

# MIGRATION LAW IN CANADA

SECOND EDITION

SHARRYN J. AIKEN  
DONALD GALLOWAY  
COLIN GREY  
AUDREY MACKLIN



Wolters Kluwer  
Law & Business

# Migration Law in Canada

Second Edition

**Sharryn J. Aiken**  
**Donald Galloway**  
**Colin Grey**  
**Audrey Macklin**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Migration Law

General Editors: Roger Blanpain, Frank Hendrickx  
Volume Editor: Dirk Vanheule



**Wolters Kluwer**  
Law & Business

*Published by:*

Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenspublishers.com](mailto:customer.service@aspenspublishers.com)

*Sold and distributed in all other countries by:*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper*

ISBN 978-90-411-6013-3

This title is available on [www.kluwerlawonline.com](http://www.kluwerlawonline.com)

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

## The Authors

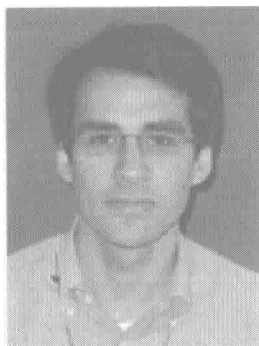


Sharryn J. Aiken is an Associate Professor and Associate Dean in the faculty of law at Queen's University where she teaches international refugee law, immigration law and administrative law. Prior to her current academic appointment, Sharry practiced immigration and refugee law with legal aid clinics in Toronto and in private practice. A past President of the Canadian Council for Refugees and former editor-in-chief of *Refuge* (2001–2011), Sharry continues to be actively engaged in scholarship and advocacy on migration related issues.



Donald Galloway specializes in immigration law, refugee law and citizenship law. He is a former member of the Immigration and Refugee Board of Canada and is currently the President of the Canadian Association for Refugee and Forced Migration Studies. As well as authoring two texts on immigration and refugee law, he has published several articles in the fields of criminal law, tort law and legal theory. Professor Galloway is co-chair of the Legal Research Committee of the Canadian Association of Refugee Lawyers (CARL).

## The Authors



Colin Grey holds a doctorate in juridical science and a master of laws from New York University, and a bachelor of laws from the University of Toronto. He is a member of the Ontario bar, and is presently legal advisor to the Immigration and Refugee Board of Canada. He has worked in Bangkok, Thailand for the UNHCR, and clerked for the Ontario Court of Appeal. He has presented and published scholarly work on justice and authority in immigration. The views expressed in this entry are those of the authors and do not reflect, nor should they be attributed to, the Immigration and Refugee Board.



Audrey Macklin is Professor of Law at the University of Toronto and Chair in Human Rights Law. She teaches, researches and writes in the fields of administrative law, migration, multiculturalism, gender and culture, and business and human rights. From 1994–1996, she adjudicated asylum claims as a Member of Canada's Immigration and Refugee Board. She has co-authored a text on Canadian immigration and refugee law, and has published in legal and inter-disciplinary academic journals and edited volumes. She is a founding member of the Canadian Association of Refugee Lawyers. Many of Prof Macklin's publications are listed and available at

<http://www.law.utoronto.ca/faculty-staff/full-time-faculty/audrey-macklin>.

# Table of Contents

The Authors	3
List of Abbreviations	13
Preface	15
General Introduction	17
§1. IMMIGRATION HISTORY AND STATISTICAL INFORMATION	17
§2. OVERVIEW OF NATIONAL LEGAL INSTRUMENTS	26
I. Historical Overview	26
II. Current Applicable Legislation	26
III. Federal-Provincial Agreements	26
IV. Social and Economic Rights	27
V. Citizenship	27
§3. OVERVIEW OF INTERNATIONAL LEGAL INSTRUMENTS APPLICABLE IN CANADA, WITH DATE OF ENTRY INTO FORCE IN CANADA	28
Part I. Border Control and Entry	31
Chapter 1. Organization of Border Control	31
§1. THE CONSTITUTIONAL FRAMEWORK	31
§2. DEPARTMENTAL AUTHORITY	33
§3. THE IMMIGRATION AND REFUGEE BOARD (IRB)	34
§4. POLICING THE BORDER	35
§5. OTHER AGENCIES	36

## Table of Contents

Chapter 2. The Right to Enter the Country	37
§1. CONDITIONS FOR THE RIGHT TO ENTER	37
I. Status and the Right to Enter Canada	37
A. The Right of Entry of Citizens	37
B. The Right of Entry of Individuals Registered as Indians under the Indian Act	37
C. The Right of Entry of Permanent Residents	38
D. The Right of Entry of Foreign Nationals	39
II. The Visa Requirement	40
A. Humanitarian and Compassionate Exemption from Visa Requirement	41
B. Obtaining a Temporary Resident Visa	41
1. Documentation Required for Obtaining a TRV	43
2. Place of Application	47
3. Exemptions from the Requirement to Obtain a Temporary Resident Visa	48
4. Issuance of Temporary Resident Visa and Grant of Status	49
C. Temporary Resident Permits	50
D. Obtaining a Permanent Resident Visa	52
1. Family Members and Permanent Resident Visas	52
2. Place of Application	53
3. Classes of Application	53
4. Exemptions for Foreign Nationals Already in Canada	55
5. Documents Required by those Applying for a PRV	56
6. Obtaining Permanent Resident Status at a Port of Entry	57
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS REQUIRED AT PORT OF ENTRY	58
I. Examinations at Port of Entry	58
II. Permission to Withdraw	59
III. Right to an Interpreter	59
IV. Right to Counsel	60
V. Examination of Citizens at Port of Entry	60
VI. Examination of Individuals Registered under the <i>Indian Act</i>	61
VII. Examination of Permanent Residents	61
VIII. Examination of Foreign Nationals Seeking Permanent Resident Status	62
IX. Examination of Foreign Nationals Seeking Temporary Resident Status	63
X. Deposits and Guarantees	64
XI. Examination of Foreign Nationals Seeking Refugee Protection	64
XII. Front End Screening at Port of Entry	65
XIII. Criteria of Ineligibility	65
XIV. Direct Back	66
XV. Detention	67

Chapter 3. Refusal of Entry	68
§1. CRITERIA FOR REFUSAL OF ENTRY	68
I. Identity and Claimed Status	68
II. Insufficient Reason to Grant Status: Prerequisites Not Met	68
III. Likelihood of Meeting Conditions	68
IV. Inadmissibility	69
§2. PROCEDURES	69
I. Decision	69
II. Detention and Detention Review	72
III. The Inadmissibility Hearing	74
Part II. Rights of Residence: General Provisions	77
Chapter 1. Short Stay Residence	77
§1. CONDITIONS ON THE RESIDENCE OF VISITORS	77
§2. MAINTAINING RESIDENCE: ADMINISTRATIVE PROCEDURES AND DOCUMENTS	80
§3. LEGAL POSITION OF VISITORS	81
§4. POSITION OF FAMILY MEMBERS	81
§5. LOSS OF STATUS	82
§6. CONDITIONS ON RESIDENCE OF TEMPORARY RESIDENT PERMIT HOLDERS	83
§7. APPLICATIONS FOR TRPs AND EXTENSIONS	84
§8. TRPs AND HUMAN TRAFFICKING	84
§9. LEGAL POSITION OF TRP HOLDERS	85
§10. POSITION OF FAMILY MEMBERS	86
Chapter 2. Long-Term Residence	87
§1. CONDITIONS OF RESIDENCE FOR PERMANENT RESIDENTS	87
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS	89
§3. LEGAL POSITION OF PERMANENT RESIDENTS	90



## Table of Contents

§4. POSITION OF FAMILY MEMBERS	92
§5. LOSS OF PERMANENT RESIDENT STATUS	92
Part III. Rights of Residence for Specific Categories of Migrants	95
Chapter 1. Temporary Residents	96
§1. STUDENTS	96
§2. TEMPORARY WORKERS	99
Chapter 2. Transitional Programmes	109
§1. LIVE-IN CAREGIVERS	109
§2. CANADIAN EXPERIENCE CLASS	111
§3. TEMPORARY RESIDENT PERMIT HOLDERS	112
Chapter 3. Long Stay Residents	118
§1. THE FAMILY CLASS AND ECONOMIC CLASS	118
§2. THE FAMILY CLASS	118
I. Family Class Members	119
II. Dependent Children and Adoptions	125
A. Sponsorships	128
III. Spouses, and Common-Law Partners, in Canada	132
§3. ECONOMIC CLASS	133
I. Federal Skilled Workers	134
II. Federal Skilled Tradespersons	137
III. Federal Business Class Immigrants (Self-Employed and Start-up Business Class)	139
IV. Québec Immigrants and Provincial Nominees	141
V. Express Entry	145
Chapter 4. Refugees and Other Humanitarian Immigrants	147
§1. CONVENTION REFUGEES ABROAD AND HUMANITARIAN PERSONS ABROAD	149
§2. INLAND REFUGEE CLAIMANTS (ASYLUM SEEKERS)	156

## Table of Contents

I. The Protection Provisions of the Act	156
A. Convention Refugees	157
B. Complementary Protection	165
C. Exclusion	171
D. Non-refoulement	178
II. The Inland Refugee Claim Process	179
§3. MORATORIUM COUNTRIES	190
Chapter 5. Nationals with Preferential Treatment	192
§1. NORTH AMERICAN FREE TRADE AGREEMENT	192
§2. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)	193
Part IV. Inadmissibility	195
Chapter 1. Inadmissibility and Loss of Residence	199
§1. HEALTH	199
§2. CRIMINALITY, ORGANIZED CRIMINALITY AND INTERNATIONAL CRIMINALITY	203
I. Criminality	204
II. Organized Criminality	208
III. International Criminality	209
§3. SECURITY	212
§4. OTHER	214
Chapter 2. Legal and Administrative Procedures	217
§1. REPORT	217
§2. ARREST	221
§3. DETENTION	222
§4. REMOVAL	226
I. Circumstances Leading to Removal Orders	227
II. Effect of Removal Orders	228
§5. JUDICIAL REVIEWS, ADMINISTRATIVE REVIEWS AND APPEALS	232
I. Forms of Discretionary Relief	233
II. Refugee Protection Division	235

**Table of Contents**

III. Immigration Division	236
IV. Immigration Appeal Division	237
V. Motions to Reopen	240
VI. Judicial Review	240
§6. SECURITY CERTIFICATES AND DANGER OPINIONS	243
I. Security Certificates	243
II. Danger Opinions	247
Part V. Sanctions	251
Chapter 1. Interdiction	252
Chapter 2. Expulsion	257
§1. DEPARTURE	257
§2. EXCLUSION	258
§3. DEPORTATION	258
Chapter 3. Fines and Imprisonment	260
§1. CARRIER SANCTIONS	260
§2. EMPLOYER SANCTIONS	262
§3. CRIMINAL PENALTIES	263
Chapter 4. Sanctions against Trafficking and Smuggling	266
§1. HUMAN TRAFFICKING	266
§2. HUMAN SMUGGLING	270
Part VI. Legal Remedies and Procedural Safeguards	275
Chapter 1. Legal Remedies in Case of Refusal of Right to Enter, Stay or Reside	275
§1. INTRODUCTION: APPEALS, APPLICATIONS FOR DISCRETIONARY TREATMENT AND JUDICIAL REVIEW OF IMMIGRATION DECISIONS	275
I. Appeals	275
II. Applications for Discretionary Treatment	280
III. Judicial Review	284

## Table of Contents

A. Powers of the Federal Court	284
B. The Requirement of an Application for Leave	287
C. The Grounds for Review and the Standard of Review	288
D. Mootness	290
E. Appeals to the Federal Court of Appeal and the Supreme Court of Canada	290
§2. REMEDIES WHERE PERMISSION TO ENTER CANADA HAS BEEN DENIED	291
I. Foreign Nationals Seeking to Enter Canada on a Temporary Basis	291
II. Foreign Nationals Seeking to Enter Canada on a Permanent Basis	294
§3. LEGAL REMEDIES IN CASE OF ADMINISTRATIVE DECISIONS ON THE RIGHT TO RESIDE	295
§4. LEGAL REMEDIES AGAINST EXPULSION MEASURES	295
§5. PROCEDURAL SAFEGUARDS	296
I. Constitutional Protections	297
II. Procedural Fairness	298
Chapter 2. Legal Remedies in Case of Detention	305
Part VII. Employment Rights	307
Chapter 1. Overview of Applicable Legislation	307
Chapter 2. Conditions for Entitlement to Work	309
§1. GENERAL CONDITIONS	309
§2. ADMINISTRATIVE RULES AND PROCEDURES	310
§3. CONDITIONS FOR SPECIAL CATEGORIES OF WORKERS	313
Chapter 3. Sanctions against Illegal Labour Market Participation	315
§1. SANCTIONS AGAINST EMPLOYERS	315
§2. SANCTIONS AGAINST WORKERS	316

**Table of Contents**

Chapter 4. Legal Remedies and Procedural Safeguards 319

Selected Bibliography 321

Index 325

# **Migration Law in Canada**

**Second Edition**

**Sharryn J. Aiken  
Donald Galloway  
Colin Grey  
Audrey Macklin**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Migration Law.

General Editors: Roger Blanpain, Frank Hendrickx  
Volume Editor: Dirk Vanheule



**Wolters Kluwer**  
Law & Business

*Published by:*

Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper*

ISBN 978-90-411-6013-3

This title is available on [www.kluwerlawonline.com](http://www.kluwerlawonline.com)

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

## The Authors



Sharryn J. Aiken is an Associate Professor and Associate Dean in the faculty of law at Queen's University where she teaches international refugee law, immigration law and administrative law. Prior to her current academic appointment, Sharry practiced immigration and refugee law with legal aid clinics in Toronto and in private practice. A past President of the Canadian Council for Refugees and former editor-in-chief of *Refuge* (2001–2011), Sharry continues to be actively engaged in scholarship and advocacy on migration related issues.



Donald Galloway specializes in immigration law, refugee law and citizenship law. He is a former member of the Immigration and Refugee Board of Canada and is currently the President of the Canadian Association for Refugee and Forced Migration Studies. As well as authoring two texts on immigration and refugee law, he has published several articles in the fields of criminal law, tort law and legal theory. Professor Galloway is co-chair of the Legal Research Committee of the Canadian Association of Refugee Lawyers (CARL).



## The Authors



Colin Grey holds a doctorate in juridical science and a master of laws from New York University, and a bachelor of laws from the University of Toronto. He is a member of the Ontario bar, and is presently legal advisor to the Immigration and Refugee Board of Canada. He has worked in Bangkok, Thailand for the UNHCR, and clerked for the Ontario Court of Appeal. He has presented and published scholarly work on justice and authority in immigration. The views expressed in this entry are those of the authors and do not reflect, nor should they be attributed to, the Immigration and Refugee Board.



Audrey Macklin is Professor of Law at the University of Toronto and Chair in Human Rights Law. She teaches, researches and writes in the fields of administrative law, migration, multiculturalism, gender and culture, and business and human rights. From 1994–1996, she adjudicated asylum claims as a Member of Canada's Immigration and Refugee Board. She has co-authored a text on Canadian immigration and refugee law, and has published in legal and inter-disciplinary academic journals and edited volumes. She is a founding member of the Canadian Association of Refugee Lawyers. Many of Prof Macklin's publications are listed and available at

<http://www.law.utoronto.ca/faculty-staff/full-time-faculty/audrey-macklin>.