



Law Society
of Ontario

Barreau
de l'Ontario

Immigration Law Fundamentals 2024

CO-CHAIRS

Sarah Fagan

Corporate Immigration Law Firm PC (CILF)

Tamara Mosher-Kuczer, C.S.

Lighthouse Immigration Law

September 27, 2024



★ C L E 2 4 - 0 0 9 0 7 0 1 - A - R E G ★



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Immigration Law Fundamentals 2024



CO-CHAIRS: **Sarah Fagan**, *Corporate Immigration Law Firm PC (CILF)*
Tamara Mosher-Kuczer, *C.S., Lighthouse Immigration Law*




September 27, 2024
9:00 a.m. to 12:30 p.m.
Total CPD Hours = 2 h Substantive + 1 h + 30 m Professionalism ^P

Law Society of Ontario

SKU CLE24-00907

Agenda

9:00 a.m. – 9:05 a.m.	Welcome <i>Sarah Fagan, Corporate Immigration Law Firm PC (CILF)</i> <i>Tamara Mosher-Kuczer, C.S., Lighthouse Immigration Law</i>
9:05 a.m. – 9:45 a.m.	Best Practices and How to Craft Family Class Permanent Residence Applications (25 m ^P) <i>Tatiana Emanuel, Legally Canadian Immigration Law Firm</i> <i>Adrienne Smith, Smith Immigration Law</i>

9:45 a.m. – 9:55 a.m.	Question and Answer Session
9:55 a.m. – 10:40 a.m.	Update on Express Entry Applications for Permanent Residence (25 m ) Elizabeth Long, <i>Long Mangalji LLP</i> Zeynab Ziaie Moayyed, <i>Visa Law Group PC</i>
10:40 a.m. – 10:50 a.m.	Question and Answer Session
10:50 a.m. – 11:10 a.m.	Break
11:10 a.m. – 12:00 p.m.	Ontario Immigrant Nominee Program (“OINP”): What You Need to Know (25 m ) Clinton Green, <i>Brown Immigration Law</i> Daud Ali, <i>Corporate Immigration Law Firm PC (CILF)</i>
11:50 a.m. – 12:00 a.m.	Question and Answer Session
12:00 p.m. – 12:25 p.m.	Permanent Resident Cards and Permanent Resident Travel Documents (15 m ) Aisling Bondy, <i>Bondy Immigration Law</i>
12:25 p.m. – 12:30 p.m.	Question and Answer Session
12:30 p.m.	Program Ends



This program qualifies for the 2026 LAWPRO Risk Management Credit

What is the LAWPRO Risk Management credit program?

The LAWPRO Risk Management Credit program pays you to participate in certain CPD programs. For every LAWPRO-approved program you take between September 16, 2024 and September 15, 2025, you will be entitled to a \$50 premium reduction on your **2026 insurance premium** (to a maximum of \$100 per lawyer). Completing any Homewood Health* Member Assistance Plan e-learning course available at homeweb.ca/map also qualifies you for a \$50 credit.

Why has LAWPRO created the Risk Management Credit?

LAWPRO believes it is critical for lawyers to incorporate risk management strategies into their practices, and that the use of risk management tools and strategies will help reduce claims. Programs that include a risk management component and have been approved by LAWPRO are eligible for the credit.

How do I qualify for the LAWPRO Risk Management Credit?

Attendance at a qualifying CPD program will NOT automatically generate the LAWPRO Risk Management Credit. To receive the credit on your 2025 invoice, you must log in to [My LAWPRO](#) and completing the online Declaration Form in the Risk Management Credit section.

STEP 1:	STEP 2:
<ul style="list-style-type: none">• Attend an approved program in person or online; and/or• View a past approved program• Completing a Homewood Health e-course*	Complete the online declaration form in the Risk Management Credit section of my.lawpro.ca by September 15, 2025. The credit will automatically appear on your 2026 invoice.

You are eligible for the Risk Management Credit if you chair or speak at a qualifying program provided you attend the entire program.

Where can I access a list of qualifying programs?

See a list of current approved programs at lawpro.ca/RMcreditlist. Past approved programs are usually indicated as such in the program materials or download page. Free CPD programs offered by LAWPRO can be found at www.practicepro.ca/cpd

Whom do I contact for more information?

Contact practicePRO by e-mail: practicepro@lawpro.ca or call 416-598-5899 or 1-800-410-1013.

*One Homewood Health e-learning course is eligible for the credit on a yearly basis.

Immigration Law Fundamentals 2024

September 27, 2024

SKU CLE24-0090701

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TAB 1

Immigration Law Fundamentals 2024

Crafting Family Class PR Applications (PPT)

Adrienne Smith

Smith Immigration Law

Tatiana Emanuel

Canadian Immigration Law Firm

September 27, 2024





Crafting Family Class PR Applications

LSO Immigration Law Fundamentals 2024

Presented by

Adrienne Smith
Smith Immigration Law
smithimmigrationgroup.com

Tatiana Emanuel
Legally Canadian
www.legallycanadian.com



The Intake Process

► Client Verification and ID

- See Part III of LSO By-Law 7.1

► Conflict Check

- Make sure to run this for all persons



The Intake Process

- **Choosing Your Category**
 - *Married spouses*
 - *Common-law spouses*
 - *Conjugal spouses*
- **Choosing inland versus overseas**



The Intake Process

► Retainers

► Joint Retainer

- Should set out clearly that:
 - You are acting for both (or all) of the persons involved
 - You cannot keep information received in connection with the matter from one person confidential from the other(s)
 - If a conflict arises, you cannot continue to act for both/all of the clients



The Intake Process

► Retainers

► Joint Retainer

- *Relevant LSO Rules:*

- **Conflicts:** R. 3.4-1 of the Rules; and r. 3.04(1) of the Paralegal Rules
- **Requirement to advise all parties:** r. 3.4-5 of the Rules; r. 3.04(6) of the Paralegal Rules.
- **Continuing Relationship:** r. 3.4-6 of the Rules; r. 3.04(7) of the Paralegal Rules.



The Intake Process

► Retainers

► Joint Retainer

- Make sure all parties are on board and understand.
- Get it in writing!



The Intake Process

- Retainers

- Common Parameters

- Adding retainer agreement in both parties' names
 - Adding a section on withdrawal and conflict of interest



The Intake Process

- **Setting Expectations**

- **Timelines**

- *Advise in advance about potential delays and reasons for delays*

- *i.e. marriage certificate, criminal history, previous spouses, dependent children, immigration history*



The Intake Process

► Setting Expectations

► Client Responsibilities

What will you be doing, what do they need to do?

- Forms
- Collection of Supporting Documents (and review)
- Using the PR Portal
- Getting Translations
- Work after submission
- If complications arise



The Intake Process

- **Setting Expectations**

- **Communication**

- *Advise on mode of communication and how often*



Ongoing Considerations

► Proof of Relationship – R4

IRPR - 4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

- (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or
- (b) is not genuine.



Ongoing Considerations

► Proof of Relationship – R4

► Cohabitation Documents:

- If they are currently living together, they need to provide documentation from at least 2 of the categories set out in the Checklist.
- If they are not living together, they must provide proof of contact, and proof of past visits/past cohabitation

► Genuineness/Perception Documents:

- Photos of significant events (wedding, engagement, etc.)
- Documents from at least two of the options listed on the checklist



Ongoing Considerations

► Proof of Relationship – R4

- Documents from at least two of the options listed on the checklist
 - Important documents showing they are recognized as spouses (such as employment or insurance benefits)
 - Documentation of financial support and/or shared expenses
 - Proof the relationship is recognized by friend/family (support letters, social media posts, etc.)
 - Proof of past cohabitation if they are not living together now but have before



Ongoing Considerations

► Proof of Relationship – R4

- *Are they on the same page?*
- *What if they don't want to disclose something to their partner?*



Ongoing Considerations

► Proof of Relationship – R4

► Legal Submissions

- Set out why they meet the requirements - reference the IRPR
- Specifically consider and address genuineness
 - How did the relationship develop?
 - What aspects of the relationship followed cultural or family traditions and norms that the Officer may not be familiar with?
 - How do others perceive them?
 - What about past relationships?
 - Is there case law on issues that might come up?

Ongoing Considerations

► Dealing With Complications

What if the Applicant isn't a Member of the Class?

May be able to process them as a *de facto* dependent, using H&C considerations

- Check out IRCC's Operational Instructions
- If you're not successful, DO NOT appeal to the IAD; see s. 65 IRPA

Ongoing Considerations

► Dealing With Complications

What if the Applicant isn't a Member of the Class?

Sultana v. Canada (MCI), 2009 FC 533 (CanLII):

It is worth mentioning that Mr. Arif appealed this decision to the Immigration Appeal Division of the Immigration and Refugee Board (the IAD). The appeal was dismissed without a hearing on February 4, 2009, on the ground that the IAD has no discretionary jurisdiction to consider humanitarian and compassionate considerations. Relying on section 65 of the IRPA and on the jurisprudence from this Court (most notably *Huang v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1302), the IAD ruled that the proper forum in which to challenge a section 25 H&C decision by the Minister is to seek judicial review of that decision by the Federal Court. **This was clearly the right decision to make.**

For a few more examples, see: *Huang* (above); *Li*, 2015 CanLII 16818 (CA IRB); *Essindi*, 2018 FC 288 (CanLII); *Reynoso*, 2018 CanLII 102113 (CA IRB); and *Kamara*, 2020 CanLII 113550 (CA IRB)



Ongoing Considerations

► Dealing With Complications

What do I do with non-accompanying family?

- Make sure all dependents are included on the required forms
- Consider if your clients may have difficulties in getting examinations done



Ongoing Considerations

► Dealing With Complications

What if they can't get documents?

What if they have a criminal history? Or potential medical inadmissibility (for Parents/Grandparents)

What if the applicant and/or sponsor has an adverse immigration history?

Ongoing Considerations

► Dealing With Complications

What if the Sponsor isn't eligible?

IRPR - 130 (1) Subject to subsections (2) and (3), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of the family class or an application to remain in Canada as a member of the spouse or common-law partner in Canada class under subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who

- (a) is at least 18 years of age;
- (b) resides in Canada; and
- (c) has filed a sponsorship application in respect of a member of the family class or the spouse or common-law partner in Canada class in accordance with section 10.

Also see requirements under R133(1)



Ongoing Considerations

► TRVs and OWPs

- *Applying for an Open Work Permit (when to apply, processing timeline)*
- *Applying for a Spousal TRV (when to apply, processing timeline)*



Helpful Resources

- **IRCC Operational Instructions and Guidelines - Family class -**
<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes.html>
- **Intent to Reside in Canada:** *Law v. Canada (Citizenship and Immigration)*, 2004 CanLII 56727 (CA IRB),
<https://canlii.ca/t/1rpnd>
- **IRCC Operational Guide – Conjugal partners -**
<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-conjugal.html>



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TAB 2

Immigration Law Fundamentals 2024

Update on Express Entry Applications (PPT)

Elizabeth Long

Long Mangalji LLP

Zeynab Ziaie Moayyed

Visa Law Group PC

September 27, 2024



Immigration Law Fundamentals 2024

Update on Express Entry Applications

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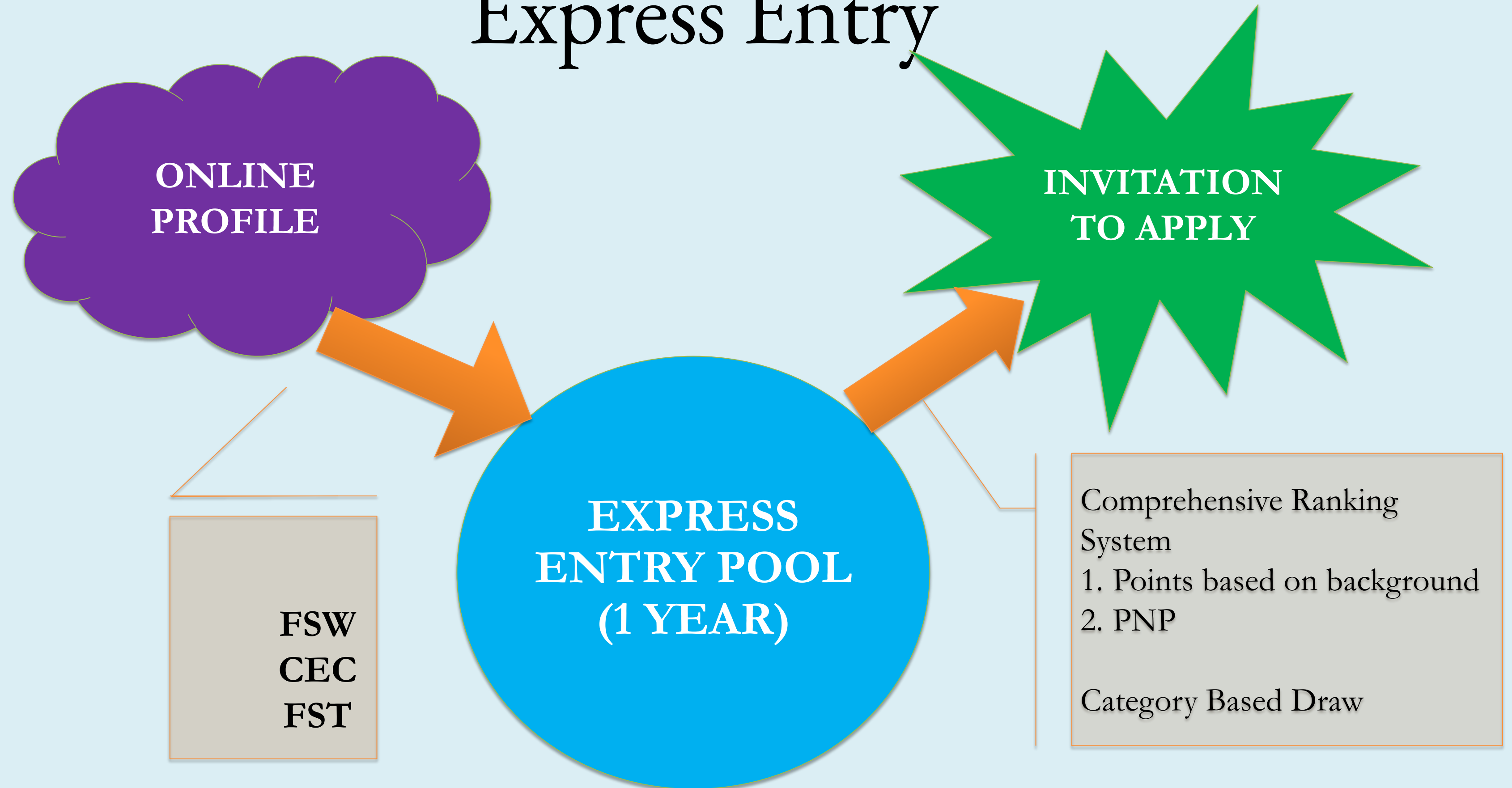
Zeynab Ziaie Moayyed
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27 September 2024

Outline

1. Overview of requirements
2. Trends and Categories
3. Consults
4. Arranged Employment Points
5. How to Approach Employers
6. Creating EE Profiles
7. Top Issues
8. Resources
9. Ethical Considerations
10. Lightning Round: Top Tips when submitting a EE file

Express Entry



Express Entry

FEDERAL SKILLED WORKER

- Work experience, language, education, age, family in Canada, etc. + financial savings and meet minimum score

CANADIAN EXPERIENCE CLASS

- Work experience, language

SKILLED TRADES

- Work experience, language, LMIA or Certification

Comprehensive Ranking System (CRS)

- Age
- Education
- Language
- Relevant Canadian Work Experience
- Foreign Work Experience
- Spouse's Education, Language, and Cdn Work Experience
- Provincial Nominee Program – EE
- Previous Study in Canada
- Arranged Employment (only Employer Specific Work Permits or LMIA)
- Siblings who are Canadian/PR in Canada
- Fluency in French
- Trade Certification

EE Trends 2024

1. ITAs:



2. Return of CEC draws (CRS score: 507 to 522)

3. Continuation of Category Based Selection

Larger percentage of ITAs going to Category Based Selection

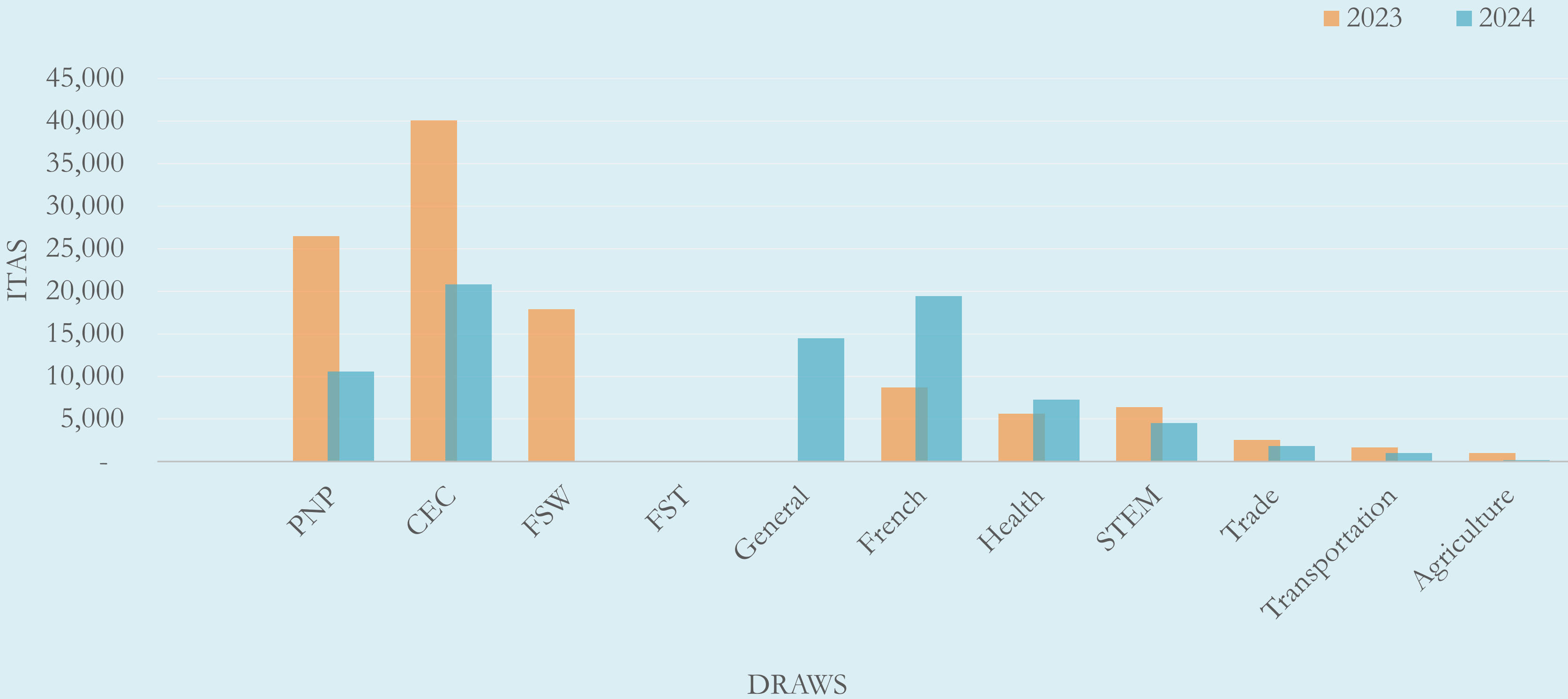
June – Dec 2023: 23% of ITAs (25,870)

Jan – Sep 2024: 43% of ITAs (34,075)

EE Categories

1. French-language proficiency
2. Healthcare occupations
3. Science, Technology, Engineering and Math (STEM) occupations
4. Trade occupations
5. Transport occupations
6. Agriculture and agri-food occupations

EE Category Based Selection

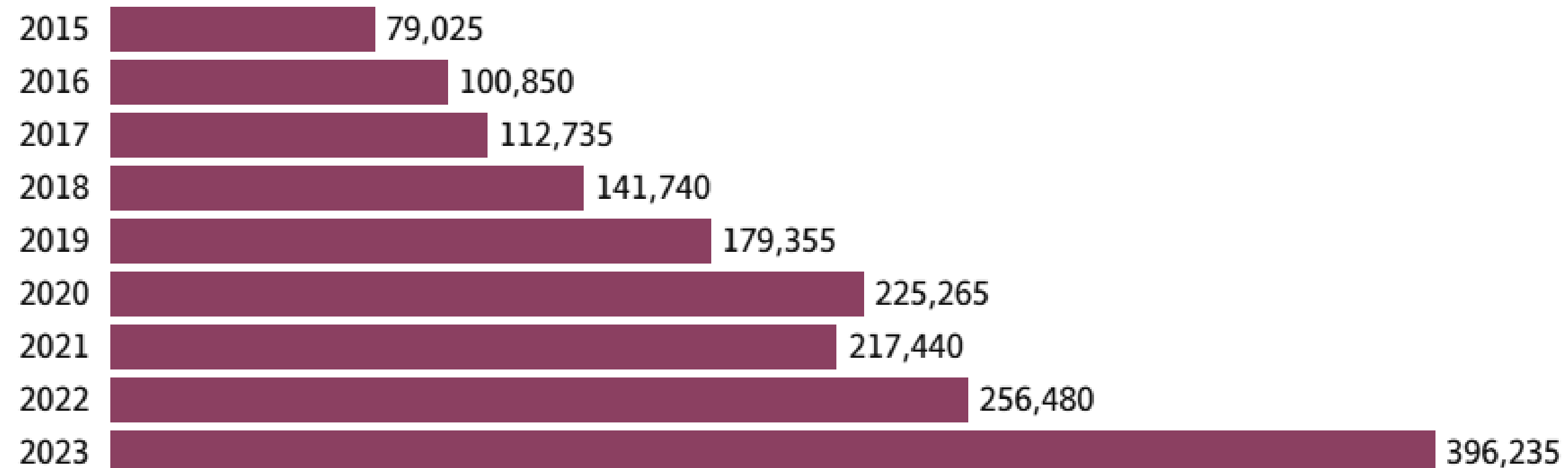


EE Trends – Beyond 2024?

PGWP holders:

70-130K PGWP expiring in 2024 and 2025

Number of international students holding post-graduation work permits in Canada



THE GLOBE AND MAIL, SOURCE: IRCC

EE Consults

1. Determining Eligibility
2. Calculating Points
3. Advising Clients on ways to increase points
4. Changing points landscape and having a Plan B

Arranged Employment

Requirements:

- Job Offer: Full-time, continuous, paid offer to work for employer for at least 1 year after become PR in NOC TEER category 0, 1, 2 or 3, AND
- by an employer with a new positive LMIA that approves the offer and names applicant and position OR
- CLOSED LMIA based work permit holder working for employer + authorized to work at time of submitting EE application (and EE issued) + full-time job offer OR
- CLOSED LMIA exempt work permit holder working for employer + have one year of full-time work experience working for employer + full-time job offer

Arranged Employment

Higher Percentage of applicants now have Arranged Employment:

2021 #	2021 %	2022 #	2022 %	2023 #	2023 %
20,927	6%	20,495	6%	30,751	9%

Express Entry Year End Report 2023

Job Offer: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents/offer-employment.html>

Advising Clients: How to Approach Employers

1. Get the terminology right – there is no such thing as “sponsorship” for employers
2. Explain to the employers as to what they need to do, what their obligations are with regard to compliance for LMIA's, OEs, etc.
3. PNP applications – don't blindsides the employers by putting applicants in the pool without letting them know first

EE 101: Creating Profiles

1. Internal Questionnaires to get ALL information from your clients
2. Points calculation
3. Review documents to ensure points can be obtained e.g. ECAs, language tests, work letters (dates, duties, etc.)
1. Create profile on Authorized Representative Portal
2. Determining NOC codes
3. Review entries and share with client to confirm before submission
4. Review points upon submission
5. Update as necessary after submission to keep EE profile up-to-date

EE 101: Top Issues

1. Employment Verification Letters

- NOC Code, duties,
- What if a client cannot obtain letters
- Self-employed experience

2. Police Clearances

- REVIEW requirements carefully
- Colour scans of originals

3. Medicals & Biometrics

EE 101: Top Issues

4. Certificate of Qualification

5. Changes between EE Profile setup → ITA → EE submission

- Pre-ITA: update
- ITA: lock-in age
- EE submission: lock-in language

6. Changes after EE submitted

- Job offers & Arranged Employment Points

EE 101: Resources

1. Checklists:

- Create your own checklists and check and re-check prior to submission

2. Program Delivery Instructions

- <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/economic-classes/experience/post.html>

EE 101: Resources

3. Tech Tools:

- Nathan Po: ImmPrintr
- Chrome Extension for creating PDFs of e-applications
- Sarah Reid: Accessing application information after submission

1. In your client's EE application page, click "View submitted application or upload documents"

Application status and messages

Check the status, review the details and read messages for your application. [View submitted application or upload documents](#)

2. From the page showing the list of supporting documents submitted for the EE application, replace "documentsToSubmit" in the URL (<https://onlineservices-servicesenligne.cic.gc.ca/eapp/documentsToSubmit>) to "applicationChecklist" (<https://onlineservices-servicesenligne.cic.gc.ca/eapp/applicationChecklist>) and press "Enter".

EE 101: Ethical Issues

1. Retainers

- Profile setup
- Post-ITA work
- Changes in law
- Changes in client circumstances and follow up work

2. Minimizing Liability:

- Internal Checklists
- Client review of application prior to submission

EE 101: Top Ten Tips

Lightning Round!

Questions

?

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TAB 3

Immigration Law Fundamentals 2024

Ontario Immigrant Nominee Program (“OINP”):
What You Need to Know

Ontario Immigrant Nominee Program (“OINP”):
What You Need to Know
Ontario’s Express Entry Streams

Ontario Immigrant Nominee Program (“OINP”):
What You Need to Know
Updates, Tips & Pitfalls

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September 27, 2024



Ontario Immigrant Nominee Program (“OINP”): What You Need to Know

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Ontario Immigrant Nominee Program (“OINP”): What You Need to Know

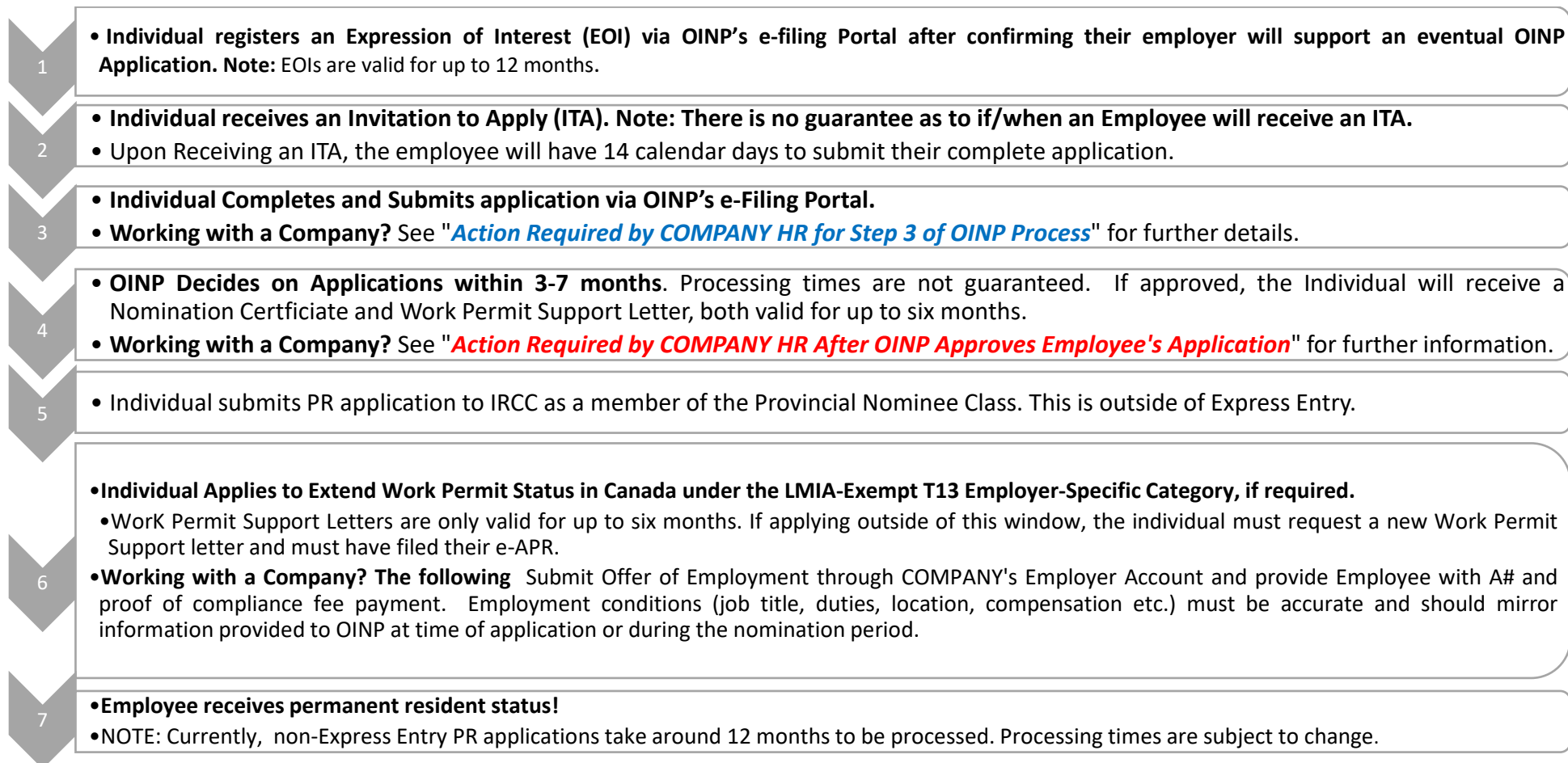
Ontario’s Expression of Interest Streams

- **Employer Job Offer Streams:**
 - **Foreign Worker**
 - **International Student**
 - **In-Demand Skills**
- **Masters Graduate and PhD Graduate Streams**
 - **Entrepreneur (Not Covered)**

GUIDE TO ONTARIO IMMIGRANT NOMINEE PROGRAM'S EMPLOYER JOB OFFER STREAMS

General Applicant Requirements		General Employer Requirements
<ul style="list-style-type: none"> • Must have a full-time (30+ hours/week), permanent and indeterminate job offer. • Must have valid temporary status and intend to continue residing in Ontario after obtaining PR. • Must have a mandatory license or other authorization for the occupation (if applicable). • Must receive a job offer that aligns with the company's existing activities and be urgently needed to maintain or grow business activity. 		<ul style="list-style-type: none"> • Must have operated for at least 3 years preceding the date of application and have premises in Ontario to which the applicant will report to work. • Must have no outstanding orders under the <i>Employment Standards Act</i> or the <i>Occupational Health and Safety Act</i>. • Must have at least \$1 million (GTA) or \$500,0000 (Outside GTA) gross annual revenue in the most recently completed fiscal year. • Must have at least 5 (GTA) or 3 (Outside GTA) full-time Canadian or permanent resident employee. • Must demonstrate reasonable efforts to hire a Canadian citizen or PR, unless the applicant holds a work permit or a positive LMIA was issued.
International Student Stream – Applicant Requirements	Foreign Worker Stream - Applicant Requirements	In-Demand Skills Stream - Applicant Requirements
<p>Work Experience Required: N/A</p> <p>Job Offer Requirements: Must be in NOC training, education, experience and responsibilities (TEER) category 0,1,2, or 3. The Applicant must show that they meet the employment requirements for the NOC.</p>	<p>Work Experience Required: At least two (2) years of cumulative paid full-time work experience (or equivalent part-time) within the past five years, in the same occupation being offered to them.</p> <p>Job Offer Requirements: Must be in NOC TEER category 0,1,2, or 3. The Applicant must show that they meet the employment requirements for the NOC.</p>	<p>Work Experience Required: At least nine (9) months of cumulative paid full-time work experience (or the equivalent in paid part-time work) in Ontario within the three years preceding the application, in the same job being offered to them.</p> <p>Job Offer Requirements: Must be one of the eligible occupations in NOC TEER category 4 or 5. Note: there is a distinction between eligible positions inside the GTA vs outside. The Applicant must show that they meet the employment requirements for the NOC.</p>
<p>Education Requirement: Must have earned one of the following at an Eligible institution :</p> <ul style="list-style-type: none"> • A degree or diploma that takes at least two years of full-time study to complete. • A degree, diploma or graduate certificate that takes at least one year of full-time study to complete. 	<p>Education Requirement: N/A</p>	<p>Education Requirement: Must hold at least a Canadian secondary (high school) credential, or its foreign equivalent. If studies were completed outside Canada, Applicant must obtain and prove an Educational Credential Assessment (ECA) that proves education equivalency in Canada.</p> <p>Minimum Language Requirement: Must be able to understand, read, write, and speak English or French at a proficiency level of Canadian Language Benchmark (CLB) level 4 or higher.</p>
<p>Wage Requirement: Compensated <u>at or above the low wage</u> level for the occupation in the region where the employee will report to work.</p>	<p>Wage requirement: Compensated <u>at or above the median wage</u> level for the occupation in the region the employee will report to work.</p>	<p>Wage requirement: Compensated <u>at or above the median wage</u> level for the occupation in the region the employee will report to work.</p>

Overview of the OINP Application Process & Timeline



ACTION REQUIRED BY COMPANY HR FOR STEP 3 OF THE OINP PROCESS

Required Document	Steps to Take
1. OINP Employer Form located here	Complete, print & sign form, then give to Employee so they can scan and upload their OINP application. Note: <ul style="list-style-type: none"> • Use detailed (6-8 bullet points) and accurate descriptions of job duties. • Identify appropriate NOC for the role by searching on ESDC's website: https://noc.esdc.gc.ca/?GoCTemplateCulture=en-CA. • You can confirm low and prevailing wages for the Toronto region here: https://www.jobbank.gc.ca/wagereport/location/geo9219
2. Job Offer Letter [A useful template is attached]	Draft job offer letter to be printed and signed by HR and the Employee.
3. Employment Experience/Reference Letter if requested by Employee. [A useful template is attached]	Accurately report the Employee's work history (including tenure, role(s) held, and duties performed, compensation earned). If the Employee held multiple roles with COMPANY, detailed duties etc. are required for each position.

Note:

1. When OINP assesses the Employee's application, they may request additional supporting documents from COMPANY. Review [OINP's Employer Checklist](#) for a list of possible documents that may be requested.
2. Should COMPANY receive such a request, HR can ask to submit the documents directly to OINP instead of through the Employee.

Action Required by COMPANY HR After OINP Approves Employee's Application

The period between when an employee receives a nomination certificate (i.e., when OINP approves their application) and when they receive permanent resident status is called the **nomination period**. Certain changes during this period can result in the cancellation of a nomination, which would be fatal to an Employee's PR application.

During the nomination period, COMPANY must continue to employ the foreign worker in the approved position and in the employment terms until the foreign worker receives permanent residence status. COMPANY should track all employees who are subject to an OINP nomination period to ensure ongoing compliance. COMPANY HR must contact OINP at ontarionominee@ontario.ca in the following circumstances:

- 1) For approval before making any changes to position title, duties, wage, hours of work, and work location.
- 2) In cases of termination.

[print on COMPANY letterhead]

DATE

EMPLOYEE'S LEGAL NAME

EMPLOYEE ADDRESS

Re: Offer Letter to EMPLOYEE NAME

Dear EMPLOYEE NAME,

As a current COMPANY LEGAL NAME ("Company") employee with valid work authorization, we wish to support your transition to permanent residency. Accordingly, it is our great pleasure to confirm our intent to offer you a full-time and indeterminate (permanent) position as a POSITION (NOC XXXXX) with COMPANY at our office located ADDRESS, Ontario Canada, POSTAL CODE.

As POSITION, you will continue to work on a full-time (40 hours per week and 52 weeks per year) basis. Your duties will continue to include, and not limited to the following:

- Job duty 1
- Job duty 2
- Job duty 3.
- Other duties as assigned.

For your services, your annual salary will (continue to) be CAD \$xx,xxx.xx. You will continue to be eligible for discretionary salary increases, bonuses, and allowances in accordance with COMPANY policies and guidelines. You will continue to be entitled to x vacation days per year.

The terms and conditions of the job offer are effective as of the date of your Ontario Immigrant Nominee Program nomination.

Employer

COMPANY NAME

NAME AND TITLE

PHONE NUMBER

EMAIL

Employee

EMPLOYEE NAME

DATE

Ontario Immigrant Nominee Program
400 University Avenue, 4th Floor
Toronto ON M7A 2R9

RE: EMPLOYEE LEGAL NAME - Employment Verification

This letter confirms that EMPLOYEE LEGAL NAME ("EMPLOYEE") has been employed with COMPANY since YYYY/MM/DD.

For the duration of Employee's tenure with LEGAL NAME OF COMPANY ("COMPANY"), they have reported to our office at ADDRESS, Ontario Canada, Postal Code and worked on a full-time (40 hours/week and 52 weeks/year) basis.

While employed with COMPANY, EMPLOYEE has worked in the role in the role of JOB TITLE. Their duties include but are not limited the following:

- Detailed job description (5-7 bullet points)

Employee receives an annual base salary of \$xx,xxx.xx and is entitled to x vacation days per year. EMPLOYEE is eligible for discretionary salary increases, bonuses, and allowances in accordance with COMPANY policies and guidelines.

Should you have any questions, please contact the undersigned.

Sincerely,

COMPANY

HR NAME

HR TITLE

TELEPHONE

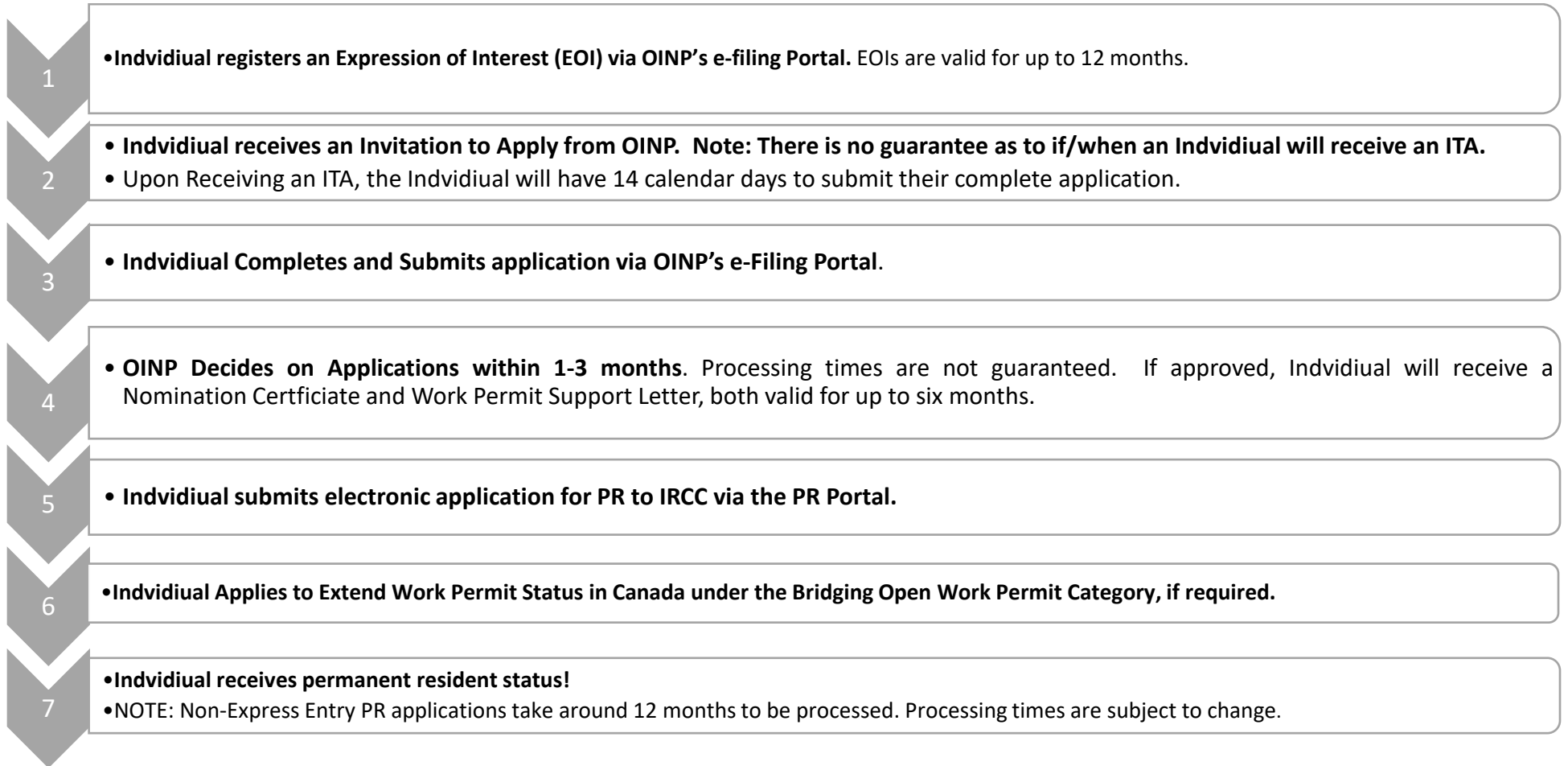
EMAIL

GUIDE TO ONTARIO IMMIGRANT NOMINEE PROGRAM'S MASTERS and PhD GRADUATE STREAMS

Individuals who have a Masters or PhD degree from an Ontario university may be eligible to apply under the Ontario Immigrant Nominee Program (“OINP”) Masters Graduate stream and PhD Graduate stream, respectively.

General Requirements	
<ul style="list-style-type: none"> • Must have received an Invitation to Apply (ITA). • Must have legally lived in Ontario for at least one (1) year cumulatively in the two (2) years preceding the application. • Must be living in Ontario with valid status or living outside Canada and intend to continue residing/reside in Ontario after obtaining PR. • Must have sufficient settlement funds to support themselves and dependent family members: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents/proof-funds.html. • Must submit application within two years of completing program requirements (date on degree or date on letter of completion). <p>Note: Applicants who received a scholarship requiring return to their home country after the completion of the degree may only apply after having fulfilled those commitments and can demonstrate an intention to live in Ontario.</p>	
Masters Stream Requirements	PhD Stream Requirements
<ul style="list-style-type: none"> ▪ Must have completed a Masters degree program at an eligible Ontario university. ▪ Must be able to understand, read, write, and speak English or French at a proficiency level of Canadian Language Benchmark (CLB) level 7 or higher. <p>Note: Applicants enrolled as a student at the time of application are not eligible unless it is for the purpose of meeting requirements to be licensed in a regulated occupation in Ontario or Applicant is also working full-time in Ontario.</p>	<ul style="list-style-type: none"> ▪ Must have completed PhD degree program at an eligible Ontario university. ▪ Note: At least two years of the PhD studies must have been completed while legally living and studying in Ontario.

Overview of the OINP Application Process & Timeline



OINP - How the EOI scoring is applied to each stream

Scoring factor	Employer Job Offer: Foreign Worker	Employer Job Offer: In-Demand Skills	Employer Job Offer: International Student	Masters Graduate	PhD Graduate
Job offer: NOC TEER category	Scored	Not applied	Scored	Not applied	Not applied
Job offer: NOC broad occupational category	Scored	Scored	Scored	Not applied	Not applied
Job offer: wage	Scored	Scored	Scored	Not applied	Not applied
Work permit status	Scored	Scored	Scored	Scored	Scored
Job tenure with job offer employer	Scored	Scored	Scored	Not applied	Not applied
Earnings history	Scored	Scored	Scored	Scored	Scored
Highest level of education	Not applied	Not applied	Scored	Scored	Scored
Field of study	Not applied	Not applied	Scored	Scored	Scored
Canadian education experience	Not applied	Not applied	Scored	Scored	Scored
Official language ability	Scored	Not applied	Scored	Scored	Scored
Knowledge of official languages	Scored	Not applied	Scored	Scored	Scored
Regional immigration: location of job offer	Scored	Scored	Scored	Not applied	Not applied
Regional immigration: location of study	Not applied	Not applied	Scored	Scored	Scored

Ontario Immigrant Nominee Program (“OINP”):

What You Need to Know

Ontario’s Express Entry Streams

- **Human Capital Priorities**
 - **Skilled Trades**
- **French-Speaking Skilled Worker**

Authors:

Clinton Green, Brown Immigration Law P.C. LLO

Daud Ali, Corporate Immigration Law Firm PC (CILF)

GUIDE TO ONTARIO IMMIGRANT NOMINEE PROGRAM'S EXPRESS ENTRY SKILLED TRADES STREAM

1. Quick Overview of Relevant Streams and Eligibility requirements

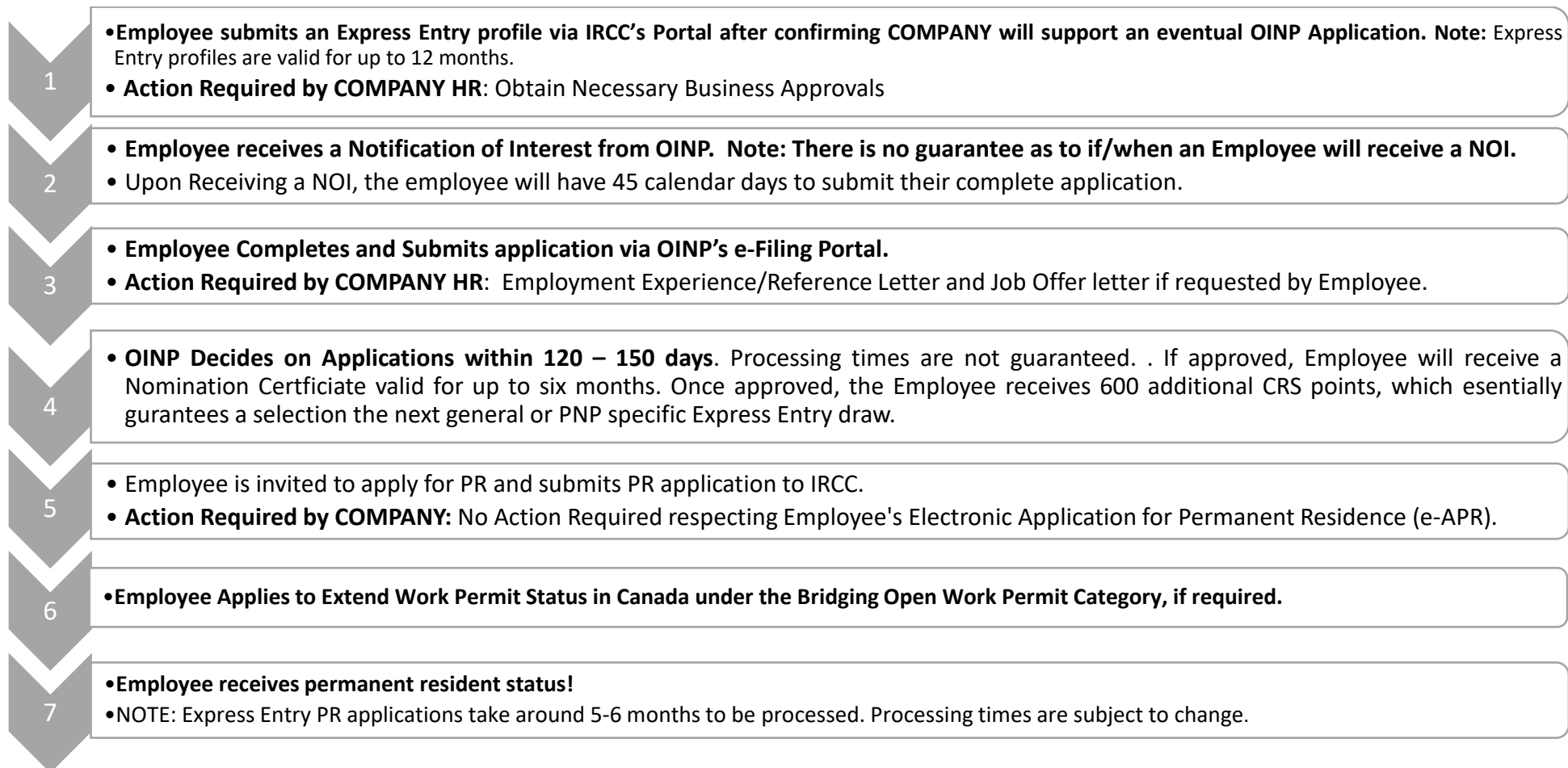
The Ontario Immigrant Nominee Program (“OINP”) Skilled Trades stream selects foreign workers with work experience in eligible skilled trades for the opportunity to apply for permanent residence in Ontario.

General Requirements for Skilled Trades Stream
<ul style="list-style-type: none">• A job offer is not required to apply for this stream.• Must have a valid profile in IRCC’s Express Entry system.• Must receive a Notification of Interest from Ontario.• Must have valid temporary status and intend to continue residing in Ontario after obtaining PR.• Valid Certificate or license (if applicable). If the Applicant is claiming work experience in a “compulsory trade” they must hold a valid certificate or license in Ontario at the time of application, even if they are no longer working in the trade. The Applicant must also have held a valid certificate or license that covers the period of work experience that is claimed for the minimum one-year work experience requirements.• Minimum Language Requirement: Must be able to understand, read, write, and speak English or French at a proficiency level of Canadian Language Benchmark (CLB) level 5 or higher.• Applicant must have sufficient settlement funds to support themselves and dependent family members. There are various ways to meet this requirements including if you have a valid job offer: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents/proof-funds.html
Work Experience Requirements
<ul style="list-style-type: none">▪ 1+ year of CUMULATIVE paid full-time work experience (or the equivalent in paid part-time work) in an eligible trade as specified under Major Groups 72 (excluding occupations under transportation officers), 73, 82, 83, 93 (excluding aircraft assemblers and aircraft assembly inspectors) or Minor Group 6320 (excluding cooks) of the National Occupational Classification (NOC).▪ Work experience must have been obtained within the last two years from the date of submitting application to the OINP.▪ Work experience must have been in one or more of the occupations identified in the Applicant’s EE profile.▪ Work experience must have been obtained in Ontario while maintaining legal status in Canada.

Note: This document is to serve as a helpful guide to navigate the application process for the OINP Skilled Trades Stream. It does not constitute as legal advice.

2. Overview of the OINP Application Process & Timeline in Situation Where an Employee has Employer Support/Job Offer During Entire Process

Note: An applicant **DOES NOT** need a job offer for this stream. This overview below is a guide to educate employer clients supporting an applicant during the application process.



Note: This document is to serve as a helpful guide to navigate the application process for the OINP Skilled Trades Stream. It does not constitute as legal advice.

GUIDE TO ONTARIO IMMIGRANT NOMINEE PROGRAM'S EXPRESS ENTRY HUMAN CAPITAL PRIORITIES STREAM

1. Quick Overview of Relevant Streams and Eligibility requirements

The Ontario Immigrant Nominee Program ("OINP") Human Capital Priorities stream selects foreign workers with the required skilled work experience, language abilities, and education for the opportunity to apply for permanent residence in Ontario.

General Requirements for Human Capital Priorities Stream	
<ul style="list-style-type: none">• A job offer is not required to apply for this stream.• Must have a valid profile in IRCC's Express Entry system and be eligible for Express Entry under the Canadian Experience Class (CEC) or Federal Skilled Workers (FSW) category.• Must receive a Notification of Interest from Ontario.• Must have valid temporary status and intend to continue residing in Ontario after obtaining PR.• Minimum Education Requirement: Must hold at least a Canadian bachelor's degree, or its foreign equivalent. If studies were completed outside Canada, Applicant must obtain and prove an Educational Credential Assessment (ECA) that proves education equivalency in Canada. <u>Note</u>: Nurses are not required to demonstrate that they meet this education requirement if they meet certain criteria.• Minimum Language Requirement: Must be able to understand, read, write, and speak English or French at a proficiency level of Canadian Language Benchmark (CLB) level 7 or higher.• Applicant must have sufficient settlement funds to support themselves and dependent family members. There are various ways to meet this requirements including if you have a valid job offer: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents/proof-funds.html	
Canadian Experience Class (CEC) Work Experience Requirements	Foreign Skilled Worker (FSW) Work Experience Requirements
<ul style="list-style-type: none">▪ 1+ year of CUMULATIVE paid full-time work experience (or the equivalent in paid part-time work) IN CANADA in a TEER 0, 1, 2, or 3 occupation. If you were invited via a targeted draw, you must demonstrate that at least six months of your one year of eligible work experience is in your primary NOC.▪ Work experience must have been obtained within last 3 years from the date of submitting application to the OINP.▪ Work experience must have been in one or more of the occupations that is identified in Applicant's EE profile.	<ul style="list-style-type: none">▪ 1+ year of CONTINUOUS paid full-time work experience (or the equivalent in paid part-time work) in a TEER 0, 1, 2, or 3 occupation.▪ Work experience must have been obtained within the last 5 years from the date of submitting application to OINP.▪ Work experience must be in the same primary occupation identified in Applicant's EE profile.▪ Work experience may have been gained in Canada or overseas.

Note: This document is to serve as a helpful guide to navigate the application process for the OINP Human Capital Priorities Stream. It does not constitute as legal advice.

GUIDE TO ONTARIO IMMIGRANT NOMINEE PROGRAM'S EXPRESS ENTRY SKILLED TRADES STREAM

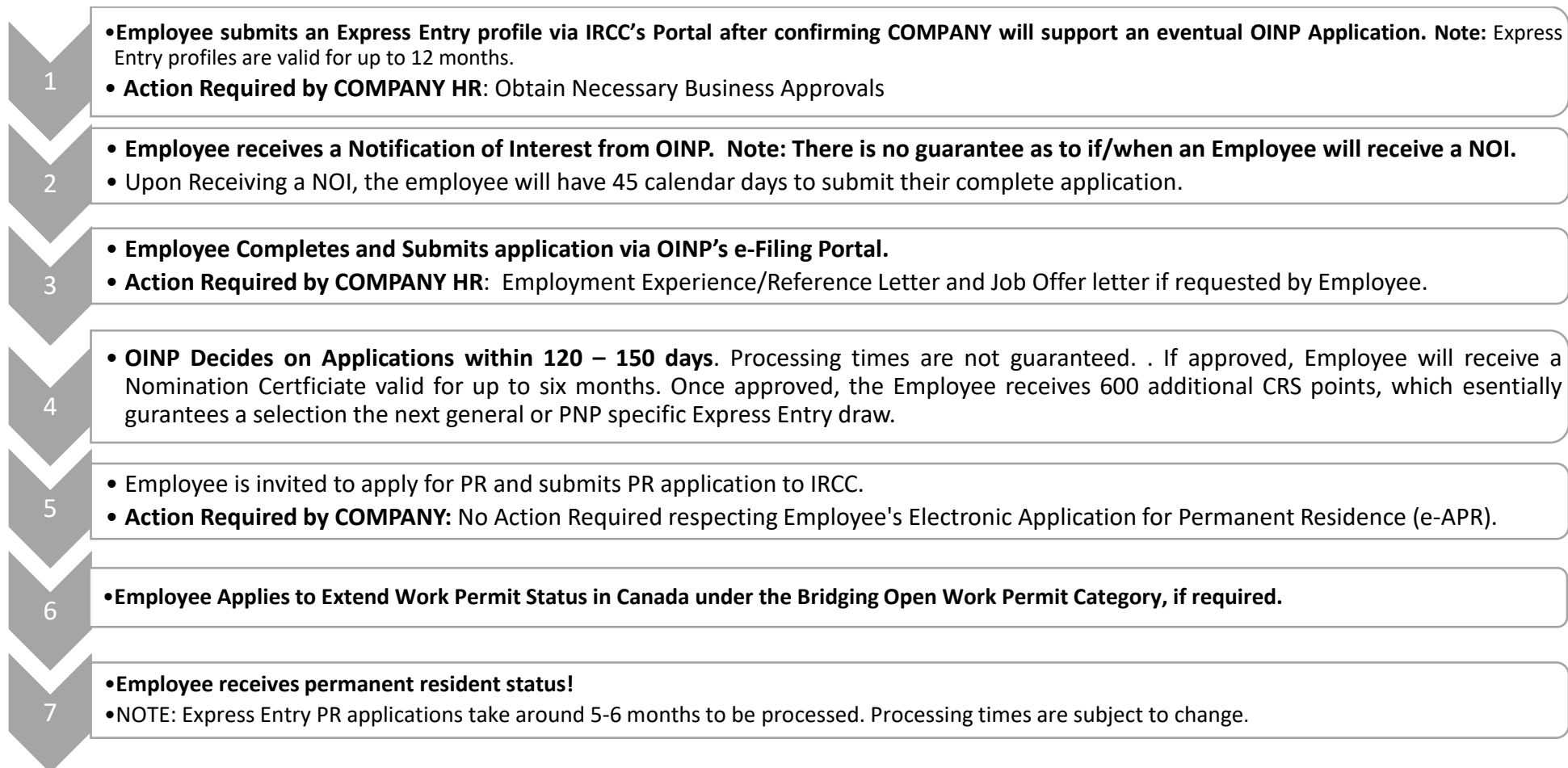
1. Quick Overview of Relevant Streams and Eligibility requirements

The Ontario Immigrant Nominee Program (“OINP”) Skilled Trades stream selects foreign workers with work experience in eligible skilled trades for the opportunity to apply for permanent residence in Ontario.

General Requirements for Skilled Trades Stream
<ul style="list-style-type: none">• A job offer is not required to apply for this stream.• Must have a valid profile in IRCC’s Express Entry system.• Must receive a Notification of Interest from Ontario.• Must have valid temporary status and intend to continue residing in Ontario after obtaining PR.• Valid Certificate or license (if applicable). If the Applicant is claiming work experience in a “compulsory trade” they must hold a valid certificate or license in Ontario at the time of application, even if they are no longer working in the trade. The Applicant must also have held a valid certificate or license that covers the period of work experience that is claimed for the minimum one-year work experience requirements.• Minimum Language Requirement: Must be able to understand, read, write, and speak English or French at a proficiency level of Canadian Language Benchmark (CLB) level 5 or higher.• Applicant must have sufficient settlement funds to support themselves and dependent family members. There are various ways to meet this requirements including if you have a valid job offer: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents/proof-funds.html
Work Experience Requirements
<ul style="list-style-type: none">▪ 1+ year of CUMULATIVE paid full-time work experience (or the equivalent in paid part-time work) in an eligible trade as specified under Major Groups 72 (excluding occupations under transportation officers), 73, 82, 83, 93 (excluding aircraft assemblers and aircraft assembly inspectors) or Minor Group 6320 (excluding cooks) of the National Occupational Classification (NOC).▪ Work experience must have been obtained within the last two years from the date of submitting application to the OINP.▪ Work experience must have been in one or more of the occupations identified in the Applicant’s EE profile.▪ Work experience must have been obtained in Ontario while maintaining legal status in Canada.

2. Overview of the OINP Application Process & Timeline in Situation Where an Employee has Employer Support/Job Offer During Entire Process

Note: An applicant **DOES NOT** need a job offer for this stream. This overview below is a guide to educate employer clients supporting an applicant during the application process.



Note: This document is to serve as a helpful guide to navigate the application process for the OINP Skilled Trades Stream. It does not constitute as legal advice.

GUIDE TO ONTARIO IMMIGRANT NOMINEE PROGRAM'S EXPRESS ENTRY FRENCH-SPEAKING SKILLED WORKER STREAM

1. Quick Overview of Relevant Streams and Eligibility requirements

The Ontario Immigrant Nominee Program ("OINP") French-Speaking Skilled Worker stream selects foreign workers with the required skilled work experience, language abilities, and education for the opportunity to apply for permanent residence in Ontario.

General Requirements for French-Speaking Skilled Worker Stream	
<ul style="list-style-type: none">• A job offer is not required to apply for this stream.• Must have a valid profile in IRCC's Express Entry system and be eligible for Express Entry under the Canadian Experience Class (CEC) or Federal Skilled Workers (FSW) category.• Must receive a Notification of Interest from Ontario.• Must have valid temporary status and intend to continue residing in Ontario after obtaining PR.• Minimum Education Requirement: Must hold at least a Canadian bachelor's degree, or its foreign equivalent. If studies were completed outside Canada, Applicant must obtain and prove an Educational Credential Assessment (ECA) that proves education equivalency in Canada. <u>Note</u>: Nurses are not required to demonstrate that they meet this education requirement if they meet certain criteria.• Minimum Language Requirement: Must be able to understand, read, write, and speak French at a proficiency level of Canadian Language Benchmark (CLB) level 7 or higher <u>AND</u> able to understand, read, write, and speak English at a proficiency level of CLB 6 or higher.• Applicant must have sufficient settlement funds to support themselves and dependent family members. There are various ways to meet this requirements including if you have a valid job offer: https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/documents/proof-funds.html	
Canadian Experience Class (CEC) Work Experience Requirements	Foreign Skilled Worker (FSW) Work Experience Requirements
<ul style="list-style-type: none">▪ 1+ year of CUMULATIVE paid full-time work experience (or the equivalent in paid part-time work) IN CANADA in a TEER 0, 1, 2, or 3 occupation. If you were invited via a targeted draw, you must demonstrate that at least six months of your one year of eligible work experience is in your primary NOC.▪ Work experience must have been obtained within the last 3 years from the date of submitting application to the OINP.▪ Work experience must have been in one or more of the occupations that is identified in Applicant's EE profile.	<ul style="list-style-type: none">▪ 1+ year of CONTINUOUS paid full-time work experience (or the equivalent in paid part-time work) in a TEER 0, 1, 2, or 3 occupation.▪ Work experience must have been obtained within the last 5 years from the date of submitting application to OINP.▪ Work experience must be in the same primary occupation identified in Applicant's EE profile.▪ Work experience may have been gained in Canada or overseas.

Note: This document is to serve as a helpful guide to navigate the application process for the OINP French-Speaking Skilled Worker Stream. It does not constitute as legal advice.

Ontario Immigrant Nominee Program (“OINP”):

What You Need to Know

UPDATES, TIPS & PITFALLS

Authors:

Clinton Green, Brown Immigration Law P.C. LLO

Daud Ali, Corporate Immigration Law Firm PC (CILF)

2024 OINP UPDATES, TIPS & PITFALLS

UPDATES

- The Ontario Immigrant Nominee Program (OINP) has received its 2024 nomination allocation from the federal government. The province's 2024 allocation is 21,500 nominations, a 30% increase of 2023's 16,500.
- **February 2024:** All new applications must include a consent form that was executed after receiving an ITA. Attestations forms are no longer accepted.
- **June 2024:** OINP confirms their interpretation of "reporting to work" for the Job Offer streams, reporting to work:
 - Currently, OINP does not approve fully remote work as meeting the work location requirement. However, hybrid is accepted and there are no minimum days in or full-time employee minimum count to qualify the definition of hybrid.
 - The program does have guidance regarding a mobile workforce, i.e. construction workers at different sites. Under this guidance, to meet the minimum number of full-time employees can include both the number of full-time employees working at the location or report to the location.
- **July 2024:** Nurses may be [exempt from the requirement](#) to provide a Bachelor's degree to qualify for the Express Entry Human Capital Priorities and French-Speaking Skilled Worker stream.
- **July 2024:** Increased minimum penalty for employer/representative/applicant/recruiters contraventions under the Ontario Immigration Act or its regulations.
- **August 2024:** In case of an error in an OINP decision, the applicant or their representative must use the OINP e-Filing portal to submit an Internal Review request. For employers (or their representatives) must submit an Internal Review request via email.

TIPS

- **For the Job Offer Streams**
 - To meet the three-year active business requirement, a company can include periods when they operated outside of Ontario.
 - Gather as many supporting documents as possible upfront in anticipation of an invitation to apply. Once invited, applicants have 14 calendar days to submit a complete application to OINP. Doing the legwork upfront will save you a lot of time as you may have several clients invited under the same draw with the same 14 calendar day deadline to submit. The fact that OINP draws are not announced in advance or predictable makes it very important to be ready.
 - Important considerations when the client is currently employed:
 - Prevailing wage requirement can be forward looking.
 - Although the client may be employed in a NOC other than the job offer, they remain eligible so long as they have two years of qualifying work experience in the same NOC as the job offer.

- The offer letter must specify that the terms and conditions of the job offer are effective as of the date of the Ontario Immigrant Nominee Program nomination (i.e., upon the issuance of the nomination certificate).
- In a situation where you are being appointed after the client receives an ITA, you must obtain both the OINP EOI profile number and the OINP application number as the OINP e-filing portal generates a new file number after an ITA is issued. Technical difficulties:
 - If you experience technical difficulties, it is very important that you include screenshots of the errors or glitches you when submit a request to OINP to troubleshoot and potentially request extension of time in exceptional circumstances.
- The OINP will no longer respond to inquiries sent to ontarionominee@ontario.ca unless they are for one of the following reasons:
 - An employer is providing additional information and/or documentation in support of an application under one of the OINP's employer job offer streams.
 - You received a response to your webform submission and you are continuing a back and forth chain of communication that was properly initiated using the OINP's webform.
 - The applicant received a nomination under one of the OINP's employer job offer streams and is notifying the OINP that they have not begun working in the approved employment position within ten (10) months from the date of their nomination.
 - The applicant received a nomination under one of the OINP's employer job offer streams and is notifying the OINP of a change in the nature of their employment.
 - You were otherwise instructed via a form or communication from the OINP to contact them via email.

Link to Webform: https://www.ontarioimmigration.gov.on.ca/oinp_index/resources/app/home/index.html#!/form

PITFALLS

- Grounds for Non-Compliance (which may be subject to penalties):
 - All fields requiring your client's contact information must be theirs and not the representative or firm's contact details.
 - Representatives are not allowed to appoint themselves. Your client must follow the email instructions received to create their OINP e-filing account and login to appoint you as their representative.
- When you create an EOI profile for your client, they must appoint you in order for their EOI to be submitted into the pool.
- [Use new Application for Approval of Employment Position \(Employer Form\)](#). If you upload an older version of the form, the application will be returned as incomplete.
- When proof of educational equivalency is required, your client must contact the relevant organization/professional body to specifically authorize the OINP to access their Educational Credential Assessment results.
- You must include a cover page outlining the client's eligibility for points under the OINP scoring factors for applications under any of the Expression of Interest streams (e.g., job offer, master's, PhD streams).

- Translations must be ATIO certified.
 - Translations must be completed by a certified translator accredited by the Association of Translators and Interpreters of Ontario (ATIO). If you cannot locate an ATIO certified translator, you must include a letter with the translation explaining why your translations are not certified and show the efforts made to locate a certified translator.
- Resumes must contain details and responsibilities for each position held and include the Applicant's current residential address, email address, and phone number.



Law Society
of Ontario

Barreau
de l'Ontario

TAB 4

Immigration Law Fundamentals 2024

Permanent Resident Cards and Permanent Resident Travel Documents

Permanent Resident Cards and Permanent Resident Travel Documents (PPT)

Aisling Bondy

Bondy Immigration Law

September 27, 2024



Permanent Resident Cards and Permanent Resident Travel Documents

Permanent Resident cards (PR cards) and Permanent Resident Travel Documents (PRTDs) are surprisingly complex and nuanced. Hopefully this paper will help guide you through the basics of how they work.

Overview

1. Confirmation of Permanent Residence document
2. PR Card Overview
3. Initial PR Card Issuance
4. Residence Obligation - overview
5. Renewing a PR card – overview
6. Renewing a PR card - client is in Canada
7. Renewing a PR card and PRTDs – client is out of Canada and meets residency obligation
8. Renewing a PR card and PRTDs – client is out of Canada and does **not** meet residency obligation
9. Client is determined to have breached the PR residency obligation

1. Confirmation of Permanent Residence Document

At the time of landing, clients are issued a document called a “Confirmation of Permanent Residence” (or CoPR). The look of this document has changed a LOT over the years, and is currently an electronic document that is uploaded to a portal for clients who are landed in Canada.

The CoPR is not referenced in the *Immigration and Refugee Protection Act* (IRPA) or *Regulations* (IRPR), but is treated as valid proof of permanent resident status.

Clients should be advised to retain this document as proof of their status.

2. Permanent Resident Cards – an Overview

A PR card serves as proof of a client’s status as a permanent resident, however is not their status in and of itself. In other words, a person remains a permanent resident of Canada even if their PR card has expired and they have not yet obtained a new one. This is in contrast to temporary status which expires together with the underlying status document.

A permanent resident is entitled to a PR card (s.31(1) of IRPA) and, for a person in Canada, a valid PR card creates a presumption they are a permanent resident of Canada (s.31(2) of IRPA).

A PR card is usually issued with a validity period of five years (s.54(1) of IRPR), with some exceptions set out in s.54(2) of IRPR, which mostly relate to situations in which a person is in proceedings to potentially lose their permanent resident status.

3. Initial PR Card Issuance

IRCC is required to automatically issue a PR card to a permanent resident once they are landed (s.53(1)(a) of IRPR). Note though that this was not always the case, and so you may occasionally encounter someone who was landed as a PR years ago and has never received a PR card.

Processing times for issuance of PR cards can vary dramatically over time and on a case-by-case basis. PR cards may erratically be sent to a client's current residential address, their mailing address (in most cases their lawyer's address), and sometimes a former residential or mailing address. I have somewhat regularly seen IRCC send PR cards for members of the same family who were landed at the same time sent to different addresses.

If a client does not receive their PR card within standard processing times, they can send an inquiry via IRCC webform or contact the IRCC Call Centre at 1-888-242-2100. I strongly recommend having the client call the Call Centre in these circumstances, even though it can sometimes take numerous tries to get through to an agent. Unfortunately, IRCC webform is likely to send a nonsensical response to an inquiry about the status of a PR card. By contrast, an agent at the Call Centre can confirm for the client whether the PR card has already been mailed, to what address, and provide instructions in the event it is apparent that the card was mailed and has become lost.

If you operate on a flat-fee basis, you may consider including a clause in your standard retainer agreement for PR applications that services in relation to issuance of the initial PR card are not covered by your flat fee. Delays and complications with issuing initial PR cards can occur erratically and be time-consuming to resolve. Clients may be able to resolve these on their own by calling the IRCC Call Centre, or can pay an additional fee if they wish to retain your services.

If your client needs to leave Canada and return before their PR card is issued, read the sections addressing what to do if a client is outside Canada below.

4. Residence Obligation: An Overview

Before launching into the topic of how to renew a PR card, it is important to have an understanding of the residence obligation for permanent residents. This is a surprisingly complex topic which merits its own paper and presentation, or even several.

The very basics of the ways in which a permanent resident can meet the residence requirement are set out in s.28(2) of IRPA.

Residency obligation

28 (1) A permanent resident must comply with a residency obligation with respect to every five-year period.

Application

(2) The following provisions govern the residency obligation under subsection (1):

- (a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are
 - (i) physically present in Canada,
 - (ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,
 - (iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province,
 - (iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or
 - (v) referred to in regulations providing for other means of compliance;
- (b) it is sufficient for a permanent resident to demonstrate at examination
 - (i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;
 - (ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination; and
- (c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

While the Act sets out certain broad categories for meeting the residence obligation, these are significantly limited by s.61 and 62 of the Regulations:

DIVISION 2

Residency Obligation

Canadian business

61 (1) Subject to subsection (2), for the purposes of subparagraphs 28(2)(a)(iii) and (iv) of the Act and of this section, a Canadian business is

- (a) a corporation that is incorporated under the laws of Canada or of a province and that has an ongoing operation in Canada;

(b) an enterprise, other than a corporation described in paragraph (a), that has an ongoing operation in Canada and

(i) that is capable of generating revenue and is carried on in anticipation of profit, and

(ii) in which a majority of voting or ownership interests is held by Canadian citizens, permanent residents, or Canadian businesses as defined in this subsection; or

(c) an organization or enterprise created under the laws of Canada or a province.

Exclusion

(2) For greater certainty, a Canadian business does not include a business that serves primarily to allow a permanent resident to comply with their residency obligation while residing outside Canada.

Employment outside Canada

(3) For the purposes of subparagraphs 28(2)(a)(iii) and (iv) of the Act, the expression *employed on a full-time basis by a Canadian business or in the public service of Canada or of a province* means, in relation to a permanent resident, that the permanent resident is an employee of, or under contract to provide services to, a Canadian business or the public service of Canada or of a province, and is assigned on a full-time basis as a term of the employment or contract to

(a) a position outside Canada;

(b) an affiliated enterprise outside Canada; or

(c) a client of the Canadian business or the public service outside Canada.

Accompanying outside Canada

(4) For the purposes of subparagraphs 28(2)(a)(ii) and (iv) of the Act and this section, a permanent resident is accompanying outside Canada, a Canadian citizen or another permanent resident — who is their spouse or common-law partner or, in the case of a child, their parent — on each day that the permanent resident is ordinarily residing with the Canadian citizen or the other permanent resident.

Compliance

(5) For the purposes of subparagraph 28(2)(a)(iv) of the Act, a permanent resident complies with the residency obligation as long as the permanent resident they are accompanying complies with their residency obligation.

Child

(6) For the purposes of subparagraphs 28(2)(a)(ii) and (iv) of the Act, *child* means a child who is not a spouse or common-law partner and is less than 22 years of age.

Calculation — residency obligation

62 (1) Subject to subsection (2), the calculation of days under paragraph 28(2)(a) of the Act in respect of a permanent resident does not include any day after

(a) a report is prepared under subsection 44(1) of the Act on the ground that the permanent resident has failed to comply with the residency obligation; or

(b) a decision is made outside of Canada that the permanent resident has failed to comply with the residency obligation.

Exception

(2) If the permanent resident is subsequently determined to have complied with the residency obligation, subsection (1) does not apply.

The relevant operational manuals can be found here: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/card.html>

It is important to have a solid understanding of the residence obligation as its set out under the Act, Regulations, Operational Manual and case law before advising any client about this, **especially** any client who may be deciding whether they can relocate outside Canada without jeopardizing their permanent resident status. For example, a lawyer reviewing only s.28 (2) of IRPA may advise a client who is considering taking a job with a Canadian business overseas that they meet the residence obligation due to their employment, without realizing that the circumstances in which employment outside Canada can fulfill the residence obligation is significantly limited by the wording of s.61 of the Regulations, as well as relevant jurisprudence.

There is no provision for a permanent resident to request confirmation from IRCC that their circumstances meet the residence obligation before they relocate abroad. The determination as to whether a person has met the residence obligation can only be made retroactively to determine whether the obligation has been met over the five-year period prior to filing the PR card application. Giving a client incorrect advice that they can relocate outside Canada without jeopardizing their permanent resident status can therefore have devastating consequences and result in the loss of their permanent resident status.

5. Renewing a PR Card – General Requirements

A PR card application should only be filed by a person who is either in Canada or has the ability to return to Canada before their card is issued. This is because the regulations require that a PR card application must be made inside Canada (s.55(2) of IRPR) and that a card will only be provided or issued in Canada (s.55(1) of IRPR). IRCC can also require an applicant to attend at a specific time

and place to retrieve their card, filing which, after 180 days, the card can be destroyed (s.58(3) of IRPR).

The PR card application is ordinarily filed online through IRCC's Permanent residence portal.

The PR card application must be signed by any applicant who is 18 years of age or older (s.57(1) of IRPR), by the applicant and their parent for any applicant who is between 14 and 17 years of age (s.57(2) of IRPR) or by the parent alone for a child who is 13 years of age or younger (s.57(3) of IRPR).

IRCC is required to issue the PR card if all requirements are met (s.59(1) of IRPR).

6. Renewing a PR Card – Client is in Canada

If your client is in Canada and meets the residence obligation, they can go ahead and apply for a new PR card (s.53(1)(b) of IRPR).

If your client is in Canada but does NOT meet the residence obligation for the past five years, they should usually wait until they meet the residence obligation and then apply. According to s.28(2)(b)(ii) of IRPA, an officer can only determine whether the applicant meets the residence obligation in relation to the five-year period immediately before the date of their review. This means an IRCC officer **cannot** refuse a PR card to an applicant who meets the residence obligation on the date they review the application, even if that applicant was in breach of the residence obligation in the past. To be clear, a permanent resident could breach the residence obligation for ten years, re-enter Canada, wait until they have been physically present in Canada for 730 days to file an application for a PR card, and the officer could not refuse to issue the PR card based on a failure to meet the residence obligation.

A client who is in Canada and has breached the residence obligation in relation to the past five years can file an application to renew their PR card and request relief on H&C grounds, but this is a risky approach. If the officer finds that there are insufficient grounds to grant H&C relief, they can not only refuse the PR card, but according to IRCC's Operational Manual¹ are expected to issue a s.44(1) report. This can lead to a loss of the person's permanent resident status. See below for further information about the consequences of a negative residency determination.

There is no risk to the status of a permanent resident if they remain in Canada without a valid PR card since the card is only their proof of status, and not the status itself. Assuming they have retained their CoPR document, they can rely on this as proof of their status in the meantime.

7. Client is Outside of Canada and Meets the Residence Obligation

A client who is outside of Canada and meets the residence obligation has three options for renewing their PR card.

¹ <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/card/complex.html>

First, they can apply for their PR card from outside Canada, but they should be prepared to travel to Canada to retrieve the card. ***This option is only viable for clients who can re-enter Canada without a valid PR card.*** There is some controversy as to whether a PR card application can be filed by a PR who is outside Canada, as s.55(1) of IRPA states that a PR card application must be made inside Canada. The language of this provision does **not** require that the applicant be in Canada at the time the application is filed. Nonetheless, there is some indication IRCC may not like this approach, and so some clients may want to consider re-entering Canada and then applying for their PR card from within Canada.

The options for a permanent resident to re-enter Canada without a PR card are limited and not available to everyone. Paragraph 19(2) of IRPA establishes a right for Canadian permanent residents at a Canadian port-of-entry (airport or land border) to be readmitted to Canada. This does **not** mean that a permanent resident has a right board a commercial vehicle to Canada; a valid PR card is still required for this purpose. However, if they can get to a port-of-entry, they must be admitted. A PR card is not required at the port-of-entry as an officer can confirm their status through documentation such as an expired PR card, their CoPR, and confirmation their information in IRCC's online databases.

US citizens do not require an electronic travel authorization to travel to Canada, and can therefore board a commercial flight to Canada without needing present any documentation, and then seek re-entry upon arrival in Canada. Canadian PRs who hold US visas can travel to the US, and then approach the Canadian land border by foot or private vehicle and seek re-entry.

Clients who do NOT have the ability to re-enter Canada without a valid PR card, should **not** be advised to apply to renew their PR card from abroad. This is because they will be unable to retrieve their PR card if IRCC requires that they attend in person to retrieve it.

A second option for a client who is outside Canada and meets the residence obligation is to re-enter Canada, and then apply for their PR card after they have re-entered.

A third option, which is available to all permanent residents abroad, is to apply for a permanent resident travel document (PRTD). This application is usually filed with a Canadian visa office outside Canada. The PRTD must be issued if, following an examination, the applicant is determined to have met the residence requirement (s.31(1) of IRPA).

Application processing times for PRTDs outside Canada who meet the residence requirement can sometimes be fairly quick, especially for those who were recently landed as permanent residents. Recall, s.28(2)(b)(ii) of IRPA sets out that for a permanent resident who has held that status for less than five years, the residence obligation can be met if the person can demonstrate that they will be able to meet the residence obligation within the five-year period after becoming a permanent resident. This means that for a permanent resident who has held that status for less than three years, there is no live issue as to whether they have met the residence obligation or not and so the visa office can make its determination quickly. We have occasionally seen visa offices issue PRTDs for new permanent residents within only a few days of the application being filed.

8. Client is out of Canada and does NOT meet the residence obligation

This is by far the most complex area of dealing with residence obligation.

Your first step should be to conduct a thorough review with anyone seeking your advice to determine whether they have any reasonable argument that the circumstances of their stay abroad in fact meet one of the conditions for meeting the residence obligation under s.28(2)(a) or (b) of IRPA. You should also determine whether they still have a valid PR card. If their PR card is still valid, even if they have not met the residence requirement, they can use this to travel to and re-enter Canada and will likely not be questioned at the border as to whether they meet the residence requirement.

If your client does not have a valid PR card and does not have any valid argument that they meet the residence obligation, then they have two options.

Their first option is to try to get to a Canadian port-of-entry and re-enter Canada. Please see information above about how US citizens or persons who can enter the US can seek re-entry to Canada without a valid PR card.

As the person will be seeking re-entry to Canada without a valid PR card, there is a very significant likelihood that they will be asked questions at the border about how long they have been outside Canada to determine whether the residence requirement is met. Technically, officers lack the authority to question about compliance with the residence obligation at the border, but most clients may not feel comfortable declining to answer. If the border officer has any reason to suspect the client does not meet the residence obligation, they can issue initiate proceedings under s.44(1) of IRPA to trigger a residence obligation review from within Canada. Further information about residence obligation determinations is below.

The second option is for the client to apply for a PRTD and seek relief from the residence obligation on humanitarian and compassionate grounds (s.28(2)(c) and s.31(3)(b) of IRPA). An officer is required to conduct a residence obligation review before issuing a PRTD, so your client has no chance of the document being issued without their breach coming to light. Unfortunately, processing times for PRTD applications requesting H&C relief can be several months and the outcome can be difficult to predict.

A PRTD refusal is considered to be a determination that the client has breached the residence obligation.

9. Client is found to have breached the residence obligation

If a client files an application for a PR card in Canada, and an officer determines that they do not meet the residence requirement and do not merit H&C relief, the officer is expected to refuse the PR card and to issue a report under s.44(1) of IRPA². The matter is then sent to a Minister's Delegate

² "If the officer is satisfied, on the balance of probabilities, that the applicant may be inadmissible for not complying with A28 (and insufficient H&C considerations exist to overcome any breach of the residency

review to make a final determination. If the Minister's Delegate determines the residence requirement has not been met (including that there is H&C relief is not merited), then a removal order is issued.

For a client outside Canada, a determination flowing from a PRTD application that they have not met the residence requirement results in a loss of permanent resident status (s.46(1)(b) of IRPA).

A client who has received a negative residence obligation determination can appeal this decision to the IAD. The appeal is filed pursuant to s.63(3) for a removal order issued in Canada, and pursuant to s.63(4) for a residency obligation decision made outside Canada.

As long as the appeal is filed within the prescribed timelines (30 days for a removal order appeal and 60 days for an appeal from the decision of a visa officer, see s.16(b) and (c) of the *Immigration Appeal Division Rules*), the person retains their status as a permanent resident until the appeal is resolved.

If the client is outside Canada, but has been physically present at least once in the year before applying for a PRTD, they can be issued a PRTD to allow them to return to Canada (s.31(3)(c) of IRPA).

If the client is in Canada or returns to Canada and has filed their IAD appeal, they can be issued a PR cards valid for one year while they wait for their appeal to be resolved (s.54(2) of IRPR).

obligation), the officer **will** prepare a report made under A44(1)." [emphasis added]
<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/card/complex.html>

Permanent Resident Cards and Permanent Resident Travel Documents

Aisling Bondy, Barrister &
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Overview

1. Confirmation of Permanent Residence document
2. PR Card Overview
3. Initial PR Card Issuance
4. PR Obligation Requirement
5. Renewing a PR card – overview
6. Renewing a PR card - client is in Canada
7. Renewing a PR card and PRTDs – client is out of Canada
8. What if client is determined to have breached the PR residency obligation?

Confirmation of Permanent Residence document

- Issued upon being landed as a permanent resident
- Has changed a LOT over the years
- Not referenced in the Act
- Treated as valid proof of permanent resident status

CONFIRMATION OF PERMANENT RESIDENCE

Family name: TEST
Given name(s): JOHN
Date of birth: 1955/03/03
Sex: MALE
Citizenship: UNITED STATES OF AMERICA
Document no.: T000000007

PERSONAL DETAILS: PA
Date of entry: 2015/01/01
Height (cm): 180 cm
Weight (kg): 75 kg
Place of birth: NEW YORK
Eye color: BLUE
Last entry date: 2015/01/01
Country of issue: UNITED STATES OF AMERICA
Expiry date: 2020/01/01

APPLICATION DETAILS
Issued on: 2015/01/01
Category: PR
Residence program: PR
Conditions: 100-100
Valid to: 2020/01/01
City of issue: TORONTO
Right no.: 100-100

REMARKS
I hereby certify that the above information is true and correct and that I fully understand the conditions imposed.

Signature Officer: _____ Date: (YYYYMMDD) _____
Signature: _____ Date: (YYYYMMDD) _____

Canada

PR Cards: An Overview

- Proof of status, but not status itself (i.e. client doesn't lose PR status if their PR card expires without being renewed)
- Permanent residents are entitled to be issued a PR card (IRPA s.31(1))
- For a person in Canada, a valid PR card creates a presumption they are a permanent resident (IRPA s.31(2)).
- A PR card is issued with a validity of five years (IRPR s.54(1)), except in some circumstances (IRPR s.54(2))



Initial PR Card Issuance

- IRCC is required to automatically issue a PR card to a person after they have been landed (IRPR s.53(1)(a))
- Processing times can vary dramatically over time and case by case
- What to do if client doesn't receive their initial card within standard processing times?
 - Send a message via webform
 - Have client call IRCC Call Centre at 1-888-242-2100
- What if client needs to travel before PR card is issued? (will address this question later)
- Practice tip: consider structuring retainer to not cover any services once client is landed as a PR, including issuance of initial PR card

Residence Obligation: An Overview

- In any five-year period, permanent residence must meet residency obligation requirement for at least 730 days in one of the following ways:
 1. Being physically present in Canada (IRPA s.28(2)(a)(i))
 2. Outside Canada accompanying a Canadian citizen spouse or common-law partner or, in the case of a child, their parent (IRPA s.28(2)(a)(ii))
 3. Outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province (IRPA s.28(2)(a)(iii))
 4. Outside Canada accompanying a permanent resident spouse, common-law partner or parent employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province (IRPA s.28(2)(a)(iv))
 5. Referred to in regulations providing for other means of compliance (IRPA s.28(2)(a)(v))
 6. Granted H&C relief (IRPA s.28(2)(c))

Residence Obligation

- Before advising clients on exceptions to residence obligation, must have a thorough knowledge and understanding of:
 - IRPA s.28
 - Relevant regulations (IRPR s.61 and 62)
 - Operational Manuals
 - IAD jurisprudence

Residence Obligation

- A person who has been a PR for less than five years can meet residence obligation by demonstrating they will be able to meet the obligation within the five-year period after becoming a permanent resident (IRPA s.28(2)(b)(i))
- For a person who has been a PR for over five years, IRCC can only look at the five-year period immediately preceding their determination (IRPA s.28(2)(b)(ii))
- There is no provision allowing for forward-looking residency obligation review by IRCC – so **very** important PR client gets proper advice before relocating abroad and relying on one of the exceptions to physical presence in Canada

Renewing a PR card – general requirements

- PR card application must be made inside Canada (IRPR s.55(2)) and card will only be provided or issued in Canada (IRPR s.55(1))
 - IRCC can require the applicant to attend at a specific time and place to retrieve the card, failing which, the card can be destroyed after 180 days (IRPR s.58(3))
- Signing application
 - Applicant aged 18+: must sign own PR card application (IRPR s.57(1))
 - Applicant aged 14 – 17: applicant and parent must sign
 - Applicant aged 13 or younger: parent must sign
- IRCC is obligated to issue PR card if all requirements are met (IRPR s.59(1))

Renewing a PR card – client is in Canada

- Client meets residence requirements: apply for a new PR card (IRPR s.53(1)(b))
- Client does NOT meet residence requirement
 - WAIT until they meet the requirement, even if this is after their PR card expires and/or after a significant breach of the residency obligation
 - Apply and request H&C relief, but this approach is very risky and can result in loss of permanent resident status

Renewing a PR card – client is out of Canada and meets residence obligation

1. Apply from outside Canada and re-enter if requested to retrieve the card
 - How to re-enter Canada without a valid PR card?
 - Permanent residents at a port-of-entry have a right to be readmitted to Canada (IRPA s.19(2))
 - Can get to a port-of-entry by foot or private vehicle from the US without requiring a PR card
2. Re-enter and apply for card from within Canada
3. Apply for a Permanent Resident Travel Document (PRTD)
 - A person outside Canada without a valid PR card is presumed not to be a permanent resident (IRPA s.31(2)(b))
 - PR is entitled to a PRTD issued outside Canada if, following an examination, they are determined to have met the residence requirement (IRPA s.31(1))
 - Application times **can** sometimes be quick if client clearly meets the residence requirement, especially if they were recently landed as a permanent resident

Renewing a PR card – client is outside Canada and does not meet the residence requirement

1. Get to border and re-enter Canada

- Border official may refer client for residency review within Canada, but is required to readmit a PR even if the official believes the PR has breached the residence requirement
- This can lead to an inland residency obligation review
- (if client has valid PR card but has breached residence obligation, they can just travel to and re-enter Canada in the normal way)

Renewing a PR card – client is outside Canada and does not meet the residence requirement

2. Apply for a PRTD

- Visa office **must** conduct a residency obligation review before issuing PRTD (IRPA s.31(3))
- Client can request H&C relief (IRPA s.31(3)(b))
- Processing times can be VERY slow if requesting H&C relief and likelihood of success difficult to predict
- If PRTD is refused, this is considered a determination that client has breached the residency obligation and PR status is lost unless they file an appeal to the IAD

What if client is found to have breached the PR residency obligation?

- Procedure in Canada:
 - S.44(1) report
 - Minister's Delegate Review and removal order
- Procedure out of Canada: determination is made by the visa office, which results in loss of PR status (IRPA s.46(1)(b)).
- Client can file an appeal of the decision to the IAD (IRPA s.63(3) for in Canada determination or (4) for out of Canada determination)
- Client remains a PR while IAD appeal is underway
 - In Canada: can apply for a new PR card, which will usually be issued for one year
- Out of Canada: PRTD can be issued only if the client was physically present in Canada at least once in the year before applying for a PRTD (IRPA s.31(3)(c))