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CANADIAN CITIZENSHIP AND IMMIGRATION INADMISSIBILITY LAW

Bellissimo

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Canadian Citizenship and Immigration Inadmissibility Law, 2nd Edition is the only resource that provides focused guidance on the rapidly expanding area of inadmissibility law. A practical and tactical guide that combines, summarizes, and analyzes hundreds of decisions and key legislation, this publication speaks in practical terms to the key statutory framework, emerging trends, policy developments and relevant leading case law and offers practical tips and key memoranda and sample submissions. This publication includes: comprehensive analyses of the statutory framework for criminal, medical, and financial inadmissibility as well as Canadian employer compliance and the evolving area of misrepresentation law including citizenship revocation; comprehensive and detailed analysis of the distinct treatment and consequences of inadmissibility on various actors in Citizenship, Immigration, and Protected Person law; an overview of remedies; discussion of detention and release, appeals, equivalency defences, judicial reviews, and stays; and, case law annotations and detailed annotated precedents based on cases. The publication also examines exceptional remedies under the Act including humanitarian and compassionate grounds applications, temporary resident permits, rehabilitation, record suspensions, and collateral consequences of criminal convictions. In all, this publication like no other delves into the nuances of inadmissibility law from many legal and practical perspectives.

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What's New in this Update

This release features updates to the commentary in Chapter 11 (Judicial Review and Stays of Removal).

Highlights

Executive Summary; Statutory Framework — Executive Summary: This chapter intends to provide practice guidance concerning how to formulate the Application for judicial Review, an affidavit, memorandum of fact and law, and a motion for staying a removal order. Further, it also includes detailed examples and practical tips regarding memoranda for requests for stays of removal orders.

Executive Summary; Statutory Framework — Statutory Framework: Section 18.1 of the *Federal Courts Act* provides the authority to bring an Application for Judicial Review to the Federal Court by anyone who has been directly affected by the matter for which relief is being sought at the Federal Court. It provides for time limitations and sets out powers of the Federal Court (including orders and declarations) and grounds for review (acting beyond or without jurisdiction, failing to observe natural justice or procedural fairness, errors in law, erroneous findings of fact, acted or failed to act through fraud or perjury, or acted contrary to the law). It also deals with technical irregularities and defects in form. Sections 72 to 75 of the *Immigration and Refugee Protection Act* provide the legislative authority and time limits with respect to judicial reviews against decisions made under the Act. Section 4 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* enumerates the sections of the *Federal Courts Rules* that apply to the *Citizenship Act* and the *Immigration and Refugee Protection Act*.

Applications for Judicial Review – Stage 1: The "Leave" Application — Introduction: The following information is required to complete the Notice of Application:

- The name of the Applicant;
- The name of the tribunal, Commission or Federal Board that made the decision;
- The location of the tribunal, Commission or Federal Board;
- The date that the decision was made. This will usually be the date that the refusal letter is signed;
- The date that the decision was communicated to the Applicant;
- The Applicant's visa office file number and unique client identifier (UCI) number;
- Whether the Applicant has received the written reasons for the decision;
- Who prepared the Notice of Application; and
- The grounds upon which the Applicant is seeking to have the decision set aside.

  Additional commentary was also added on leave for judicial review (including applicants' obligations).

Applications for Judicial Review – Stage 1: The "Leave" Application – Memorandum of Fact and Law: Rule 70 of the *Federal Courts Rules* provides for the requirements for a memorandum of fact and law.

Applications for Judicial Review – Stage 2: Further Pleadings and Hearing: Rule 15 of the Federal Courts Citizenship, Immigration and Refugee Protection Rules sets out what must be included in an order granting leave.

Applications for Judicial Review – Oral Advocacy at the Federal Court: In the decision of *Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50 (Fed. C.A.), the Federal Court of Appeal commented on the "awkward situation" which arises in considering certified questions. The Court noted that, "Certified questions generally raise questions of law, including, as in this case, questions of statutory interpretation. However, the questions, as phrased by the Federal Court, require a yes or no answer. This invites correctness review by this Court" (para 40). Citing several decisions, including *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (S.C.C.), and its own approach in hearing the same case (prior to the appeal to the Supreme Court of Canada) the Court commented that it had provided a "reasonableness review of the administrative decision but gave a precise answer, akin to a correctness review answer" (para 43). The Federal Court of Appeal noted that the Supreme Court had, in effect, ratified this approach.

Applications for Judicial Review – Changes in Legislation: Significant changes to the *Federal Courts Rules* continue to be implemented, most reflecting the ability to serve and file documents electronically. Changes have been made with respect to time extensions, address of service of documents, powers to limit scope or duration of an examination, representation by a solicitor under a limited scope retainer, unrepresented parties, pre-trial conferences, and providing books of authorities. There were changes to the list of forms. Changes were also made to the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, with respect to deemed receipt of documents, applications for leave (including electronic service), procedures for requesting anonymity, and the order in which the Application Record is to be prepared.

Appendix 11A: Case Law on Stays of Removal: *Thompson v. Canada (The Minister of Public Safety and Emergency Preparedness),* 2023 FC 730 (F.C.) involved the judicial review of a decision to refuse the Applicant's request for a deferral of removal. In granting the judicial review, Justice Sadrehashemi agreed with the Applicant that his risk, "particularly since the RPD's 2019 finding about his family members, has never been assessed by a 'competent decision-maker.' " The Court also found the Officer's decision was unreasonable as it failed to appreciate that the only time the Applicant's risk was assessed, the decision maker could not make a meaningful assessment because no submissions were provided by the Applicant's representative at the time. Not only did Justice Sadrehasmi set aside the decision to deny the Applicant's deferral request, but it was also ordered that if he were to be scheduled for removal from Canada, he would be given minimum 28 days' notice of the removal date, and any new request for deferral of removal would be assessed by a different CBSA officer.

Appendix 11A: Case Law on Stays of Removal: *Gill v. Canada (Citizenship and Immigration)*, 2021 FC 1441 (F.C.). This matter involved the judicial review of a decision to refuse the Applicant's application for a work permit, mis-

representation finding and associated five-year inadmissibility bar. The Applicant filed a work permit application disclosing his six prior unsuccessful attempts to obtain Canadian visas but did not disclose an unsuccessful tourist visa application to the United States. The visa officer reviewing the application was not satisfied with the Applicant's explanation for not including the US refusal and found it to be a misrepresentation that could have caused an error in the administration of the IRPA. The officer therefore found the Applicant inadmissible to Canada for a five-year period under section 40 of the IRPA. In granting the judicial review, Justice McHaffie decided that the officer failed to adequately justify their decision that there was a misrepresentation. The officer made no findings about whether the omission was out of the Applicant's control as a result of his apparent misunderstanding, such that it is unknown whether the officer considered it a necessary part of the misrepresentation assessment or the innocent mistake exception.

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