

## TABLE OF CONTENTS

<i>Dedication</i> .....	iii
<i>Foreword</i> .....	v
<b>INTRODUCTION</b> .....	INT-1
<b>TABLE OF CASES</b> .....	TC-1
<b>CHAPTER 1: REMOVAL ORDERS</b>	
1.1 EXECUTIVE SUMMARY.....	1-1
1.2 TYPES OF REMOVAL ORDERS.....	1-2
(a) Departure Order.....	1-2
(b) Exclusion Orders.....	1-3
(c) Deportation Orders.....	1-4
(d) Removal Orders: Temporary versus Permanent Residents.....	1-5
(e) Foreign Nationals Not Subject to a Report.....	1-9
1.3 STAY OF REMOVAL ORDERS.....	1-9
(a) A(50) Stays of Removal.....	1-9
(i) When does A(50) apply?.....	1-11
(b) Section 50(b).....	1-34
(c) Regulatory Stays of Removal.....	1-35
(i) Temporary Suspension for Generalized Risk.....	1-35
(ii) Stays Pending Leave Applications at the Federal Court of Canada (FC).....	1-35
(iii) Exception.....	1-36
(iv) Stay Pending Pre-Removal Risk Assessment (PRRA).....	1-37
(v) Stays Based upon Humanitarian and Compassionate Grounds.....	1-42
(vi) Stays Based on Detention or Imprisonment.....	1-43
(d) When Does a Stay Not Apply?.....	1-44
(i) Probation Orders.....	1-45
(e) Stay Motions at Federal Court of Canada.....	1-48
1.4 ENFORCEMENT OF REMOVAL ORDERS.....	1-49
(a) Who is Subject to an Enforceable Removal Order?.....	1-49

**TABLE OF CONTENTS**

(b) No Limitation Period on a Removal Order .....	1-50
(c) Voluntary Compliance with a Removal Order.....	1-51
(d) Removal by the Minister.....	1-52
(e) Deferring a Removal Order .....	1-53
(f) Removals Interview — Risk of Detention.....	1-53
(g) In Force Removal Orders — Persons Found Not to be in Need of Protection .....	1-54
(h) Enforcement of Removal Orders outside Canada...	1-55
(i) Removal Cost Reimbursement .....	1-58
(j) The Assisted Voluntary Return and Reintegration (AVRR) Pilot Program .....	1-58
1.5 LASTING TRENDS.....	1-61
1.6 TOP TEN PRACTICAL TIPS FOR CLIENTS AND COUNSEL.....	1-62
1.7 APPENDIX “A” — PROCEDURAL FAIRNESS REGARDING THE EXECUTION OF REMOVAL ORDERS.....	1-64
(a) Removal In the Presence of Impediments to Removal.....	1-69
1.8 APPENDIX “B” — REMOVAL ORDERS ISSUED BY THE IMMIGRATION APPEAL DIVISION AND THE IMMIGRATION DIVISION .....	1-69
1.9 APPENDIX “C” — STAYS FOR PENDING CRIMINAL CHARGES .....	1-71
1.10 APPENDIX “D” — REMOVAL ORDER APPEALS	1-72
(a) Consideration of Appeal Under 64(1).....	1-72
(b) Ministerial Appeal of Stay of Removal .....	1-76
(c) Appellant Appeal of Refusal to Stay Removal.....	1-81
1.11 APPENDIX “E” — PENDING APPLICATION FOR LEAVE AND JUDICIAL REVIEW AT FEDERAL COURT .....	1-97
1.12 APPENDIX “F” — OFFICER’S DECISIONS TO DEFER REMOVAL ORDERS.....	1-105
(a) Tri-Partite Test.....	1-105

TABLE OF CONTENTS

(b) Procedural Fairness and Errors in Officer’s  
Decisions to not Stay Removal ..... 1-112

**CHAPTER 2: CITIZENS, PERMANENT RESIDENTS,  
TEMPORARY RESIDENTS, CRIMINALITY AND  
THE INADMISSIBILITY PROCESS**

2.1 EXECUTIVE SUMMARY ..... 2-1

2.2 STATUTORY FRAMEWORK — CITIZENSHIP ..... 2-4

(a) Effects of Criminality and Other  
Inadmissibilities on Applicants ..... 2-4

(b) Revocation Process under Section 10 of the  
*Citizenship Act* ..... 2-9

(i) Summary Judgment Hearings in the  
Context of Citizenship Revocations ..... 2-12

(ii) Costs ..... 2-15

(iii) Governor in Council Process (GIC)..... 2-17

(c) The *Citizenship Act* and the *IRPA*: Key Distinctions 2-21

(i) Honest and Reasonable Mistake ..... 2-22

(d) Waiver by the Minister..... 2-24

2.3 EMERGING TRENDS..... 2-24

(i) Citizenship Amendments..... 2-29

2.4 STATUTORY FRAMEWORK: PERMANENT  
RESIDENTS..... 2-34

(a) Who Qualifies as a Permanent Resident? ..... 2-34

(b) What is Criminal Inadmissibility? ..... 2-35

2.5 CRIMINALITY AND PERMANENT RESIDENTS. 2-36

(a) Serious Criminality ..... 2-37

(b) Criminality..... 2-38

(c) Limit on Citizens/Permanent Residents to Sponsor 2-39

(d) Retrospective Application of the Law..... 2-42

2.6 PORT OF ENTRY CONSIDERATIONS ..... 2-57

(a) Valid Proof of Permanent Residency ..... 2-57

(b) Examinations..... 2-58

(c) Obligation upon Entry ..... 2-60

(d) Primary Examinations ..... 2-61

(e) Secondary Examinations ..... 2-63

(f) Arrest and Detention at Port of Entry (POE)..... 2-66

**TABLE OF CONTENTS**

(g) The Importance of Language .....	2-66
2.7 LOSS OF STATUS AND REMOVAL .....	2-69
(a) Inadmissibility Reports.....	2-69
2.8 ADMISSIBILITY HEARINGS.....	2-70
(a) The Decision-Making Process.....	2-71
(b) Possible Outcomes of the Admissibility Hearing ....	2-72
(c) Loss of Permanent Resident Status.....	2-74
2.9 TEMPORARY RESIDENTS .....	2-76
(a) Statutory Framework .....	2-76
(b) Immigration Objectives Concerning Temporary Residency and Criminal Inadmissibility.....	2-77
(c) Visitors.....	2-78
(d) Workers .....	2-79
(e) Students .....	2-80
(f) Live-In Caregivers.....	2-81
2.10 STATUTORY FRAMEWORK .....	2-83
(a) Refusal/Loss of Temporary Resident Status for Inadmissibility .....	2-83
(b) Qualified Right of Temporary Residence .....	2-85
(c) Evidentiary Threshold for Temporary Residents ....	2-86
(d) Participatory Rights.....	2-87
(e) Pending Criminal Charges.....	2-88
(f) Officer’s Discretion Regarding Minor Violations ...	2-89
(g) Different Referral Regime and Appellate Scheme ..	2-89
2.11 OPTIONS FOR CRIMINALLY INADMISSIBLE TEMPORARY RESIDENTS .....	2-91
(a) Rehabilitation.....	2-91
(b) Record Suspensions .....	2-93
(c) Temporary Resident Permits .....	2-94
2.12 EMERGING TRENDS .....	2-96
2.13 APPENDIX “A” — CRIMINALITY AND CITIZENSHIP.....	2-98
(a) Pending Criminal Charges and Citizenship .....	2-98
(b) Convictions and Citizenship.....	2-102
(c) Ongoing Probation and Citizenship .....	2-105
(d) Canadian Passport Order Related Offences .....	2-109

TABLE OF CONTENTS

2.14 APPENDIX “B” — PROCEDURAL FAIRNESS  
ISSUES IN CITIZENSHIP JURISPRUDENCE ..... 2-109

2.15 APPENDIX “C” — FRAUD AND CITIZENSHIP  
APPLICATIONS..... 2-120

(a) Misrepresentation of Criminality..... 2-120

(b) Misrepresentation Regarding Residency  
Requirements..... 2-129

(c) Misrepresentation and *Mens Rea* ..... 2-134

2.16 APPENDIX “D” — SERIOUS CRIMINALITY  
AND PERMANENT RESIDENTS..... 2-135

2.17 APPENDIX “E” — EQUIVALENCY  
ASSESSMENTS ..... 2-140

2.18 APPENDIX “F” — 44(1) REPORTS ..... 2-144

(a) Procedural Fairness ..... 2-144

(b) Section 44(1)..... 2-148

(c) 44(2) Reports..... 2-150

(d) Allegations of Inadmissibility Under A34 ..... 2-154

(e) Allegations of Inadmissibility Under A36 ..... 2-156

2.19 APPENDIX “G” — CASE LAW ON  
TEMPORARY RESIDENTS ..... 2-159

(a) Visitors..... 2-159

(b) Workers ..... 2-162

(c) Students ..... 2-163

**CHAPTER 3: MEDICAL INADMISSIBILITY:  
A COMPREHENSIVE OVERVIEW**

3.1 EXECUTIVE SUMMARY..... 3-1

3.2 LEGISLATION..... 3-5

(a) Assessing Danger to Public Health ..... 3-7

(b) Assessing Excessive Demand ..... 3-8

3.3 MEDICAL EXAMINATIONS..... 3-10

3.4 MEDICAL REPORT ..... 3-13

3.5 PROCEDURAL FAIRNESS..... 3-16

3.6 RESPONDING TO THE PFL ..... 3-19

(a) Danger to the Public Health and Safety ..... 3-20

## TABLE OF CONTENTS

(b) Excessive Demand on Health and Social Services....	3-20
(i) Ability & Intent.....	3-22
(ii) Health Care in Canada.....	3-23
(iii) Social Services in Canada.....	3-25
(iv) Prescription Drugs .....	3-25
3.7 THE DECISION-MAKING PROCESS.....	3-33
(a) Danger to Public Health or Safety.....	3-33
(b) Excessive Demand on Health and Social Services .....	3-35
(c) Assessing the PFL Response for Excessive Demand .....	3-38
3.8 REFUSALS AND LEGAL REMEDIES.....	3-40
3.9 INDIVIDUALIZED ASSESSMENTS VERSUS HISTORICAL EXCLUSION .....	3-42
3.10 PRACTICAL TIPS — THE 12-STEP PROGRAM....	3-43
3.11 CONCLUSION .....	3-45
3.12 RECENT CASE LAW .....	3-46
(a) Appendix “A” — Medical Inadmissibility & Economic Classes.....	3-46
(b) Appendix “B” — Medical Inadmissibility Cases & Family Class.....	3-51
(c) Appendix “C” — Medical Inadmissibility Cases & H&C/TRPs.....	3-52

## **CHAPTER 4: MISREPRESENTATION: A COMPREHENSIVE OVERVIEW**

4.1 EXECUTIVE SUMMARY.....	4-1
4.2 LEGISLATION.....	4-2
(a) Subsection 40(1)(a).....	4-2
(b) Subsection 40(1)(b) .....	4-9
(c) Subsection 40(1)(c).....	4-10
(d) Subsection 40(1)(d) .....	4-12
(e) Legislative Conclusion.....	4-14
4.3 DISCOVERING AND INVESTIGATING MISREPRESENTATION.....	4-14
4.4 PROCEDURAL FAIRNESS.....	4-17

## TABLE OF CONTENTS

(a) The Procedural Fairness Letter and Response.....	4-18
(b) Reports Under Subsection 44(1) of the <i>IRPA</i> .....	4-23
4.5 ADMISSIBILITY HEARINGS & THE IMMIGRATION DIVISION.....	4-27
(a) Preparing for the ID Hearing .....	4-28
(b) Disclosure & Witnesses .....	4-31
(c) ID Hearing Procedures.....	4-32
(d) Outcomes .....	4-33
4.6 APPEALING & THE IMMIGRATION APPEAL DIVISION.....	4-35
(a) Preparing for the IAD Hearing .....	4-36
(b) Disclosure & Witnesses .....	4-37
(c) IAD Hearing Procedures.....	4-39
(d) Outcomes .....	4-40
4.7 CONSEQUENCES & LEGAL REMEDIES .....	4-41
(a) Application Bars .....	4-42
(b) Removal Orders .....	4-43
(c) Federal Court.....	4-45
(d) Penal Charges.....	4-46
(e) Misrepresentations in the Labour Market Impact Assessment (LMIA formerly LMOs) Regime .....	4-49
4.8 CONCLUSION .....	4-54
(a) Appendix “A” — Indirect Misrepresentation.....	4-55
(b) Appendix “B” — Material Misrepresentation.....	4-56
(c) Appendix “C” — Misrepresentation & Procedural Fairness .....	4-62
<b>CHAPTER 5: COLLATERAL CONSEQUENCES</b>	
5.1 EXECUTIVE SUMMARY.....	5-1
5.2 IMMIGRATION INADMISSIBILITY — IS IT A COLLATERAL CONSEQUENCE?.....	5-2
(a) Permanent Residents, Foreign Nationals, and Collateral Consequences of Conviction .....	5-2
(i) Rehabilitation.....	5-17
(ii) Eligibility for Rehabilitation and Deemed Rehabilitation.....	5-18
(iii) Record Suspensions .....	5-24

**TABLE OF CONTENTS**

(iv) Eligibility for Record Suspensions.....	5-26
(v) Temporary Resident Permit.....	5-27
(b) Canadian Citizens and Collateral Consequences of Crime .....	5-29
5.3 EMPLOYMENT .....	5-34
5.4 EDUCATION.....	5-39
5.5 BECOMING A TENANT: COLLATERAL CONSEQUENCES AND HOUSING .....	5-45
5.6 TRAVELLING WITH A CRIMINAL RECORD.....	5-46
5.7 COLLATERAL CONSEQUENCES AND INSURANCE .....	5-48
5.8 CONCLUSION & EMERGING TRENDS.....	5-49
<b>INDEX</b> .....	I-1