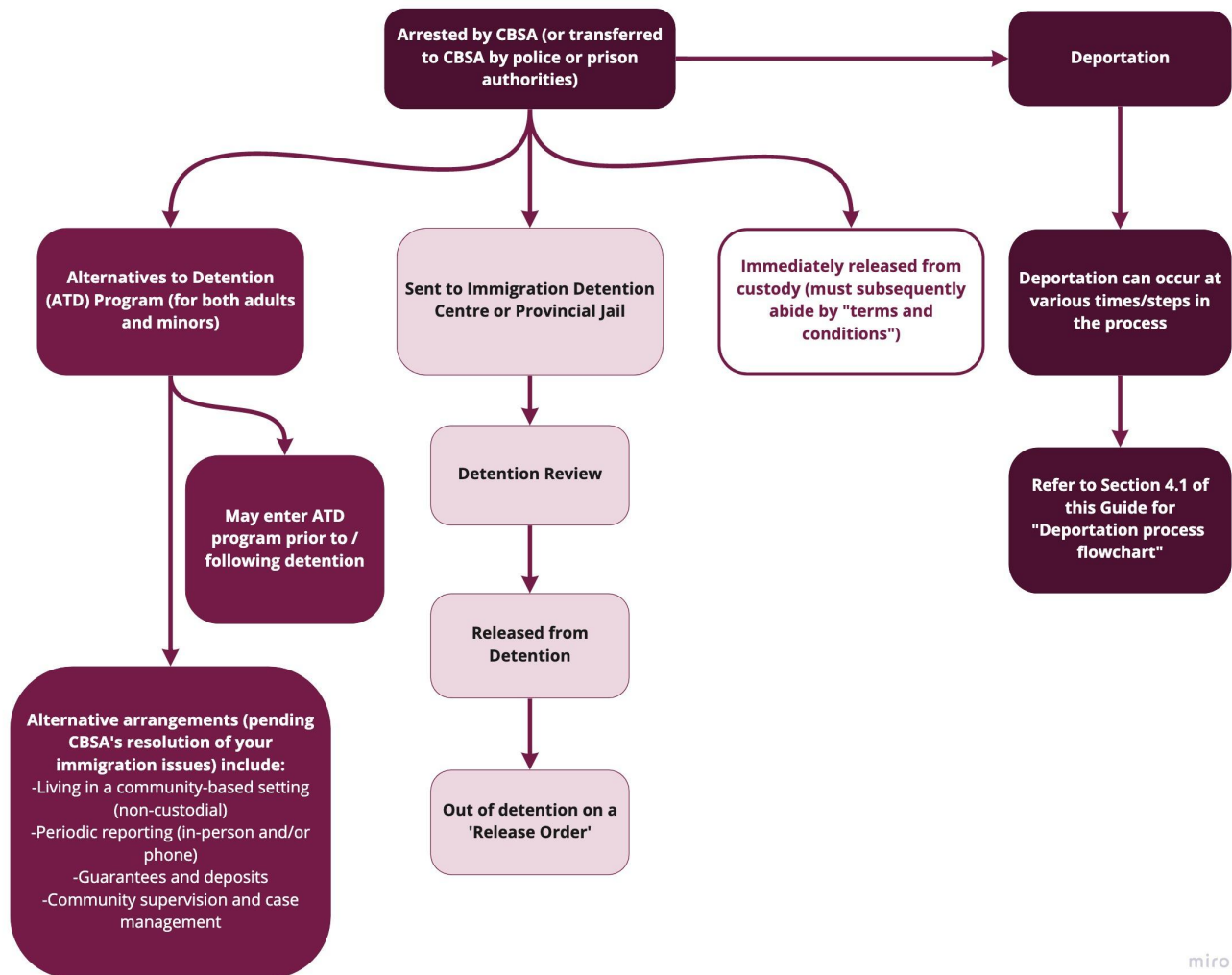
<sup>98</sup> Immigration Legal Committee, "Migrants Know Your Rights!" *supra* note 1 at 4.

<sup>99</sup> This practical tip was provided during consultations with migrant communities in Toronto in August, 2019.

<sup>100</sup> IRPA, *supra* note 2 at s 55(2)(b).

# 5. WHAT IF I AM ARRESTED AND PUT IN IMMIGRATION DETENTION?

## 5.1 Detention process flowchart<sup>101</sup>



<sup>101</sup> This flowchart was informed by the following sources: Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), “ENF 20 Detention” (Last Updated: 23 March 2020), online: <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20a-en.pdf>> [Operation Manual, “ENF 20”]; IRPR, *supra* note 2 at s 248; Operation Manual, “ENF 34”, *supra* note 89.

## 5.2 Grounds for immigration detention

It is important that you know the grounds for immigration detention in order to avoid giving CBSA any impression that you should be detained. Under *IRPA*, along with guidance from *IRPR*, the CBSA has grounds to detain you if they have a reasonable belief that:<sup>102</sup>

### ***You are inadmissible and otherwise do not have valid status:***

See [Chapter 2](#) of this guide for discussion surrounding inadmissibility and common ways that individuals fall out of status.

### ***You are deemed a flight risk – unlikely to present yourself for examinations, inadmissibility hearings, or hearings related to removal orders:***

Determining factors from *IRPR* include: being a fugitive of justice, whether or not you complied with previous removal orders or in immigration/criminal proceedings (even if the notice was not received), you tried to escape from custody previously, you are strongly connected to an organization based in Canada, or you were involved with organizations that engage in human smuggling/trafficking.

### ***You are deemed a danger to the Canadian public:***

Determining factors from *IRPR* include: if you were convicted in Canada for sexual and/or violent offences, trafficking and other drug trade related offences, or you had convictions in other countries for similar crimes. These determinations can often be animated by stereotypes regarding race and criminality and perpetuate systemic racism in criminal justice systems more broadly and policing and convictions specifically.<sup>103</sup>

### ***Your identity is in question in any of your immigration proceedings under IRPA:***

Determining factors from *IRPR* include: if you cooperate in providing the CBSA with detailed evidence on your identification, family history, and travel plans/history to Canada; if you destroyed your identification documents, used fraudulent documentation in your interactions with the CBSA,<sup>104</sup> and/or provided documents which were inconsistent/contradictory with one another. If you have used a different identity or fraudulent identity documents, you should speak with counsel to discuss your options.

---

<sup>102</sup> *IRPA*, *supra* note 2 at s 55; *IRPR*, *supra* note 2 at R 244 – 250.

<sup>103</sup> See Robyn Maynard, “Policing Black Lives: State Violence in Canada from Slavery to the Present” (2017 Fernwood Publishing).

<sup>104</sup> See *Canada (Minister of Citizenship and Immigration) v. Singh*, 2004 FC 1634 (CanLII), <<http://canlii.ca/t/1j9h5>> at para 3.

## 5.3 Rights when you are arrested and detained

Under Canadian law, you have certain rights when you are arrested and detained. You may exercise these various rights if you so choose, including the following:

### **Right to speak to counsel:**<sup>105</sup>

As stated above, you have the right to counsel per section 10(b) of the *Canadian Charter of Rights and Freedoms*; you have the right to speak to a lawyer/legal counsel before answering any questions while arrested. This applies for both police and CBSA arrests. If you cannot afford private legal counsel, you may be eligible for your province or territory's legal aid organization. See [Section 6.1 – Legal Aid](#).

### **You can exercise your rights when you are arrested and detained – you have the right to:**

- Speak to counsel
- Remain silent
- Contact your home country's consulate
- Detention reviews
- A phone call

### **Right to remain silent:**<sup>106</sup>

If you are arrested by the CBSA, you have the right to contact a lawyer/counsel before answering any questions. Similarly, if you are arrested by the police you have the right to remain silent. Once you are in immigration detention, however, your silence and refusal to answer questions posed by the authorities could factor into your detention review and delay your release (see [Section 5.4](#) “What to Expect in Detention” for more information on detention reviews).

### **Right to contact your home country's consulate:**<sup>107</sup>

You also have the right to contact the consulate of your home country. Depending on the country, they may be able to support or assist you in some way. However, in certain cases contacting your home country's consulate may not always be advisable. Some consulates may be more interested in maintaining/developing their relationship with Canadian authorities and facilitating deportation than providing assistance.<sup>108</sup> It is also not advisable to contact your home country's consulate if you are an asylum seeker and fear persecution from your home country.

---

<sup>105</sup> Ideas for this section were developed through consultation with migrant communities in Toronto in September, 2019.

<sup>106</sup> Stella/Butterfly's “Immigration Status And Sex Work” Guide (Published March 2015) at 20; Butterfly, “Upholding and promoting human rights- Part 1”, *supra* note 29 at 19.

<sup>107</sup> See Canada Border Services Agency, “Arrests, detentions and removals” (Date modified: 24 July 2018), online: <[www.cbsa-asfc.gc.ca/security-securite/arr-det-eng.html](http://www.cbsa-asfc.gc.ca/security-securite/arr-det-eng.html)> [https://perma.cc/4445-7252].

<sup>108</sup> This opinion was provided during consultations with migrant communities in Toronto in January, 2020.

### **Right to a detention review:**<sup>109</sup>

If you are detained, you will have the right (and be legally required) to have various detention reviews. In these reviews, the IRB will consider whether your detention is lawful and/or whether you should be released. You also have the right to be represented by counsel in detention review hearings. You will have an initial detention review within 48 hours of your detention. Following that review, you will have another detention review in 7 days, and then subsequently get reviews every 30 days (see [Section 5.4](#) “What to Expect in Detention” for more information on detention reviews).

### **Phone call rights:**<sup>110</sup>

You should be given a phone call to contact your counsel and/or another emergency contact if you are arrested.<sup>111</sup> If you are refused one, demand your right to call someone. You have the right to make as many phone calls as needed to find counsel. As stated above in [Section 4.2](#) (“Safety Plan in Case of Arrest”), memorizing the numbers of important contacts (e.g. lawyers, community workers, close friends and family) could prove to be useful, especially if your cell phone is taken away from you.

## **5.4 What to expect in detention**

Conditions in immigration detention may vary depending on which facility you are detained in, the specific officers in charge of your detention, and many other factors. Although experiences in detention will be highly individualized and context-specific, there are certain facts/risks that will be fairly consistent for every immigration detainee. You can expect the following when you are in detention:

### **Specific detention centers:**<sup>112</sup>

You may be sent to either a provincial jail or a CBSA Immigration Holding Centre. While detained, you may also be relocated to another facility. But regardless of where you are being held, you will have a detention review hearing within 48 hours, then another within 7 days, and another for each 30-day period afterwards.<sup>113</sup>

---

<sup>109</sup> See Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), “ENF 3 Admissibility, Hearings and Detention Review Proceedings” (29 April 2015), online: [www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf03-eng.pdf](http://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf03-eng.pdf) at 33-35; see also Operation Manual, “ENF 20”, *supra* note 101 at 42; IRPA, *supra* note 2 at s 57; see [Section 5.3](#) “What to Expect in Detention” for more information on detention reviews.

<sup>110</sup> See Canadian Civil Liberties Association, “Know Your Rights – A Citizen’s Guide to Rights When Dealing With Police” (accessed 09 April 2020), online: [www.peelpolice.ca/en/in-the-community/resources/Documents/Know-Your-Rights-Booklet.pdf](http://www.peelpolice.ca/en/in-the-community/resources/Documents/Know-Your-Rights-Booklet.pdf) at 5, 6.

<sup>111</sup> See *R. v. Pavel* (1989), 74 C.R. (3d) 195 (Ont. C.A.) at 311, 312 for a discussion about how you are able to make multiple calls in order to first speak to a lawyer.

<sup>112</sup> See Operation Manual, “ENF 20”, *supra* note 101 at 28, 29, 42.

<sup>113</sup> IRPA, *supra* note 2 at s 57(1)-(2).



If you are sent to a CBSA Immigration Holding Centre (as opposed to a provincial jail), you may be sent to one of the following facilities:<sup>114</sup>

<b>Toronto Immigration Holding Centre</b>	<b>385 Rexdale Boulevard, Toronto, ON</b> (416) 401-8505
<b>Vancouver Immigration Holding Centre</b>	<b>13130 76 Avenue, Surrey, BC</b> (778) 591-4101
<b>Laval Immigration Holding Centre</b>	<b>200 Montée Saint-François, Laval, QC</b> (450) 661-4717

Alternatively, you may instead be sent to provincial jail (i.e. a normal jail for those who violate the Canadian *Criminal Code*) if you are deemed to be a danger to the public. These jails are often mixed with the general population as opposed to solely those who have violated immigration law. You will also be sent to jail if you need medical assistance. Depending on your specific medical needs, however, you may instead be sent to a mental health facility. Research shows that detainees are frequently not notified in advance of the transfer, the reason for transfer, nor given a chance to meaningfully challenge the decision.<sup>115</sup>

<b>Vanier Centre for Women</b>	<b>655 Martin St, Milton, ON</b> (905) 876-8300
<b>Central East Correctional Centre</b>	<b>541 Kawartha Lakes County Rd 36, Lindsay, ON</b> (705) 328-6000
<b>Toronto South Detention Centre</b>	<b>160 Horner Ave, Toronto, ON</b> (416) 354-4030
<b>Fraser Regional Correctional Centre</b>	<b>13777 256 St, Maple Ridge, BC</b> (604) 462-9313
<b>Montréal Bordeaux Prison</b>	<b>800 Boul Gouin O, Montréal, QC</b> (514) 336-7700

<sup>114</sup> See Canada Border Services Agency, “Immigration holding centres” (2020), online: <[https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html#\\_s2](https://www.cbsa-asfc.gc.ca/security-securite/ihc-csi-eng.html#_s2)> for further detail regarding the three immigration holding centres.

<sup>115</sup> See International Human Rights Program, “‘We Have No Rights’ - Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada” (2015), online: <[jhrp.law.utoronto.ca/sites/jhrp.law.utoronto.ca/files/PUBLICATIONS/IHRP%20We%20Have%20No%20Rights%20Report%20web%20170615.pdf](http://jhrp.law.utoronto.ca/sites/jhrp.law.utoronto.ca/files/PUBLICATIONS/IHRP%20We%20Have%20No%20Rights%20Report%20web%20170615.pdf)> [<https://perma.cc/9A7G-XYR3>] at 52 [We Have No Rights].

### **Potential loss of personal items:**

Some individuals reported that they lost their documents and personal belongings (such as jewelry and cell phone) once detained. Others reported that they had their cash and wallet taken by law enforcement for “criminal investigation” reasons while in immigration detention and were not able to get their property back before being deported.<sup>116</sup>

You should get any items back that were taken from you by authorities within three months, as long as 1) you are the lawful owner of these items; 2) they are not illegal items (e.g. drugs or weapons), or 3) they are not being used as evidence for a criminal investigation (in which case it would be returned to you after the investigation has been concluded).<sup>117</sup>

You should make records of any items that authorities take from you. When you make your records, write down a description of the item, how much you think it costs, and the quantity. If possible, you should obtain proof that you are the legal owner of the item (such as through receipts). Taking photos of the item(s) before they are taken would also be helpful.<sup>118</sup>

### **Phone-call access:**

Depending on the detention facility, your phone calls could potentially be limited (e.g. you may be unable to make calls outside of regular business hours), or even revoked completely in certain cases.<sup>119</sup> Usually, your friends and family may still call you during calling hours, but need to have your full legal name and date of birth available in order to do so. Remember that your call may not be private. At some immigration holding centres, it has been reported that incoming calls are only allowed in the form of passing messages to detainees.

Oftentimes, if you have problems with accessing phone calls, you may request to speak with a social worker or other staff to get their assistance with making a call to your friend, family, or community workers – sometimes even if it is a long distance call to your home country.<sup>120</sup>

Some detention facilities require detainees to place their calls collect, which can be very expensive for the people they are calling. In Ontario, calls from prison can only be made to landlines, which creates further accessibility issues, although the government is currently switching to a more modern system.<sup>121</sup>

---

<sup>116</sup> This first-hand experience was provided during consultations with migrant communities in Toronto in September, 2019.

<sup>117</sup> Steps to Justice, “What are my rights if the police take things that belong to me during a search?” (2 November 2018), online: <<https://perma.cc/B4MU-RYA>>.

<sup>118</sup> *Ibid.*

<sup>119</sup> This first-hand experience was provided during consultations with migrant communities in Toronto in September, 2019.

<sup>120</sup> This insight was provided during consultations with migrant communities in Toronto in January, 2020.

<sup>121</sup> The Canadian Press, “Ontario looking to adjust jail phone call system, include calls to cellphones” (14 January 2020), online: <<https://globalnews.ca/news/6410719/ontario-jail-phone-call-cellphones/>>.

## **Food**

Prisons and detention centres have positive obligations under human rights legislation to provide culturally appropriate food and treatment (e.g. Halal, Kosher, Vegan diets). If not specifically asked by admission officials, these requests can be made afterwards or through request forms.

## **Interpreter/translator issues:**

You have a right to an interpreter for all detention review hearings. However, outside of those hearings you may face a potential lack of help from translators and interpreters. Still, if you insist on requiring an interpreter, you may be able to get one.

## **Health conditions:**

There are also health considerations to be aware of. You may be at risk of developing mental health issues while detained or worsening pre-existing mental health and/or other medical issues (e.g. if you have cancer) if you are detention. The CBSA may be able to support you and allow you to access healthcare services while detained. The Canadian Red Cross independently monitors the CBSA to ensure that conditions in immigration detention (such as factors that affect detainees' health) are adequate and consistent with relevant domestic/international legal standards.<sup>122</sup>

Yet requesting help from the CBSA may, in certain situations, result in negative consequences. If you inform the CBSA of your mental health risks/issues, for instance, this may result in you being transported to a provincial jail. You should also consider the implications of confiding with immigration authorities if you are contemplating suicide. The resulting 'suicide watch' which you may be placed under often takes the form of segregation. In addition, the CBSA may see your untreated mental illness as a risk and argue that it poses a danger to the public (which may consequently be used to justify your detention and delay your release). You would need to think about how all of these implications would affect both your health and overall well-being.

## **Process of detention review:<sup>123</sup>**

In a detention review, a member of the IRB's Immigration Division will review the reasons for your detention and determine whether it is lawful, you are eligible for release, or your detention should be extended. The hearing will probably take place in the centre/jail where you are located. There are usually only oral submissions made in detention review hearings. In addition, as stated above, you have the right to be represented by counsel in these hearings. A hearings officer will represent the Minister of Public Safety and Emergency Preparedness ("PSEP").

As stated above, you will have a detention review within 48 hours of first being detained. There will be another detention review 7 days after this initial review. After that, there will be a new detention

---

<sup>122</sup> We Have No Rights, *supra* note 115; see also Operation Manual, "ENF 20", *supra* note 101 at 18, 33.

<sup>123</sup> IRPA, *supra* note 2 at s 57; see Operation Manual - Immigration, Refugees and Citizenship Canada (IRCC), "ENF 3 Admissibility, Hearings and Detention Review Proceedings" (29 April 2015), online: <[www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf03-eng.pdf](http://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf03-eng.pdf)> at 33-35; see also Operation Manual, "ENF 20", *supra* note 101 at 42; IRPR, *supra* note 2 at s 248.

review *at least* every 30 days. You could also make a written request (if the request is justified by new facts) to have a detention review *earlier* than any of the scheduled reviews mentioned above; the request needs to be made to the IRB's Immigration Division.<sup>124</sup>

## 5.5 Getting out of detention

Under *IRPA*, you must be released from detention *unless* it is determined that:<sup>125</sup>

- You pose “a danger to the public”;
- It is unlikely that you will “appear for examination, an admissibility hearing, removal from Canada” or a related proceeding;
- The Minister of PSEP is already taking “necessary steps” to determine whether you are “inadmissible” due to security reasons, criminality and/or organized criminality, serious criminality, or violations of human/international rights; or
- The Minister of PSEP believes that your identity is in question (and/or you are being uncooperative in sharing personal information which could establish your identity).

Section 248 of *IRPR* also outlines the relevant factors in considering whether to release a detainee, including:<sup>126</sup>

- The time they have already spent in detention;
- The reasons for detaining them;
- Any inexplicable delays/errors/omissions on the part of either immigration authorities or the detainee;
- Whether there are alternatives to detention;
- How any affected children that are under 18 years old may be impacted.

You will probably need to prepare for a ‘bondsperson’ in order to be released from detention. Once you are out of detention, you will then need to abide by the terms and conditions of your ‘release order’.

Each of these processes are outlined below:

---

<sup>124</sup> See Canada Border Services Agency, “Information for people detained under the *Immigration and Refugee Protection Act*” (2015), online: <<https://www.cbsa-asfc.gc.ca/publications/pub/bsf5012-eng.pdf>> [<https://perma.cc/4FVZ-NDGW>] at 4.

<sup>125</sup> *IRPA*, *supra* note 2 at s 58 (1).

<sup>126</sup> *Ibid* at s 248.

### **Preparing a Bondsperson:<sup>127</sup>**

Preparing to have a ‘bondsperson’ who can pay for your immigration bail/ ‘financial guarantee’ and testify at your detention review is key to getting out – and keeping out – of detention. In order to prepare to have someone act as your bondsperson, you should ensure that you know their legal name and address. You should also make sure your bondsperson knows something about your personal background (e.g. work, family) and preferably has known you for a while. They should also discuss with you a release plan for when you are released to ensure that they can check up on you and that you follow your release conditions (such as reporting).

The bondsperson has to be living in Canada and be either a Canadian citizen or permanent resident. The bondsperson should not have a criminal record or have failed to ensure compliance in previous bond cases. Otherwise, their record could pose substantial hurdles and affect the prospective success of your detention review. Since they will be questioned at the hearing, the bondsperson should be someone that knows you well enough to demonstrate that they have meaningful and substantial contact with you.

It will be helpful if you can demonstrate that you will be able to stay with this bondsperson after your release. They also need to demonstrate that they can financially support you through non-illicit means. If you are unable to provide a bondsperson, you could alternatively be released through being accepted into the Toronto Bail Program (available in the Greater Toronto Area).

### **Release order:<sup>128</sup>**

When released from custody after either criminal or immigration law violations, your release will be contingent on terms and conditions in the form of a ‘release order’ which you must abide by. If you violate your release order, there may be negative consequences – such as a return to detention. Your ‘bondsperson’ (see above) may also lose their guarantee/deposit (often known as a ‘performance bond’) if you do not follow all of the release order’s conditions.

#### **Any potential ‘bondsperson’ should have the following characteristics:**

- Can pay for your immigration bail and testify at your detention review hearing
- Reside in Canada and be either a PR or Citizen
- No Criminal Record
- They know you well (and you know their address and last name)
- Can financially support you (through non-illicit means)

<sup>127</sup> See Steps to Justice, “I’ve been asked to be a bondsperson for a person in immigration detention. What should I know?” (Last updated: 17 July 2019), online:

[stepstojustice.ca/questions/refugee-law/%E2%80%99ve-been-asked-be-bondsperson-person-immigration-detention-what-should-i-know](https://stepstojustice.ca/questions/refugee-law/%E2%80%99ve-been-asked-be-bondsperson-person-immigration-detention-what-should-i-know) <<https://perma.cc/68BC-UWPY>>; see Immigration and Refugee Board of Canada, “Information for Bondspersons” (Date modified: 2018-07-06), online: <[irb-cisr.gc.ca/en/information-sheets/Pages/ib-ic.aspx](http://irb-cisr.gc.ca/en/information-sheets/Pages/ib-ic.aspx)> <<https://perma.cc/C64M-J74Z>>.

<sup>128</sup> See Immigration and Refugee Board of Canada, “Information for Bondspersons” (Date modified: 2018-07-06), online: <[irb-cisr.gc.ca/en/information-sheets/Pages/ib-ic.aspx](http://irb-cisr.gc.ca/en/information-sheets/Pages/ib-ic.aspx)>; for an example of a release order, see Government of Canada, “FORM 11 (Section 2) Release Order” (Date modified: 24 March 2020), online: <[laws-lois.justice.gc.ca/eng/acts/c-46/page-258.html](https://laws-lois.justice.gc.ca/eng/acts/c-46/page-258.html)>.

### ***Habeas corpus applications:***

In a situation where you have endured a prolonged detention for immigration reasons, it may be possible to make an application to a provincial or territorial court for *habeas corpus*, where you can make a detailed plea to a judge on why you should be released.<sup>129</sup> Further, in *habeas* applications, the burden is squarely on the government to justify why you should not be released. Consult with a lawyer about the possibility of this remedy if your detention is prolonged.

## **5.6 Practical tips**

You can follow some practical tips below in order to better understand, and navigate, the immigration detention system in Canada.<sup>130</sup>

### ***Preparing for detention:***

If you know you are about to be detained, there are some steps you can take to better prepare yourself. For instance, if you feel like you may forget the phone numbers of important contacts (e.g. of a lawyer, potential bondsperson, social worker, mental health worker, or addictions counselor), ask for a pen and paper to write them down. Once you are detained, you could potentially build up your network within the detention centre/jail itself. People often will help each other, but still be aware and cautious about sharing personal information with other detainees/inmates. You can also take action ahead of time to prepare for potential detention. It is important to build up and maintain a social network outside of jail. Once you are detained, for instance, they can help you call a lawyer, water your plants at home, take care of other household tasks, and provide emotional support.<sup>131</sup>

### ***CBSA's actions:***

You should be aware that the CBSA may not give you accurate legal advice. In addition, while in detention, they may try to convince you to sign documents that relinquish your legal rights. This could include efforts to coerce you into signing papers that renounce your right to apply for certain immigration applications which would allow you to remain in Canada (e.g. a Pre-Removal Risk Assessment). On the other hand, the CBSA has argued in the past that refusing to sign documents like these demonstrates that a detainee is uncooperative; this factor could then be used as a justification to extend the length of your detention and delay your release. In general, you should always try to access an interpreter (if you can) whenever you do not understand a particular document or what an individual is saying to you.<sup>132</sup>

---

<sup>129</sup> See Canada (*Public Safety and Emergency Preparedness*) v. *Chhina*, 2019 SCC 29.

<sup>130</sup> These 'practical tips' do not constitute legal advice; see [Section 1.1](#) "Disclaimer" for more information.

<sup>131</sup> This practical tip was provided during consultations with migrant communities in Toronto in January, 2020.

<sup>132</sup> Immigration Legal Committee, "Migrants Know Your Rights!", *supra* note 1 at 8.

### ***Making complaints, potential civil suits for CBSA/police mistreatment:***

If you were mistreated or subjected to illegal conduct by either the CBSA or police, there are formal complaint mechanisms available.<sup>133</sup> Depending on the severity of their abuse (e.g. if you were assaulted, or subjected to abuse of power) you may also be able to launch a civil lawsuit and potentially receive compensation as a result. [Chapter 6](#) of this guide (“6. What are some resources and support that I can reach out to?”) provides various legal aid/counsel resources that you can reach out to for further information.

---

<sup>133</sup> See Canadian Civil Liberties Association, “Know Your Rights – A Citizen’s Guide to Rights When Dealing With Police” (accessed 09 April 2020), online: [www.peelpolice.ca/en/in-the-community/resources/Documents/Know-Your-Rights-Booklet.pdf](http://www.peelpolice.ca/en/in-the-community/resources/Documents/Know-Your-Rights-Booklet.pdf) at 8. You can also file complaints against an IRB member – see Immigration and Refugee Board of Canada, “How to file a complaint against an IRB member” (Date modified: 24 June 2018), online: [irb-cisr.gc.ca/en/legal-policy/procedures/pages/file\\_complaint-deposer\\_plainte.aspx](http://irb-cisr.gc.ca/en/legal-policy/procedures/pages/file_complaint-deposer_plainte.aspx) [perma.cc/DCE5-B2PG]; Immigration and Refugee Board of Canada, “Procedures for Making a Complaint about a Member” (Date modified: 25 June 2018), online: [irb-cisr.gc.ca/en/legal-policy/procedures/Pages/member\\_complaint-plainte\\_commissaire.aspx](http://irb-cisr.gc.ca/en/legal-policy/procedures/Pages/member_complaint-plainte_commissaire.aspx) [perma.cc/SR3R-YZTF].

# 6. WHAT ARE SOME RESOURCES AND SUPPORT THAT I CAN REACH OUT TO?

## 6.1 Legal aid

### Provincial and local level support:

If you find that you are in need of legal counsel or support, there are many legal resources available at the provincial and local level. The following chart provides a roadmap of some accessible provincial and local level legal services, how you may qualify, and the types of support they provide :<sup>134</sup>

COMMUNITY LEGAL CLINICS	
<b>How can you qualify?</b>	<p><b>You must:</b></p> <ul style="list-style-type: none"> <li>• Qualify as low-income (which also depends on how many members are in your family)</li> <li>• Have a legal issue that the clinic deals with, and</li> <li>• Live in the clinic’s service area</li> </ul>
<b>How can I access them? What services do they provide?</b>	<ul style="list-style-type: none"> <li>• To find a community legal clinic that serves your area, you may check your provincial legal aid branch (e.g. visit Legal Aid Ontario’s (“LAO”) website to access their directory of legal clinics)</li> <li>• Will provide free legal services, including advice, information, and even representation in a variety of areas</li> </ul>
<b>Which areas of law do they cover?</b>	<ul style="list-style-type: none"> <li>• Will depend on the clinic (see some relevant legal clinics below)</li> <li>• Often a range of issues; not all legal clinics handle issues relating to refugee and immigration law (but you can still contact your local community legal clinic regardless as they may be able to refer a legal professional or individual who can help.</li> </ul>

<sup>134</sup> These summary tables were informed by the following sources: Steps to Justice, “Programs and services across Ontario - Getting help in Immigration law” (n.d.), online: <<https://stepstojustice.ca/legal-topic/getting-help-in-immigration-law/services>> [<https://perma.cc/U8H2-XN4U>]; Community Legal Education Ontario, “Getting Legal Help: A Directory of Community Legal Clinics in Ontario” (October 2019), online: Community Legal Education Ontario, <[www.cleo.on.ca/en/publications/ontario/community-legal-clinics](http://www.cleo.on.ca/en/publications/ontario/community-legal-clinics)> [<https://perma.cc/D3JN-43AZ>] [CLEO, “Getting Legal Help”]; Legal Services Society BC, “Duty counsel lawyers for immigration law matters” (n.d.), online: <[https://lss.bc.ca/legal\\_aid/immigrationDutyCounsel](https://lss.bc.ca/legal_aid/immigrationDutyCounsel)> [<https://perma.cc/384A-Q9RJ>]; Law Society of Ontario, “Law Society Referral Service”, online: <<https://lso.ca/public-resources/finding-a-lawyer-or-para-legal/law-society-referral-service>> [<https://perma.cc/2BMZ-3LUV>].



## LEGAL AID BRANCHES *(Focus on Legal Aid Ontario and Legal Aid BC)*

<b>How can you qualify?</b>	<ul style="list-style-type: none"><li>• Eligibility may vary by branch and each specific service (see some examples of provincial branches below)</li></ul>
<b>How can I access them? What services do they provide?</b>	<ul style="list-style-type: none"><li>• Legal Aid branches are located in every province and territory</li><li>• Your provincial legal aid branch can help you find a community legal clinic that serves your area (e.g. you can view Legal Aid Ontario’s website to access their directory of legal clinics)</li></ul> <p><b>Legal Aid Ontario (“LAO”):</b></p> <ul style="list-style-type: none"><li>• Funds Federal Court work (Judicial Reviews of decisions, staying removal), Humanitarian Applications, Pre-Removal Risk Assessments (“PRRA”), Immigration Appeals, Refugee Claims, Refugee Appeals (among other services)</li><li>• In some cases, LAO will pay for legal representation for a refugee claimant or an immigrant</li><li>• LAO does <b>not</b>: help individuals obtain permanent resident status (unless on H&amp;C grounds), check IRCC application status, prepare sponsorship applications, renew visas or permits, or resolve problems in receiving OHIP coverage (you must also pay IRCC application and filing fees yourself)</li></ul> <p><b>Legal Aid BC (“LABC”):</b></p> <ul style="list-style-type: none"><li>• Offers a Legal Aid Immigration Line for individuals looking for support and resources for their case or whether they qualify for further support from LAB</li><li>• Provides duty counsel for people in CBSA detention in Vancouver regardless of financial eligibility for LABC services (and so any individual detained by CBSA may contact LABC for duty counsel)</li></ul>
<b>Which areas of law do they cover?</b>	<ul style="list-style-type: none"><li>• Will depend on the clinic (see some relevant legal clinics below)</li><li>• Often a range of issues; not all legal clinics handle issues relating to refugee and immigration law (but you can still contact your local community legal clinic regardless as they may be able to refer a legal professional or individual who can help).</li></ul>

## LAW SOCIETY ORGANIZATIONS AND REFERRAL SERVICES

<b>How can you qualify?</b>	<ul style="list-style-type: none"> <li>• Depends on the service, but often anyone seeking legal assistance can qualify</li> </ul>
<b>How can I access them? What services do they provide?</b>	<ul style="list-style-type: none"> <li>• You can visit the website of your provincial law society organization to find contact details and a list of services (some law society referral services are listed below)</li> <li>• Law society organizations often provide some resources, but are more limited than community legal clinics or Legal Aid branches</li> <li>• Law society organizations' resources typically include directories and referral services</li> <li>• For example, if you contact the Law Society of Ontario Referral Service, they will refer a lawyer or paralegal who will provide free legal advice for 30 minutes; similarly, the Ontario Legal Information Centre offers a free 30-minute meeting with a lawyer in any area of law in English or French</li> </ul>
<b>Which areas of law do they cover?</b>	<ul style="list-style-type: none"> <li>• Wide range of practice areas (often including immigration and refugee law – see specific law society organizations or referral services for details)</li> </ul>

### **Examples of local legal support resources in each province and territory:**

<b>Alberta</b>	<ul style="list-style-type: none"> <li>• Legal Aid Alberta</li> <li>• Medicine Hat Legal Help Centre</li> <li>• Law Society of Alberta Lawyer Referral Service</li> <li>• Women's Centre Legal Advice Clinic</li> </ul>
<b>British Columbia</b>	<ul style="list-style-type: none"> <li>• Legal Aid BC</li> <li>• Access Pro Bono's Lawyer Referral Service</li> <li>• People's Law School</li> <li>• Mosaic BC's Legal Advocacy Program</li> </ul>
<b>Manitoba</b>	<ul style="list-style-type: none"> <li>• Legal Aid Manitoba</li> <li>• Manitoba Interfaith Immigration Council and Welcome Place</li> <li>• Immigrant Centre</li> </ul>
<b>New Brunswick</b>	<ul style="list-style-type: none"> <li>• New Brunswick Refugee Clinic</li> <li>• Public Legal Education and Information Service (PLEIS)</li> <li>• Wilmont Church Legal Advice Clinic</li> </ul>
<b>Newfoundland</b>	<ul style="list-style-type: none"> <li>• Newfoundland and Labrador Legal Aid Commission</li> </ul>

<b>and Labrador</b>	<ul style="list-style-type: none"> <li>● Public Legal Information Association of Newfoundland &amp; Labrador (PLIAN)</li> <li>● Legal Aid St. John's</li> <li>● Association for New Canadians</li> </ul>
<b>Northwest Territories</b>	<ul style="list-style-type: none"> <li>● Law Society of the Northwest Territories</li> <li>● Legal Aid Commission of the Northwest Territories</li> </ul>
<b>Nova Scotia</b>	<ul style="list-style-type: none"> <li>● The Halifax Refugee Clinic</li> <li>● Nova Scotia Legal Aid</li> <li>● The Legal Information Society of Nova Scotia (LISNS)</li> </ul>
<b>Nunavut</b>	<ul style="list-style-type: none"> <li>● Legal Services Board of Nunavut</li> </ul>
<b>Ontario</b>	<ul style="list-style-type: none"> <li>● Legal Aid Ontario</li> <li>● Justice Net</li> <li>● Ontario Legal Information Centre</li> <li>● Law Society Referral Service</li> <li>● The Refugee Law Office (RLO)</li> </ul>
<b>Prince Edward Island</b>	<ul style="list-style-type: none"> <li>● Community Legal Information Association of PEI</li> <li>● Prince Edward Island Legal Aid</li> </ul>
<b>Quebec</b>	<ul style="list-style-type: none"> <li>● Commission des services juridiques du Québec</li> <li>● Barreau du Québec referral service</li> <li>● The Refugee Centre</li> </ul>
<b>Saskatchewan</b>	<ul style="list-style-type: none"> <li>● Legal Information for Newcomers</li> <li>● Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) – Walk-in Advocacy Clinic</li> <li>● Legal Aid Saskatchewan</li> </ul>
<b>Yukon</b>	<ul style="list-style-type: none"> <li>● Law Society of Yukon</li> <li>● Multicultural Centre of the Yukon (for lawyer referrals)</li> </ul>

**Examples of city-based legal support resources in Toronto, Vancouver, and Montreal:**

TORONTO	VANCOUVER	MONTREAL
<ul style="list-style-type: none"> <li>• Community Legal Clinics (e.g. Parkdale Community Legal Services, Rexdale Community Legal Clinic, Barbra Schlifer Clinic Commemorative Clinic)</li> <li>• Centre francophone de Toronto</li> <li>• Student Legal Centres (i.e. Downtown Legal Services)</li> <li>• FCJ Refugee Centre</li> <li>• Ethnoracial Legal Clinics (e.g. The Centre for Spanish Speaking People, Chinese and Southeast Asian Legal Clinic, South Asian Legal Clinic of Ontario)</li> </ul>	<ul style="list-style-type: none"> <li>• Community Legal Clinics</li> <li>• Law Students' Legal Advice Program (Peter A. Allard School of Law)</li> <li>• Vancouver Justice Access Centre</li> <li>• The Multicultural Helping House Society – Newcomers Resource Centre (MHHS–NRC)</li> </ul>	<ul style="list-style-type: none"> <li>• Centre Communautaire Juridique de Montréal</li> <li>• Clinique juridique de l'Université du Québec à Montréal (in French only)</li> <li>• Greater Montreal Community Justice Center</li> <li>• Legal Aid Clinic at the Université de Montréal's Faculty of Law</li> <li>• Legal Information Clinic at McGill</li> <li>• Mile End Legal Clinic</li> <li>• Just Solutions Clinic (Boussole Juridique)</li> <li>• Head and hands (À Deux Mains)</li> </ul>

**6.2 Migrant support organizations**

**Migrant Rights Network** is a national network advancing the rights of migrants by combating racism and fighting for migrant justice. The Migrant Rights Network website has tools to educate the public on areas relating to immigration and racism. They continue to advocate for permanent resident status for all migrants and refugees currently in Canada, and landed status for those arriving in the future. Currently, the Migrant Rights Network is organizing demonstrations to advance this movement.

For more information, please visit: <https://migrantrights.ca/>

**No One is Illegal – Toronto** is a grassroots organization advancing migrant justice. They specifically advocate for the freedom to stay, the freedom to move, and the freedom to return. No One is Illegal – Toronto often organizes and participates in demonstrations to raise awareness for migrant justice and immigration policy reform. No One is Illegal is not limited to Toronto. They also have branches in Halifax, Montreal, Ottawa, and Vancouver.

For more information, please visit: <https://toronto.nooneisillegal.org/>

**Migrant Workers Alliance for Change** organizes provincially and federally to advance the rights of migrant workers so that they may live with dignity and respect. Their recent projects include policy

proposals for: migrant farmworkers, migrant students, migrant care workers, and migrant workers in general. In addition, Migrant Workers Alliance for Change provides training materials, referrals to service providers, and legal professionals, for those interested in supporting migrant self-organizing.

For more information, please visit: <https://migrantworkersalliance.org/>

**Butterfly** strives to advance the rights of Asian and migrant sex workers. Butterfly supports and promotes the safety and dignity for all sex workers. In addition, they advocate for the decriminalization of sex work. Butterfly provides educational and legal resources for those in the industry and the public. Most recently, they developed a comprehensive guide for service providers on ending violence against migrant sex workers.

For more information, please visit: <https://www.butterflysw.org/>

**Canadian Council for Refugees** is a national non-profit organization that advocates for the rights and protection of refugees and migrants in Canada. The Council provides policy analysis on issues affecting refugees and works with other groups and organizations to defend the rights of refugees. Furthermore, they advocate for refugees through education, research, government relations, and media relations.

For more information, please visit: <https://ccrweb.ca/en>

**Additional migrant support organizations:**

- Immigrant Services Society of BC
- DIVERSECity (BC)
- Pacific Immigrant Resources Society (PIRS) (BC)
- Solidarity Across Borders – Mutual Aid Night for Migrants (Quebec)
- Immigrant Workers Centre (Quebec)

## 6.3 Further Considerations

### **Considerations in choosing legal counsel or support:**

Finding and deciding on legal counsel is an important part of one's immigration process. In deciding on a legal advisor, you should avoid anyone who: advises you to lie or withhold information, suggests you use false documents, or asks you to sign a blank form or anything you do not understand.<sup>135</sup> Instead, you should find someone who is: trained and knowledgeable of the law, authorized to provide legal advice, and is honest and trustworthy.<sup>136</sup> Before any services are provided, make sure there is a written contract describing the nature of your relationship with the legal professional, and read it carefully.<sup>137</sup>

### **How to file a complaint against an immigration consultant or lawyer:**

The Immigration Consultants of Canada Regulatory Council (ICCRC) is a body that regulates Immigration Consultants and International Student Advisors to ensure access to adequate and complete immigration services professionals. If you find that there are significant issues with your immigration services, you can submit a complaint to ICCRC. If the Council closes the complaint and you disagree with the decision, you may request a review by the Independent Complaints Review Officer (ICRO). The ICRO is a third party of appointed members by the ICCRC, to ensure fairness in the review process. To submit a claim for review, you must complete a Request for Review Form within 30 days of receiving notice of the initial decision from the ICCRC.<sup>138</sup>

In addition, each province and territory's law society has a complaints process. These organizations regulate those working in the legal profession in Canada. If there is ever a complaint made against a member of the profession for violating the society's required standards of conduct, the organization will conduct an investigation and discipline members accordingly.<sup>139</sup>

You may also sue a lawyer or immigrant consultant for malpractice in provincial court. This will ordinarily activate the lawyer or consultant's Errors & Omissions (E&O) insurance, which will be responsible for representing the lawyer or consultant in defending and/or settling the claim.

---

<sup>135</sup> Steps to Justice, "Where can I get legal advice and help with a problem about immigration status in Canada?" (16 August 2019), online:  
<[stepstojustice.ca/questions/immigration/where-can-i-get-legal-advice-and-help-problem-about-immigration-status-canada](http://stepstojustice.ca/questions/immigration/where-can-i-get-legal-advice-and-help-problem-about-immigration-status-canada)  
> [<https://perma.cc/5LZR-XEFM>].

<sup>136</sup> *Ibid.*

<sup>137</sup> Government of Canada, "How to choose an immigration or citizenship representative" (16 May 2019), online:  
<[www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/choose.html](http://www.canada.ca/en/immigration-refugees-citizenship/services/immigration-citizenship-representative/choose.html)  
> [<https://perma.cc/G6M5-D9YK>].

<sup>138</sup> Immigration Consultants of Canada Regulatory Council, "Complaints" (n.d.), online:  
<[icrc-crcic.ca/complaints-professional-conduct/file-a-complaint/#File-a-Complaint](http://icrc-crcic.ca/complaints-professional-conduct/file-a-complaint/#File-a-Complaint)> [<https://perma.cc/XJQ4-WQW2>].

<sup>139</sup> Federation of Law Societies of Canada, "Our Member's: Canada's Law Societies", online:  
<[flsc.ca/about-us/our-members-canadas-law-societies/](http://flsc.ca/about-us/our-members-canadas-law-societies/)> [<https://perma.cc/W42Y-46CY>].

# 7. APPENDICES

## 7.1 Safety plan checklist

- Have documentation and identification in a protected location only known by a person you trust
- Familiarize yourself with what an official warrant looks like
- Ensure all belongings are password-protected, if possible (e.g. phones, laptops)
- Inform a trusted individual of your dependents and their care in case you are arrested and need someone to care for them in your absence
- Scan all important documents and upload them to a Google Drive that is password-protected – only give the password to trusted friends and individuals
- Have the contact information of support resources written down, on your person, and ideally memorized, in the event that you need assistance
- Have a lawyer pre-arranged in case you are arrested or detained and need to speak with someone immediately
- If your phone dies or is taken away from you when you are arrested, ask for a pen and paper to write down phone numbers or details so you know who to contact

## 7.2 Summary of practical tips

- To regularize or retain status, always ensure you are aware of any deadlines to renew or maintain status
- To claim refugee status, you must: 1) be outside the country that you are from/habitually live in 2) have a “well-founded fear of persecution” in that country due to your race, religion, political actions, nationality, or membership in a particular social group and 3) be unable or unwilling to receive help from that country due to your fear
- If you do not qualify for immigration/refugee status, you may apply for permanent resident status on Humanitarian and Compassionate (H&C) Grounds
- CBSA officers must: 1) have an immigration arrest warrant and 2) have a warrant that allows them to enter your home (known as both a ‘Feeney Warrant’ or a ‘Special Entry Warrant’)
- If they do not have both of these warrants, or there are mistakes on the warrants, they are not legally allowed to enter your home and you have the right to refuse them entry (i.e. politely ask them to leave)
- When asking them questions, do not open the door as they may force entry
- Do not sign any papers without first speaking to a lawyer because you may be giving up your rights to pursue an application to stay in Canada, such as a Pre-Removal Risk Assessment (PRRA)

- However, you should note that CBSA has argued that refusing to sign papers (even if it's to speak to a lawyer first) shows that the person is uncooperative and therefore should not be released from detention
- As a result, it is useful to have a lawyer pre-arranged in case you're arrested and to speak to them quickly
- Do not rely on CBSA Officers to provide you with accurate legal advice
- Ask for an interpreter if you don't understand what's being said to you
- You have a right to contact your embassy or consulate, but you may not want to if you fear the government of your home country
- If you are arrested, you have the right to remain silent and the right to contact legal counsel, before answering any questions
- Removal orders may take 3 forms: Departure Orders, Exclusion Orders and Deportation Orders
- For a Departure Order, you must leave Canada within 30 days after the order takes effect
- For an Exclusion Order, you must leave Canada and cannot return for one year
- For a Deportation Order, you will no longer be legally allowed to remain in the country



## 8. GLOSSARY AND KEY TERMS

**Authorization to Return to Canada (“ARC”)** – Any individual that is issued an Exclusion Order or Deportation Order from Canada, requires an Authorization to Return to Canada (ARC) in order to return. An ARC is not required for a Departure Order. However, if you depart more than 30 days after the date the order was issued, or you do not verify your departure, your Departure Order becomes a Deportation Order – which would then require an ARC to return.

**Conditional Departure Order** – A departure order that only comes into effect *if* the refugee claim, and any appeals, fails.

**Convention Refugee** – An individual who is outside of their home country and cannot return due to a fear of persecution based on: race, religion, political opinion, nationality, or membership to a particular social group (e.g. gender, sexual orientation). To qualify as a convention refugee, the individual must be sponsored by the Canadian government, a group of people or an organization, or both.

**Deportation** – the forced removal of a foreign individual from a country. Often, you cannot return to Canada without an Authorization to Return to Canada (special permission to return, costs \$400).

**Exclusion Order** – A form of removal order that is issued when an individual must leave Canada and cannot return for one year or five years, depending on the type of exclusion order. If you do wish to return within a year, you must apply for an ARC.

**Indictable/Hybrid Offence** – Indictable offences are more serious and carry heavier punishments, including mandatory minimum prison sentences in some cases. They also have a more involved and serious procedure in the justice system. Most crimes in Canada are indictable offences. ‘Hybrid’ offences will be treated as indictable offences for immigration purposes. Hybrid offences are offences that can either proceed as summary or indictable.

**Non-Status** – ‘Non-status’ individuals, also known as ‘undocumented’, do not have a legal status of immigration in Canada (i.e. do not have temporary or permanent resident status). This may happen if a person remains in Canada following the expiration of a visa, study or work permit, or when a claim for refugee status has been denied. We do not use the term “illegal” (as some people do) as we feel that while certain actions can be illegal in terms of being outside of existing laws, people themselves cannot be illegal and calling people illegal is demeaning, dehumanizing, and oppressive.

**Permanent Resident Status** – Someone who has been given permanent resident status by immigrating to Canada but is not a Canadian citizen, as they retain citizenship in another country. Sometimes also called landed immigrants.

**Person in Need of Protection** – An individual in Canada whose removal to their former country of residence or country of nationality would subject them to potential torture, or a risk to their life, or to cruel and unusual punishment. This individual's country of residence would not provide protection if they were to return, and the risk is not due to the country's inability to provide adequate health care.

**Protected Persons** – A person who has been determined to be either (a) a Convention Refugee or (b) a person in need of protection, according to the Immigration and Refugee Protection Act.

**Refugee Claimant** – An individual who is forced to flee from persecution and is seeking protection in another country.

**Repatriation** – The process of returning an individual to their country of citizenship.

**Regularize** – Actions taken to legalize an individual's status within a country.

**Segregation (solitary confinement)** – Separating vulnerable or dangerous individuals from the general population within a detention facility. Segregation has been found to be a form of cruel and unusual punishment after a certain period of time by the Ontario Courts.

**Serious Criminality** – A label prescribed to a permanent resident or foreign national who is inadmissible for committing an offence in Canada with a maximum prison sentence of 10 years or more, a conviction resulting in a prison sentence of 6 months or more, or offences outside Canada with a maximum prison sentence of 10 years or more (they look at the similar offence in Canada to figure out what the maximum would be here and then decide based on that).

**Temporary Status** – A foreign national who is legally authorized to enter and remain in Canada on a temporary basis as a visitor, student, worker, or temporary resident permit holder.

**Warrant** – Legal document signed by a judge allowing law enforcement to execute a particular action (i.e. arrest warrant). In an immigration context, immigration warrants can be issued when they are signed by a Senior Officer. In either case, make sure it is a) signed, b) dated, and c) has your correct name.