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## **IMMIGRATION LAWS AND POLICIES: IMMIGRATION POINTS SYSTEMS**

### **CANADA**

*Written Statement of Stephen Clarke, LLM  
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appearing before the U.S. House of Representatives Committee on the Judiciary  
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and  
International Law

Hearing before the Subcommittee on an  
Examination of Point Systems as a Method for Selecting  
Immigrants

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**IMMIGRATION LAWS AND POLICIES:**  
**IMMIGRATION POINTS SYSTEMS**

**CANADA**

*Executive Summary*

*In 2006, Canada accepted over three-quarters of one percent of its total population as new permanent immigrants. The nearly 100,000 persons who were accepted for temporary residence pushed the total immigrant influx to over one percent. This is a relatively high figure for Western countries and demonstrates the importance of immigration to the development of Canada. In order to manage the influx, Parliament has enacted comprehensive laws respecting immigration, refugee policies, and temporary visitors. Since 2001, Canada has also strengthened its screening, deportation, and detention laws in its fight against terrorism. The major difference between the immigration policies of Canada and the United States is that Canada accepts a significantly higher percentage of skilled workers and a significantly lower percentage of family class immigrants. Skilled workers are assessed through the use of a points system. Family reunification is limited by restricting the class to apply mostly to spouses, conjugal partners, dependent children, and parents.*

## **I. Introduction**

Canada does not have country-based or hemispheric quotas, but it does establish annual worldwide targets, and the actual numbers of immigrants accepted for permanent residence within a year are usually within ten percent of those targets. Canada also does not provide that immigrants in any one category can only exceed that category's target figure by a certain percentage, but there is an understanding between Parliament and Citizenship and Immigration Canada (CIC) that, in enacting the current Immigration and Refugee Protection Act (IRPA),<sup>1</sup> Parliament intended to create a system in which skilled or independent workers would usually comprise about sixty percent of the annual total, and that skilled or independent workers would normally outnumber family class immigrants by a margin of approximately two to one. It is also understood that Parliament expects CIC to exercise the administrative powers conferred upon it to preserve the current balance and that any significant fluctuations in either direction would probably lead to legislative or administrative reforms. Thus, in processing applications submitted at Canadian Embassies, consulates, and internal immigration offices, officials attempt to adhere to the goals that are set out annually by CIC in consultation with the government and appropriate parliamentary committees.

## **II. Immigration**

### **Categories of Immigrants**

Canada accepts several categories of immigrants for permanent residence. In addition to skilled or independent workers and close family members, Canada admits business immigrants, provincial nominees, adopted children, and refugees. Temporary workers are issued work visas for prescribed periods of time. Canada has a Seasonal Agricultural Workers Programs and issues employment permits to United States citizens in accordance with the North American Free Trade Agreement.

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<sup>1</sup> 2001 S.C. ch. 27.

### **Family Class Immigrants**

Family class immigrants are not assessed on a points system, but preferences are given to certain applicants based upon their relationship to their sponsor. The administrative practice is to process applications from spouses and dependent children first. Applications from parents, grandparents, and relatives who are orphans and under the age of eighteen are generally given lower preference, although persons in these categories may still qualify for the family class.

Canada has a narrower definition of family class immigration than does the United States. Applicants who do not fit into one of the above categories may be sponsored as skilled workers by a relative, but they are then assessed on the basis of the points system. Relatives who are not considered to be family class immigrants may be awarded five points towards the sixty-seven points that they need in order to qualify for permanent residence.

### **Business Immigrants**

Canada admits three types of business immigrants: investors, entrepreneurs, and self-employed persons. Because investors must have the highest net worth, they enjoy the highest priority. Entrepreneurs are in the middle category. Self-employed persons have the lowest preference for business immigrants because they need only have the intention and ability to create their own employment.<sup>2</sup> Business immigrants are not assessed on the points system.

### **Provincial Nominees**

Canada has signed agreements with a number of provinces that allow them to sponsor immigrants. By far the largest of these programs is the one administered by the Province of Quebec. Quebec uses a points system to assess its applicants which is similar to the federal government's points system, but it awards a higher number of points for fluency in the French language. Applications accepted by Quebec are submitted to the federal government for medical examinations and background checks.

Attracting qualified Francophones has long posed difficulties for Quebec. Another problem facing that province is that persons accepted into the Quebec program are not required to remain in that province once they become permanent residents. A significant portion of the applicants accepted by Quebec eventually moves to other provinces offering greater opportunities in their chosen field.

### **Refugees**

Canadian refugee policy is generally considered to be relatively generous. Many critics contend that the system is so lax as to invite fraud and abuse.<sup>3</sup> Reports prepared and interviews granted by some of these critics have raised concerns in the United States that Canada offers an easy back-door entry into the United States for persons intending to conduct terrorist activities. The case of the would-be "millennium bomber," Ahmad Ressam, is often cited as an example of a person who entered Canada as a refugee and later attempted to bring explosives into the United States for the purpose of setting them off at a Los Angeles airport on the eve of 2000. However, the Canadian Government has taken a number of steps to reform the system, tighten procedures, reduce backlogs, and increase security screening. Many of the steps Canada has taken are in accordance with the Safe Border Accord signed with the United States

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<sup>2</sup> Citizenship and Immigration Canada, *Who Is a Business Immigrant?* (2004), available at <http://www.cic.gc.ca/English/business/index.html>.

<sup>3</sup> See, for example, The Fraser Institute, *Canada's Dysfunctional Refugee Determination System*, Dec. 2003, available at <http://www.fraserinstitute.ca/admin/books/files/ImmigrationPPS78.pdf>.

shortly after September 11, 2001.<sup>4</sup> Other steps Canada has taken have been designed to address problems that are more internal or systemic in nature.

Between 1989 and 2004, an average of about 30,000 refugee claims were presented annually. In 2001, this number was at a high of approximately 45,000 persons before it fell back to approximately 39,000 in 2002, 27,000 in 2004, and 20,000 in 2005. An average of about forty-four percent of the claims were accepted between 1989 and 2004.<sup>5</sup> In 2005, the acceptance rate increased to around 46.6 percent.<sup>6</sup> This is somewhat higher than the corresponding figure in the United States, but still refutes the notion that Canada almost routinely accepts refugee claims. Of particular concern to Canadian authorities prior to 2005 was the fact that approximately forty percent of the overall total and seventy percent of port-of-entry claimants entered Canada from the United States. There is significant evidence that illegal immigrants have abused the U.S. Non-Immigrant Visa system to first access North America and then apply for asylum to stay in Canada. The result has been that many of Canada's refugee claimants have arrived in Canada without any documents and have been allowed free entry into the country even though it has been clear that many purposely disposed of the identity documents they had before entering the country. Canada does screen undocumented persons to determine whether they might pose a security or flight risk.<sup>7</sup>

There are four specific reasons why a person might wish to pursue a refugee claim in Canada rather than in the United States. First, as has been mentioned, the acceptance rate has generally been somewhat higher, particularly for persons from certain countries and persons claiming certain types of persecution, such as gender mutilation. Second, Canada traditionally has detained few undocumented refugee claimants pending independent identification, although it has prepared additional facilities for detainees. Third, the Canadian Charter of Rights and Freedoms has been interpreted to generally give refugee claimants the rights to immediate employment authorization, education, and health services.<sup>8</sup> Fourth, the appeals process can be very slow in Canada. Persons who have been judged to be ineligible for refugee status have been able to remain in the country for more than a decade fighting deportation.

Refugee claims are presented to a senior immigration official. Persons who are not determined to be in the following categories have their cases referred to the Immigration and Refugee Board (IRB):

- persons already recognized as Convention refugees;
- persons already determined to be protected in Canada;
- persons subject to a safe third country agreement;
- persons determined to be inadmissible on grounds of security, human rights violations, serious criminality or organized criminality;
- persons already rejected by the IRB;
- persons already determined to be ineligible for an IRB determination; or
- persons who had a previous refugee protection claim withdrawn or abandoned.

Appeals on decisions respecting admissibility may be filed with the Minister of Citizenship and Immigration. The Minister can refer the matter to the Immigration Division. The Immigration Division can authorize the entry of a foreign national for further examination.<sup>9</sup> Further appeals may be made to the

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<sup>4</sup> Although there have been some misperceptions on this point, there has never been any evidence of any connection between the hijackers of September 11 and Canada.

<sup>5</sup> Citizenship and Immigration Canada, *A Look at the Refugee Claimant Population in Canada, 2005*, available at <http://www.fraserinstitute.ca/admin/books/files/ImmigrationPPS78.pdf>.

<sup>6</sup> Information provided by the Minister-Counselor (Immigration) at the Canadian Embassy in Washington, D.C. on February 22, 2007.

<sup>7</sup> *Id.*

<sup>8</sup> [1985] 1 S.C.R. 177. The rights are outlined by Citizenship and Immigration Canada, *Rights to Employment, Education, and Health Services*, July 9, 2002, available at <http://www.cic.gc.ca/english/refugees/asylum-5.html>.

<sup>9</sup> Immigration and Refugee Protection Act, 2001 S.C. c. 27, ss. 44-45, as amended.

Immigration Appeal Division. However, no appeal can be made to the Immigration Appeal Division against a finding that a person is inadmissible on grounds of security, violating human or international rights, serious criminality, or organized criminality.<sup>10</sup>

Cases referred to the IRB are heard by members of the Refugee Protection Division. Persons who have had their application denied can apply to have their case heard by the Federal Court of Canada within fifteen days. The Federal Court first conducts a paper review. If leave is granted, the Federal Court can order a rehearing. Leave of the Supreme Court of Canada is needed for a further appeal.

When the Immigration and Refugee Protection Act was enacted in 2001, provision was made for the creation of a Refugee Appeal Division to review IRB decisions.<sup>11</sup> The relevant sections of the Act, however, were not brought into force by the former Liberal Government. The current Conservative Government has released a background paper in which it explains its position that a Refugee Appeal Division is not required, because Canada's current system is fair and in compliance with all international and treaty obligations.<sup>12</sup>

In addition to the appeals process, Canada has two other protection mechanisms for refugee claimants. The first of these is the pre-removal risk assessment process. This process gives failed refugee claimants an opportunity to explain why they should not be removed from Canada. New evidence can be presented at a hearing. Persons who do not qualify as refugees, but who are found to be in need of protection, can be granted permanent residence. The second protection mechanism allows persons to apply at any time to the Minister of Citizenship and Immigration for permission to remain in Canada on humanitarian or compassionate grounds. Applications for permission to remain in Canada on humanitarian or compassionate grounds do not stay other legal proceedings.

### III. Number of Immigrants

According to Statistics Canada, the Canadian population in 2006 was approximately 32,623,500.<sup>13</sup> According to CIC's statistics, approximately 262,000 persons were admitted to Canada for permanent residence in 2005.<sup>14</sup> Of those, approximately 156,000 were admitted as economic immigrants and their dependents, 63,000 as family class immigrants, 13,500 as business immigrants, 8,000 as provincial nominees, and 36,000 as refugees.<sup>15</sup> These figures are quite close to those for 2004, except that the number of economic immigrants increased by over 20,000.<sup>16</sup> In 2006, the total number of persons admitted for permanent residence was 251,511. The family class grew by approximately 7,000 persons while the economic class fell by almost 18,000 persons. The number of refugees declined by slightly over 3,000 and the number of provincial nominees increased by approximately 5,000 persons.

### IV. Points System for Skilled Workers

Canada's process for selecting skilled workers is fairly complex. Prior to 2002, applicants were assessed on a points system that generally required applicants to have a job offer for a position that no Canadian citizen was willing and able to fill. In enacting the IRPA, Parliament adopted a slightly

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<sup>10</sup> *Id.*, s. 64(1).

<sup>11</sup> *Id.*, s. 110.

<sup>12</sup> Citizenship and Immigration Canada, *The Refugee Appeal Division:Backgrounder*, Nov. 3, 2005, available at <http://www.cic.gc.ca/english/refugees/rad-backgrounder.html>.

<sup>13</sup> Statistics Canada, *Population by Year, by Province and Territory*, Oct. 26, 2006, available at <http://www40.statcan.ca/101/cst01/demo02a.htm?sdi=population>.

<sup>14</sup> Citizenship and Immigration Canada, *Facts and Figures 2005, Immigration Overview Permanent and Temporary Residents*, Aug. 18, 2006, available at <http://www.cic.gc.ca/english/pub/facts2005/overview/01.html>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

different philosophy. The law seeks to identify the types of persons who are most likely to integrate into the Canadian workforce based upon their background. This change of philosophy is based upon findings that persons with certain education and work backgrounds generally become well integrated into Canadian society regardless of whether or not they have a specific position waiting for them.

Under the current system, applicants must obtain at least sixty-seven points out of a total of 100 possible points on the selection grid and have at least one year of work experience within the past ten years in a management occupation or in an occupation normally requiring university or technical training set out in skill types identified in the National Occupational Classification.<sup>17</sup> The six selection criteria and the maximum number of points available for each are the following:

- *Education.* A maximum of twenty-five points can be earned by a person who has a Master's Degree or a Ph.D. and at least seventeen years of full-time or full-time equivalent study. The lowest number of points available is five for completion of high school.
- *Languages.* A maximum of twenty-four points can be awarded to persons who are highly proficient in both official languages. Sixteen points can be awarded for fluency in either French or English and eight for the other. Written and oral tests are administered to ascertain a person's abilities in different language areas.
- *Experience.* A maximum of twenty-one points can be awarded for experience in approved occupations. The IRPA allows CIC to designate certain professions as being restricted to guard against labor surpluses. However, at the present time, it appears that there are no professions that are designated as being restricted. The maximum of twenty-one points can be earned with four or more years experience in an approved occupation. For each year less than four, two points are deducted. The minimum number of fifteen points can be earned through one year of qualifying experience.
- *Age.* A maximum of ten points is awarded to persons who are between twenty-one and forty-nine. Persons outside this range lose two points for each year that they are under twenty-one or over forty-nine.
- *Arranged employment.* A person may be awarded ten points for having a permanent job offer that has been confirmed by Human Resources and Skills Development Canada.
- *Adaptability.* A person may be awarded ten additional points for a spouse's education, previous work in Canada, and family relations in Canada.

Each of the selection criteria is set out in charts that show how points are awarded.<sup>18</sup>

## V. Pros and Cons of the Points System

Canada's points system is designed to attract immigrants who show promise of being able to join in and contribute to their new communities. One of the major advantages of the system is that it is largely transparent. Potential applicants can review the selection criteria to determine whether they may be able to attain sufficient points to reach the pass mark of sixty-seven points. Another advantage of the new system is that it gives persons who are unable to travel to Canada to arrange employment a better chance of being accepted than was previously the case.

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<sup>17</sup> Citizenship and Immigration Canada, *Skilled Workers* (2004), available at <http://www.cic.gc.ca/English/skilled/index.html>.

<sup>18</sup> Citizenship and Immigration Canada, *Six Selection Factors and Pass Mark* (2004), available at <http://www.cic.gc.ca/English/skilled/qual-5.html>.

One disadvantage of the points system is that transparency can lead to complaints of unfair treatment. Persons who fall short of the pass mark often believe they should have been awarded more points in one or more categories. This is particularly true of the more subjective categories, such as adaptability.

Another source of complaints under the new system has been voiced by professionals who have been unable to find employment in their chosen field or to have their foreign credentials recognized by professional licensing bodies. Most professions, such as those in medicine and law, are licensed by provincial governing bodies. For example, each province has its own law society. Professional licensing bodies have discretion in determining what types of additional training or examination foreign trained professionals must undergo before they can practice in that province.

The problem of foreign-trained professionals being underemployed in Canada has received considerable media attention and has elicited many promises of assistance from Canadian politicians. However, what is sometimes overlooked in considering cases of hardship is that the new system was never designed to guarantee foreign-trained persons employment in their chosen fields. The system was designed to attract promising immigrants. Many of the persons who have found themselves at least temporarily underemployed would not have qualified for admission under the old system that, in general, required prospective immigrants to have a firm offer for a job that no Canadian citizen or permanent resident was ready and able to fill.

A longer-standing problem in Canadian immigration arises out of the fact that over two-thirds of Canada's immigrants have settled in the three largest metropolitan areas of Toronto, Montreal, and Vancouver. Because, the very rapid growth of these areas has brought new social and infrastructure problems to them, the federal government has long hoped for a greater dispersal of immigrants. While the new points system does not appear to have exacerbated the problem, it does not appear to have helped address it, either. The major cities have remained magnets for immigrants. However, the recent strength of the Canadian economy does appear to have encouraged more immigrants to settle in some other areas—particularly in resource-rich Alberta. The expansion of provincial nomination programs also shows some promise in bringing the benefits of immigration to areas that previously received few new arrivals.

## **VI. Source Country Profile of Immigrants**

The top fifteen source countries for immigrants to Canada in 2005 were as follows:

1. China
2. India
3. Philippines
4. Pakistan
5. United States
6. Colombia
7. United Kingdom
8. South Korea
9. Iran
10. France
11. Romania
12. Sri Lanka
13. Russia
14. Taiwan
15. Hong Kong
- 16.



The first two countries accounted for approximately 75,000 immigrants. All Asian countries now account for approximately seventy-five percent of Canada's immigrants. The number of immigrants from the United States reached a ten-year high of slightly over 9,000 in 2005.<sup>19</sup>

## VII. Recent or Proposed Changes to the System

Because Canada has received a large number of applications for permanent residence in recent years, consideration has been given to raising the pass mark from the current sixty-seven points to a higher number. The previous pass mark of seventy-five points was lowered after backlogs had been reduced. However, there has not yet been an announcement of an impending raise in the pass mark.

Consideration is also being given to addressing the issue of underemployment. One manner in which this could be done is by restricting the admissions of certain types of professionals; this, however, has not yet occurred. What the federal government recently has done is to allocate funds to establish a program to help foreign-trained professionals to become accredited in Canada. This federal program is designed to help provide needed additional training and to work with the provinces in reforming accreditation policies.

## VIII. Employment Outcomes

The philosophy behind the current Canadian immigration law is that most promising immigrants are able to become well-established in Canada. The Government appears to believe that the current system is generally working well, although it has been acknowledged that the problem of underemployment has grown in recent years. Consideration has been given to many ideas on how this can be addressed within the framework of the current system. The Government has not indicated that it would like to return to the former system, which required the vast majority of skilled workers or independent applicants to have a job offer before they would be eligible to become permanent residents.

## IX. Unskilled Immigration

### Visitors, Students, Employment, and Other Categories

Canada issues visas to visitors, students, and workers. Only persons from a country on the country control list are required to obtain a visa prior to their arrival as a tourist. United States citizens are not required to obtain visas or produce passports, but they may be required to prove their U.S. citizenship.

### NAFTA Professionals

Skilled workers from the United States may also be able to take advantage of Chapter 16 of NAFTA. Under this Chapter, persons who fit into one of sixty professional categories can obtain employment in Canada without the Canadian employer having to first apply for a labor clearance from the government. Such a clearance requires labor authorities to conduct an inquiry as to whether there are any available citizens or permanent residents in Canada who are willing and able to accept the position being offered. Under NAFTA, persons considered to be professionals must still obtain a work permit, but this process is much less time-consuming when a labor certification is not required.

Appendix 1603.D.1 of the NAFTA agreement lists many different types of workers who are eligible to qualify as NAFTA professionals. These professions usually require at least a baccalaureate

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<sup>19</sup> Citizenship and Immigration Canada, Facts and Figures 2005: Immigration Overview: Permanent Residents, available at <http://www.cic.gc.ca/english/pub/facts2005/permanent/12.html>.



degree. Included on the list of NAFTA professionals are accountants, architects, foresters, lawyers, librarians, physicians and dentists, landscapers, and teachers.<sup>20</sup>

### **Guest Workers**

Canada issues work visas to unskilled as well as to skilled workers. Many of the unskilled employees are agricultural workers. Canada has a Seasonal Agricultural Workers Program (SAWP) for persons who do not qualify as skilled or professional agricultural workers. Under this program, Canada has signed SAWP agreements with Jamaica, Mexico, Barbados, and Trinidad and Tobago. Under these agreements, persons may apply for admission to the program in their home country. Applicants are screened by local authorities. Canadian immigration officials issue work permits to screened workers in accordance with Canada's agricultural needs. The majority of the agricultural workers are admitted in the second and third quarters of each year. Guatemala is not a participant in the SAWP program, but an increasing number of work permits have been issued to workers from that country over the past two years. Nevertheless, Mexico and Jamaica are the leading source countries, with fifty-three and twenty-eight percent of the 2004 SAWP permits issued to citizens of those countries, respectively. The total number of SAWP permits reportedly issued in 2004 was approximately 22,000.<sup>21</sup> Government statistics show that in 2005, the number of foreign workers at skill level C, which includes most seasonal agricultural workers, was approximately 31,000.<sup>22</sup> Under the SAWP agreements, consular officials are allowed to visit housing facilities to ensure that they meet Canadian standards. Foreign officials keep records on the return of agricultural workers to ensure that the program is not used illegally by persons who want to remain in Canada indefinitely.

### **Services for Immigrants**

Persons accepted for permanent residence in Canada generally have immediate access to all social services and enjoy the same constitutional rights and protections as Canadian citizens. Immigrants can enroll in the health insurance programs run by the provinces, receive free language training, get assistance in finding employment and housing, enroll in elementary and secondary schools, and pay in-province college tuition.

Immigrants are eligible for welfare benefits, referred to as "social assistance," but cannot receive unemployment benefits until they have worked the number of weeks required to qualify. The Canada Pension Plan, the Old Age Security Plan, and the Guaranteed Income Supplement are open to immigrants who have paid into those plans and have reached the required age or become disabled.

In order to assist immigrants in learning for which benefits they may be eligible, Services Canada has created a benefits homepage.<sup>23</sup>

## **X. Illegal Immigration**

### **Sanctions for Unlawful Entry and Overstaying**

The IRPA does not specifically criminalize unlawfully entering the country or unlawfully overstaying a visa. Both of these types of actions, however, fall under the general prohibition against contravening the law without exercising due diligence to prevent doing so. Crown prosecutors have discretion to try general IRPA offenses either by way of an indictment or in summary proceedings. The

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<sup>20</sup> North American Free Trade Agreement, Appendix 1603.D.1, July 9, 2003, available at [http://www.nafta-sec-alena.org/Default Site/index\\_e.aspx?DetailID=78](http://www.nafta-sec-alena.org/Default Site/index_e.aspx?DetailID=78).

<sup>21</sup> THE ECONOMIST, May 27, 2006, at 63.

<sup>22</sup> *Foreign Workers*, THE MONITOR, Jan. 26, 2007, available at <http://www.cic.gc.ca/english/monitor/issue14/03-workers.html>.

<sup>23</sup> *Canada Benefits.gc.ca*, Mar. 9, 2007, available at <http://canadabenefits.gc.ca/faehome.jsp?lang=en>.

distinction between indictable and summary offenses is similar to the distinction between felonies and misdemeanors in the United States, and a crime that can be tried either by way of an indictment or in summary proceedings is considered to be a “hybrid” offense. The maximum penalty for a person who commits such a general offense as entering the country unlawfully or unlawfully overstaying a visa is a fine of Can\$50,000 and imprisonment for two years, if prosecuted by way of an indictment, and a fine of \$10,000 and imprisonment for six months, if prosecuted in summary proceedings.<sup>24</sup> Crown prosecutors usually base their decisions as to whether a defendant should be tried by way of an indictment or in summary proceedings upon such factors as the seriousness of the violation, the defendant’s intentions, and the defendant’s prior record.

While the IRPA does provide for the prosecution of persons who enter the country illegally or illegally overstay a visa, trials for these offenses are rare. Most persons caught violating the general provisions of the immigration laws are deported or ordered to leave Canada.<sup>25</sup>

### **Sanctions for Hiring Undocumented Workers**

Another general offense under the IRPA is hiring undocumented workers. Section 124(1)(c) states that any one “who employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed” is guilty of an offense. The maximum penalties for this offense are the same as those for entering the country illegally or overstaying a visa illegally. A person is not guilty of the offense of illegally hiring an undocumented worker if he or she exercised “due diligence.”<sup>26</sup> The Act and its regulations do not specify what the accused must show in order to prove that he or she did in fact exercise due diligence.

The IRPA also makes both counseling misrepresentation and general misrepresentation criminal offenses. Misrepresentation can be committed by withholding material facts, giving misleading information, and refusing to answer questions in legal proceedings.<sup>27</sup> These offenses are punishable with a maximum fine of Can\$100,000 and imprisonment for five years, if prosecuted by way of an indictment, and a maximum fine of Can\$50,000 and two years of imprisonment, if prosecuted in summary proceedings.

In addition to criminalizing misrepresentation, the IRPA has special provisions for using, exporting, and dealing in forged documents that purport to establish a person’s identity. Using a forged document is punishable with up to five years of imprisonment and exporting or dealing in forged documents is punishable with up to fourteen years of imprisonment. Canada has had numerous problems with forged passports. In several reported cases, international incidents have arisen out of discoveries that foreign intelligence agencies were using forged Canadian passports. Forged Canadian passports are reportedly popular with criminals because immigration officials in other countries are less likely to regard them with suspicion, due to the fact that Canada has a relatively large and diverse immigrant population.

In addition to the penalties for hiring illegal immigrants, Canada also has strict laws respecting human smuggling and trafficking. A person who smuggles fewer than ten persons into the country is liable on a first offense to a fine of up to Can\$500,000 and imprisonment for up to ten years. For a subsequent offense, the maximum fine is doubled and the maximum period of imprisonment is raised to fourteen years. Those who smuggle more than ten persons into the country are liable to a fine of up to Can\$1,000,000 and imprisonment for life. Disembarking persons at sea is a separate offense that is also punishable with a fine of up to Can\$1,000,000 and imprisonment for life. This section was created in response to several instances in which owners of foreign boats filled them with illegal aliens and abandoned ship just before they washed up upon Canadian shores. In determining the appropriate

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<sup>24</sup> Immigration and Refugee Protection Act, 2001 S.C. c. 27, s. 124(1) (a).

<sup>25</sup> Information obtained from the Immigration Office at the Canadian Embassy in Washington, D.C. in 2006.

<sup>26</sup> Immigration and Refugee Protection Act, 2001 S.C. c. 27, s. 124.

<sup>27</sup> *Id.*, s. 127.

sentence for persons who engage in human trafficking, judges must consider such aggravating factors as whether the aliens suffered any bodily harm or degrading treatment.

### **Border Security**

In December 2002, the United States and Canada signed a Safe Third Country Agreement to allow immigration officials in both countries to require most persons seeking asylum at a border crossing to go back and present their claim in the other country. This type of agreement had been called for in the Action Plan to the Smart Border Declaration. Implementation of the Agreement was delayed by the lengthy and complicated process for drafting and approving appropriate regulations in the United States, but it finally went into force at the beginning of 2005.<sup>28</sup>

Although the Safe Third Country Agreement aims to limit asylum shopping and the filing of multiple claims, it is limited in scope and subject to several major exceptions. One major limitation is that it only covers the presentation of claims at land border crossings. Airport and marine facilities are not covered because, as the drafters of the Agreement explained, authorities can only know that persons were in the other country when they are seen at a border crossing.

Statistics show that the number of refugee claims presented at border crossings in Canada declined by approximately forty percent in the first half of 2005 and that there were less than 20,000 total claims for the entire year. While this would suggest that the Safe Third Country agreement has had a dramatic impact on Canadian refugee claims, it is also true that claims presented at airports during the same period were down about twenty-five percent.<sup>29</sup> Thus, the Safe Third Country Agreement appears to have gone into effect during a period in which the number of refugee claims was already declining.

### **Statistics on Illegal Immigrants**

Although there are no official statistics on the number of illegal immigrants in Canada, CIC is reported to have estimated that there may be as many as 300,000 undocumented workers in Canada.<sup>30</sup> The most widely-cited statistic is that the number is probably around 200,000.<sup>31</sup> In either case, it is clear that the total has increased dramatically over the past ten years. This increase reflects the growing strength of the Canadian economy over that period.

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April 2007

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<sup>28</sup> Statement of Joseph E. Langlois, Director Asylum Division, United States Immigration and Naturalization Service, Department of Justice (Oct. 16, 2002), *available at* <http://www.immigration.com/newsletter1/uscanadaagreement.pdf>.

<sup>29</sup> Citizenship and Immigration Canada, Canada-U.S. Safe Third Country Agreement (2006), *available at* <http://www.cic.gc.ca/english/policy/menu-safethird.html><http://www.uscis.gov/graphics/aboutus/congress/testimonies/2002/Langlois101602.pdf>.

<sup>30</sup> Andrew Mayeda, *Legalizing Illegal Immigrants Could Hurt U.S. Ties: Solberg*, WINDOR STAR, Nov. 8, 2006, at A10.

<sup>31</sup> *Deportation Move Protested*, CALGARY HERALD, Mar. 30, 2006, at B2.