Between Legitimate Refugees and Deportable Subjects: (In)admissibility in Canadian Immigration Law

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Abstract

While legal discourse commonly interprets 'admissibility' as 'inadmissibility' within Canadian immigration law and policy, this research explores 'admissibility' as a concept of its own and how it is implemented through Canadian immigration practice. The *Immigration and Refugee Protection Act* provides concrete terms in which individuals are deemed inadmissible to Canada, however the same cannot be said for an individual being found admissible and nowhere in the Act is admission to the Canadian state guaranteed simply from not meeting such terms. This depicts a disparity between an individual being found not to be inadmissible and actually being admissible to Canada – underscoring the importance to examining how 'admissibility' is determined, in addition to 'inadmissibility', within the field of immigration. Specifically, this project addresses the following research question: How is admissibility constructed and framed within Canadian immigration law and policy? Two case studies – 1) The security certificate mechanism and 2) Canada's recent response to the Syrian refugee crisis – of opposing immigration objectives – determining individuals to be inadmissible and admissible, respectively – are analyzed, though it is important to recognize that the construction of admissibility takes place through a variety of sites and processes, most of which are less public than the two cases. To gain an informed understanding of admissibility, this project employed a multi-phase research process that collected data from three sources: 1) Access to Information data from governmental bodies, 2) Open source data from online government websites, and 3) Data from interviews conducted with practitioners in the field of immigration law. Admissibility emerges as a fluid construct that is framed and circumscribed by 'security' – and due to its political nature, the terms surrounding the admissibility of a non-Canadian citizen is susceptible to influence, suggesting multiple ways or "points of admissibility" in which an individual's admissibility can be constructed. Additionally, I provide a detailed review on my experience with the Access to Information process.

Keywords: immigration law, refugee policy, security certificates, Syrian refugee crisis, construction of non-citizens, admissibility, inadmissibility, security, politicization of immigration, Access to Information

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Introduction

This project pertains to 'admissibility' in Canadian immigration law. Existing literature surrounding the topic of immigration law and policy speaks predominantly to issues concerning exclusion, inadmissibility, and deportation, and it appears that admissibility as a concept, is not readily studied as an object of socio-legal scholarship. This research seeks to explore and understand the role that admissibility plays within Canadian immigration law and policy. It should be acknowledged prior to continuing, that the concept of 'admissibility' is generally synonymous with 'inadmissibility'[1] within the practice of Canadian immigration law. For the purposes of this research project, I sought to explore 'admissibility' as a concept of its own, one that has not been legally defined within Canadian immigration law. While there are prescribed terms of inadmissibility for individuals seeking to gain entry into Canada, not meeting these terms does not necessarily result in an automatic admission into Canada (and this is discussed in later chapters) – suggesting that there exists a gap between determining someone to be not inadmissible and actually being admissible.

In 2014, I learned about the existence of security certificates for the first time in a criminology class. Certificates are a rarely used, but (in my opinion) highly unethical, immigration removal procedure which allow for the indefinite detention of a suspected terrorist (a detailed overview of security certificates is provided in chapter 2). Initially I did not think much of it – if the government has proof that an individual has ties to terrorist activity then sure, interview the individual and if they elect to do so, let them leave the country. Then I found out that the accused individuals are not even told why and how they are allegedly linked to terrorism – rather the entire process is conducted in secrecy from the suspected individual. The certificate is issued in secret, the evidence supporting the certificate is kept secret from the individual, and even the precise nature of the allegations against them are kept secret - even when they are arrested. Even worse, the majority of the five individuals who were subject to the security certificate process at the time, known as the Secret Trial 5 (discussed in detail in chapter 2), were previously declared to be refugees by Canada[2]! How is it that the Canadian government can in one breath, legally find these individuals to be refugees – those who should be offered the most protection – and in another, purport them to be terrorists or terrorist associates? If these men were really terrorists, why not charge them with the crime? If these men were truly terrorists, then why admit them to the country in the first place?

Many more questions arose surrounding the implementation of the security certificate mechanism however it always came back to one question in particular – why would Canada deem these individuals admissible in the first place? The premise that someone could be detained indefinitely and then deported for an act they had not committed with little to no recourse simply because the act did not fall under the purview of the *Criminal Code* of Canada seemed to me, completely ridiculous – and

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[1] Immigration lawyers typically equate 'inadmissibility' with 'admissibility' within the practice of immigration law. Inadmissibility is often encountered via criminal allegations by immigration lawyers and the *Immigration and Refugee Protection Act* (IRPA) defines the terms in which a foreign national may be found inadmissible to Canada under Division 4 (see Appendix A-1). See also Peter Edelmann, "Update on Criminal Inadmissibility" (2013) (The Canadian Bar Association), online: < http://www.cba.org/CBA/cle/PDF/IMM13_paper_edelmann.pdf>.

[2] I refer to Canada in its legal and authoritative capacity – as the "Canadian state" – however where certain government institutions are in question, they will be specifically named.

the secrecy surrounding the entire process, completely arbitrary[3]. It sent the message that Canada regarded foreign nationals as potential terrorists and criminals who are always potentially subject to deportation – yet Canada claims to espouse values of acceptance, diversity and multiculturalism.

In 2015, Bill C-24 came into effect. It allowed for the revocation of Canadian citizenship – without any grounds to appeal - for dual citizens under certain circumstances including fraud or false representation (even in the case of the misrepresentation being unknowingly made), conviction of national security offences and terrorism offences, and engagement in armed conflict against Canada[4]. Up until that point, I had always thought of citizenship as an everlasting status where if one has it, one has it for life – until they for any reason wished to renounce it[5]. While I understood the sentiment in not wanting terrorists residing in the same land, I did not understand why Canadian citizenship could be so easily stripped from someone who had worked hard to obtain it, and by someone – the state – who had taken the effort and time to ensure that the citizen was worthy of the title. If these Canadian individuals were terrorists, why not convict them in criminal court, as those who were born into Canadian citizenship – who did not have to prove and pledge themselves to the Canadian state - would be? In other words, why not treat them as Canadians instead of turning back on them? It is no secret that Canada has had homegrown terrorists, yet no one has yet to see any of them being deported to another country that would be part of their ancestral origin. One might note that Canada admits many immigrants and refugees, however it would appear that citizenship and immigration laws seem to make 'admissibility' a highly discretionary process while creating multiple mechanisms that could facilitate determinations of inadmissibility, denial, and deportation of non-Canadian citizens – and we see this reflected in laws which grants the Canadian state the ability to retract their original positive determinations[6].

Initially, I understood immigration law and policy to operate within a legally determined domain, governed by clear and unambiguous rules in conformity with the rule of law. This understanding would mirror what Naffine and Comack refer to as the "Official Version of Law" – a legal system in which social conflicts are allegedly resolved impartially, neutrally, and objectively[7]. What is often overlooked, is that those who write the law, and those who enforce it, are the very humans who engage in the conflicts that require resolution – thus as much as the law is purported to be absolute in its fairness and justice, it more likely than not, is driven by those in power (who have the authority to create laws), and oftentimes politicized in its conception and implementation despite its appearance of impartiality. This comports with how Comack notes that the official version of law is a falsehood and ideological in nature – intended to legitimize a political, rather than purely legal, system – as the creation of law derives from particular perspectives and ideas of how human nature and society

[3] I do not mean to say that there are no legitimate cases of terrorism or terrorist affiliation, however there needs to be transparency – claiming "national security reasons" for withholding relevant information makes the security certificate seem as if it was completely made up and that the targets of these certificates were randomly chosen to make a point in furthering some kind of political agenda.

[4] CTV News, "What dual citizens need to know about Bill C-24, the new citizenship law", *CTV News* (17 June 2015) online: < http://www.ctvnews.ca/canada/what-dual-citizens-need-to-know-about-bill-c-24-the-new-citizenship-law-1.2426968>.

[5] I was also under the impression that if one is granted an immigration status – permanent residency specifically – that status would also be permanent. However, I was wrong about that as well.

[6] The *Citizenship Act* and IRPA have provisions that revoke citizenship from dual citizens (see note 4) and declare conditions in which an individual will be found inadmissible to Canada even after they have already been found to be 'admissible' to Canada.

[7] Elizabeth Comack et al, *Locating Law: Race/Class/Gender/Sexuality Connections 2nd Edition* (Halifax, Fernwood Publishing, 2006).

should be, which oftentimes results in inequalities within the law itself[8]. In part, this project was motivated by a desire to understand the "Official Version of Law" pertaining to admissibility within Canadian immigration law and policy – and I found that the 'reality' of the official version of law noted by Comack applies to Canadian immigration law as well.

This is readily demonstrated through immigration, as well as citizenship, laws as they only present laws surrounding the inadmissibility and exclusion of foreign nationals (particularly the security certificate mechanism), but not the admissibility and inclusion of foreign nationals[9]. It seems then, with clear conceptions of who is inadmissible and who is excludable, that the law is biased against foreign nationals who seek to enter and remain in Canada - this calls into question who Canada wants to grant access to its land. With so many resources to facilitate the expulsion of foreign individuals, there is the implication that the Canadian state is seeking a specific profile of individuals to accept in its Canadian membership – consequently deeming them as admissible. It is important then, to understand how admissibility – who can enter and who must leave Canada – is conceived within Canadian immigration laws, policies, and practices, as those who are permitted to enter into Canada are those most likely to be granted citizenship – particularly given the present travel ban in the United States[10]. Due to Canada's geographical relation to the United States, the ban has impacted upon Canada's immigration system since it came into effect as there have been increased rates of refugees crossing the Canada-United States border, outside of formal entry points. Now more than ever, it would be important to understand and have a consistent or "official" way to handle a potential influx of migrants – and this is the objective that motivated this study.

Specifically, I sought to answer the following research question: How is admissibility constructed and framed within Canadian immigration law and policy? To realize this objective, I examined how admissibility is conceptualized within immigration practices – specifically, the processes behind the determination of a non-Canadian citizen being (in)admissible to Canada. Additionally, I discuss potential implications that this conceptualization may have on immigration laws and policies. For this project, I used as comparative case studies two Canadian immigration practices of opposing objectives, the security certificate mechanism (to find individuals inadmissible) and Canada's recent response to the Syrian refugee crisis (to find individuals admissible), as my points of entry into conceptualizing admissibility within Canadian immigration law and policy – and I provide a descriptive overview of these two cases in chapter 2 of this paper.

Scholarly literature within this topic area, mirroring immigration law and policy itself, focuses on exclusion and inadmissibility, (in)security, and the politics thereof rather than admissibility. Specifically, there is a wealth of literature surrounding the construction of non-citizens and refugees and how their treatment within host states is a result of their conceptualization. I review this literature

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[8] *Ibid.*

[9] While the *Citizenship Act* of Canada does have provisions that state that foreign nationals may be granted citizenship, it does not provide for guarantees that citizenship will be granted in the named circumstances, nor does it guarantee an indefinite status of citizenship after having acquired it – in this sense, I refer to inclusion as both continued and guaranteed inclusion.

[10] For general information regarding the travel ban, see: BBC News, "Trump's executive order: Who does travel ban affect?", BBC News (10 February 2017), online: <http://www.bbc.com/news/world-us-canada-38781302>; Executive Orders, *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States* (2017), online: WhiteHouse.gov <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/>.

(also in Chapter 2) to inform my approach to the framing and construction of admissibility because how non-citizens are viewed can be a reflection of how a host state decides to regulate them into the country. In particular, both case studies involve juridico-political claims-making, and construct foreign nationals in particular identities. In addition, I review the merits of engaging in a social constructionist perspective for this research project. In adopting a social constructionist perspective, one recognizes the significance of societal interactions and the role that they play in everyday processes[11].

Of particular interest with these two cases however, is that despite their opposing objectives, both concern similar themes that affect how foreign nationals – specifically non-citizens and refugees - are processed into Canada. These themes include security – where there are concerns of whether or not non-citizens are 'safe' enough to allow into Canada – inclusion and exclusion – where certain profiles of non-citizens serve as criteria for their inclusion (women and children in the case of the Syrian refugees) and exclusion (Muslim males in the case of the Secret Trial Five) into Canada – and (il)legality – where non-citizens may be treated illegally (afforded lesser rights and protections) and seen as illegal subjects because they are not legal subjects of the Canadian state, despite the fact that they were admitted into Canada legally. Ultimately, the determination of admissibility of a foreign national (with respect to these two case studies) becomes a quest to identify who is the "legitimate refugee" and who remains, a "deportable subject".

Since there is no study that has explored the same research question as I have, there was no ready-made template to follow. Instead, I drew on three sources of data - interview data (collected from practicing immigration lawyers), Hansard transcripts (parliamentary debates), and Access to Information (ATI) records (government documents) – in an attempt to achieve a well-rounded account of how admissibility is constructed and framed experientially, officially, and practically. In chapter 3, Methods, a detailed report of how I collected and analyzed my data is provided – particularly with my collection of ATI records. While the least amount of data was received from this avenue, the ATI process became a noteworthy learning experience on its own – thus I ask for your indulgence throughout the 13 pages that depict the path of my ATI journey.

In the Findings chapter, I explore the political nature behind determinations of admissibility (and immigration in general) through my interview sessions and my review of the Hansard material. The immigration process, for refugees in particular, was revealed to be a highly ambiguous and discretionary system in which foreign nationals must continuously navigate through should they wish to maintain their immigration status. The role in which security plays in the admissibility of a foreign national is identified as a precondition that cannot be overwritten. Finally, different ways in which admissibility can be conceived within the immigration context are identified.

My findings led me to conclude that "admissibility" is fluidly constructed, while also being framed and circumscribed by "security". This is discussed in further detail in the final chapter - the Discussion & Conclusion chapter – where the politicization of admissibility renders it a malleable construct open to influence – suggesting the existence of multiple ways in which admissibility can be granted - and the prevalent role of security through both case studies delineates its capacity in framing

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[11] Nick Lynn & Susan Lea, "'A phantom menace and the new apartheid': The social construction of asylum-seekers in the United Kingdom" (2003) 14:4 *Discourse & Society* 425 (SAGE Publications).

admissibility narratives. A discussion surrounding the implications of this finding is also provided and I end my thesis with a few observations which I found worth noting and a final note on the construction of law.

Literature Review

This chapter will open with a brief discussion of citizenship and immigration in general, then move to provide descriptive overviews of the security certificate mechanism and Canada's recent response to the Syrian refugee crisis. As there is no literature that speaks directly to admissibility as a concept of its own, I draw upon literature that speaks to the social construction of foreign nationals, in particular non-citizens and refugees, because how foreign nationals are perceived by the Canadian state and public has the potential to affect – and already has if we consider citizenship revocation law and policy in Canada, and the travel ban that was issued in the United States – immigration admissibility and inadmissibility processes (and vice versa) and how they are enforced. In particular, both case studies involve juridico-political claims-making and explicit efforts to construct particular identities for foreign nationals. Specifically, an overview of the social constructionist perspective will also be provided to discuss the merits of utilizing the approach in this type of research, and then move into an exploration of existing constructions of non-citizens. Throughout this chapter important emerging themes will also be highlighted at the end of each overview. It is important to note that the literature utilized in this research is primarily socio-legal rather than criminological. However, at the same, the processes studied in this research have the potential to impact upon criminal law and policy.

Citizenship and Immigration

The concept of immigration presupposes the capacity to identify citizenship[12]. But what is citizenship? Literature tells us that citizenship is a political status – an authentic political identity that bears specific rights, protections, and freedoms[13] - designated by the sovereign state, granted only to those who are worthy or deserving while those who are not, are either forcefully expelled from the state's land or physically confined[14]. The notion of the "worthy" or "deserving" illustrates citizenship as membership to a state's nation – and with it denotes exclusivity. This implicates citizenship as a process of exclusion where certain groups and/or individuals are designated and constructed as unworthy or undeserving of the Canadian title – and consequently inadmissible to the Canadian state.

Citizenship and immigration in Canada are presently governed by the *Citizenship Act* (R.S.C., 1985, c. C-29) [*Citizenship* Act] and the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) [IRPA]. While both laws have enabled the welcoming of foreign nationals into Canada and their subsequent membership into the Canadian nation, the objectives of both laws appear to seek to do the opposite – in particular, immigration law is predicated on discrimination against non-Canadian citizens, and a need to build upon Canada's economic prosperity and its dignified nation. The history of

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[12] Elspeth Guild, *Security and Migration in the 21st Century* (Cambridge, UK: Polity Press, 2009).

[13] Peter Nyers, *Rethinking Refugees: Beyond States of Emergency* (New York: Routledge, 2006).

[14] Guild, *supra* note 12; Nyers, *supra* note 13; Anna Pratt, *Securing borders: Detention and deportation in Canada* (Vancouver: UBC Press, 2005).

Canada's immigration system over the years, encompasses the racialization of immigration law[15], the politicization of immigration law[16], and now the securitization of immigration law – where concerns for the security of Canada have intensified, along with the need to control and/or deport "illegal" immigrants, culminating in the birth of Bill C-11, the *Immigration and Refugee Protection Act* in 2001[17]. Citizenship in Canada has followed a similar path as well: the racialization/xenophobia of citizenship[18], the "liberalization" of citizenship law in 1976[19], and the securitization of Canadian citizenship – which gave way to the enactment of Bill C-24, the *Strengthening Canadian Citizenship Act* (S.C. 2014, c. 22)[20].

For those (foreign nationals) who are seeking membership, the process does not provide for any guarantees – other than the guarantee of exclusion[21]. Exclusions of the fraudsters, criminals, national security risks and engagement in armed conflict from national membership are pronounced through conditions of the *Citizenship Act* and even predetermined through the immigration process as the unworthy and underserving are either removed or not even granted access to state soil. No where in the Act is an individual's citizenship guaranteed indefinitely after having acquired it – instead there are guarantees for loss of citizenship. In effect, foreign nationals are put up against a double standard where they must present themselves as nationals to the sovereign state - following its rules, customs, and meeting its expectations – however if at any time they do not, they are subject to expulsion. This suggests that citizenship is solely exclusive to those who acquire it through birthright – and those who do not are only admitted to Canadian membership on a conditional or temporary basis. It is no surprise then, that immigration functions in a similar manner.

The Security Certificate Regime

Generally speaking, when a non-citizen in Canada is facing a removal (deportation) order they are entitled to an admissibility hearing – where individuals have the opportunity to make their case before an adjudicator speaking to the evidence and/or reasons against their admission to Canada – before the Immigration and Refugee Board, and if they are detained for the duration of their removal

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15 Where European (white) immigrants were favoured and ethnic minorities exploited to fulfil labour needs.

16 Where a more "liberal" and seemingly non-discriminatory system was implemented to curry political pressures to eliminate racial discrimination.

17 Lisa Marie Jakubowski, ""Managing" Canadian Immigration: Racism, Ethnic selectivity, and the Law" in Comack et al, supra note 7.

18 Where initially British subjects held special privileges and citizenship to another country resulted in the arbitrary revocation of Canadian citizenship.

19 Where citizenship law became more "equitable", recognizing dual citizenship, eliminating the privileges of British subjects and many of the provisions for loss of citizenship under the previous Act, and amendments which included provisions that granted citizenship under more circumstances. It is important however, to keep in mind that citizenship revocation for foreign nationals on grounds of fraud and misrepresentation already existed prior to 2014 amendments – calling into question whether or not the *Citizenship Act* became more equitable to everyone subjected to it.

20 This Act allowed for increased conditions of citizenship revocation from dual citizens without grounds to appeal. Government of Canada, *History of citizenship legislation,* online: < http://www.cic.gc.ca/english/resources/tools/cit/overview/hist.asp>; The Canadian Press, "A look at the complex evolution of Canada's citizenship laws over the years", *News 1130* (18 September 2016), online: <http://www.news1130.com/2016/09/18/a-look-at-the-complex-evolution-of-canadas-citizenship-laws-over-the-years/>; CTV News, *supra* note 4.

21 Generally speaking, there are three ways in which citizenship is granted by the state to an individual, the first of which by birth – on state soil – the second through inheritance of citizenship – either from a parent or legal guardian holding the relevant citizenship – and the third through naturalization, which is achievable through immigration to the state. Those who obtain citizenship through birth or inheritance are not required to apply for citizenship, only those (foreign nationals) who obtain citizenship through naturalization do. See Guild, *supra* note 12; *Citizenship Act*. For the purposes of this paper, the citizenship that I speak to will be with respect to foreign nationals, unless otherwise stated.

process, their detention is subject to review regularly[22]. The security certificate mechanism however, operates much differently from a standard removal process in order to ensure the security of Canada. In particular, security certificates operate on an exceptional level, where its provisions allow for constitutional violations of both non-citizens and permanent residents, despite having been legally admitted into the Canada by the Canadian state.

Under Division 9, section 77 of the IRPA, security certificates serve as a removal process against non-Canadian citizens and permanent residents who have been deemed inadmissible due to security concerns, having violated human or international rights, or involvement in serious or organized criminality[23]. Although the legislation behind the security certificates has existed since 1978, from the *Immigration Act* prior to the enactment of the IRPA, they were only first used in 1991 and are rarely used[24]. It was not until the early 21st century where increased public recognition of the security certificates occurred as a result of five Muslim men - Mahmoud Jaballah, Mohammad Zeki Mahjoub, Hassan Almrei, Mohamed Harkat, and Adil Charkaoui - who were detained under these certificates, now known as Canada's "Secret Trial Five" (ST5). Though security certificates were not created as products of post-9/11 anti-terrorism laws, they function as a means to ensure national security, a pre-emptive strike against terrorism, albeit in a controversial way, and have undergone significant revision as a result[25].

The security certificate process begins with the Canadian Secret Intelligence Service (CSIS), which conducts investigations on individuals it believes to jeopardize the security of Canada. Should CSIS come to the conclusion that the suspected individual constitutes a threat from their investigation, they share that information with two government Ministers, the Minister of Citizenship and Immigration and the Minister of Public Safety, who then sign off on a security certificate if they find it reasonably warranted[26].

The matter is then reviewed by a federal court judge who makes the determination on whether or not the certificate was reasonably granted[27] – should it be found unreasonable, the certificate is quashed; if reasonable, the certificate serves as conclusive evidence as to the suspected individual's status of admissibility, and the subject of the security certificate may be arrested and detained without being formally charged or processed through the criminal justice system. All of which remains secret to the suspected individual, the charge and evidence against the individual, the trial, judgement, and sentencing, all carried out and concluded against the individual, all without their knowledge.

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[22] Audrey Macklin, "The Canadian Security Certificate Regime: CEPS Special Report/March 2009" (2009) online: <http://aei.pitt.edu/10757/1/1819.pdf>. It is worth noting however, that admissibility decisions can also be made by CBSA officers.

[23] See Appendix A-2 "Division 9 of the IRPA".

[24] Mike Larsen and Justin Piché, "Exceptional State, Pragmatic Bureaucracy, and Indefinite Detention: The Case of the Kingston Immigration Holding Centre" (2009) 24:2 Canadian Journal of Law and Society 203 (Project MUSE).

[25] *Ibid*; *The Secret Trial 5*. Directed by Wala, Amar, Noah Bingham (Producer), et al. Toronto, Ontario: Secret Trial 5 Production Inc, 2015.

[26] Encompassed under section 77 of the IRPA. Refer to Appendix A-2, pages 57-58. See also Evaluation Directorate of Public Safety Canada, *Final Report: 2009-2010 Evaluation of the Security Certificate Initiative* (Public Safety Canada, 2010) online: Public Safety Canada <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/vltn-scrt-crtfct-2009-10/index-eng.aspx#a2.1>; Macklin, *supra* note 22; Larsen and Piché, *supra* note 24; Wala et al, *supra* note 25.

[27] Realized through section 78 of the IRPA, refer to Appendix A-2, page 58.

Canada however, due to domestic and international laws cannot deport someone to face a substantial risk of torture, unless the *Suresh* exception is applied - which would grant the contrary even in the face of *refoulement*[28]. However, if an individual has established that there is a risk of torture upon return to their country, they are entitled to know the case against them and to have the opportunity to present evidence against their removal from Canada[29]. This relates to the controversy and criticism surrounding the use of security certificates as certificate detainees may be held indefinitely, without being charged with any crime, if they face a substantial risk of torture upon returning to their country – which was the case for the ST5, especially when the majority of them were given refugee status in Canada[30].

In February 2007, it was found by the Supreme Court of Canada that security certificate procedures were unconstitutional largely due to violations of the *Charter*, particularly s. 7 in relation to an individual's right to a fair hearing due to the secrecy of the process in *Charkaoui v. Canada (Citizenship and Immigration),* [2007] 1 S.C.R. 350 (also often referred to as *Charkaoui I)*. However, the Court suspended its judgement in striking down the certificate process for a year, allowing the Canadian government time to amend the IRPA and in hopes of providing a remedy to the Charter violations. The proposed remedy was Bill C-3 (now encompassed in section 85 of the IRPA), a provision which allowed for the use of special advocates[31] – persons from a small list who have the security clearance to access the secret evidence that is relied upon in issuing a security certificate – who act in the interest of the individual held under a certificate.

The government however, waited until the end of the legislative period to introduce Bill C-3 and was able to have it passed, arguing that the national security of Canada would be jeopardized if the bill was not passed quickly, and was passed in February 2008 despite the fact that the bill itself was considered to be flawed and unconstitutional[32]. Although special advocates were able to access secret evidence and legally represent certificate subjects (without being their actual lawyer[33]), they were not allowed to communicate with or take instruction from their clients. This amendment had in essence, changed nothing to rectifying the fact that certificate detainees still did not have access to the case against them.

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[28] Larsen and Piché, *supra* note 24. *Refoulement* is commonly known as 'removal to torture'. As Canada is a signatory to the UN Convention Against Torture, we are unable to deport a foreign national back to their country of origin if they would be at risk of torture, cruel and unusual treatment, punishment, or persecution. See also section 115 of the IRPA and *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3 [Suresh] at para 129.

[29] Macklin, *supra* note 22.

[30] Wala et al, *supra* note 25*;* Colin Perkel, "Court finds designation of Egyptian man as security threat unreasonable", *CBC News* (24 May 2016), online: <http://www.cbc.ca/news/politics/mahmoud-jaballah-security-certificate-1.3598337>; Colin Perkel, "Court ruling upholds security certificate imposed on Mohamed Mahjoub", *The Globe and Mail* (25 October 2013), online: <http://www.theglobeandmail.com/news/national/court-ruling-upholds-national-security-certificate-imposed-on-mohamed-mahjoub/article15090863/>; Mike Larsen, Sophie Harkat & Mohamed Harkat, "Justice in Tiers: Security Certificate Detention in Canada" (2008) 17:2 Journal of Prisoners on Prisons 31; Ben Morris, "The Story of Mohammad Mahjoub" *The Huggington Post Alberta* (14 April 2013) online: <http://www.huffingtonpost.ca/2013/04/10/mohammad-mahjoub-twelve-year-tour_n_3053889.html>

[31] Refer to Appendix A-2, pages 63-66.

[32] Maude Barlow, Roch Tassé & Sameer Zuberi, "Rushing injustice through the Senate", *The Star* (13 February 2008), online: <https://www.thestar.com/opinion/2008/02/13/rushing_injustice_through_the_senate.html>; Larsen and Piché, *supra* note 28; Wala et al, *supra* note 29.

[33] Section 85.1(3) of the IRPA, refer to Appendix A-2, page 64.

However, this is not to say that special advocates made no contribution to the defense of certificate detainees as they possessed an invaluable right to challenge CSIS documents and request access for additional files – which ultimately contributed to the certificate against Charkaoui being rescinded since CSIS refused to produce files that the Court had ordered[34]. To date, two more security certificate cases have been quashed, the first being that of Almrei – where the certificate issued against him relied on false information – and the second, just recently in 2016, that of Jaballah – who has had three certificates issued against him, the first of which was originally found to be unreasonable as well[35].

The security certificate regime also gave way to the creation of the now closed Kingston Immigration Holding Centre (KIHC) on the grounds of Millhaven Institution from 2006 to 2011. Wala et al. (2015) and Larsen and Piché (2009) underscore the state of exceptionality in which this space, or rather, repurposed utility shed, encompassed. Because the ST5 maintained their innocence and refused to be deported due to increased risk of torture, they initially each spent over two years in provincial detention facilities, despite imprisonment sentences for provincial custody being limited to two years. Further, the men carried out extensive hunger strikes in protestation of the conditions of their detention, the longest one being 156 days by Almrei. This presented serious implications for the provincial jurisdiction, because even though certificate detainees were technically under federal custody, if any of the detainees died or became seriously ill as a result, the provinces would be considered responsible regardless.

Recognizing this, the KIHC was created as a means to circumvent this situation, where the powers of correctional authority and immigration authority (through the Canada Border Services Agency) could be transferred yet maintained at the same time at Millhaven – while federal authority presided outside of the KIHC, correctional authority remained maintained inside the structure of the KIHC. Further, since immigration detention is civil and preventive in nature, certificate detainees are denied many of the rights that convicted offenders are afforded in prison – such as rehabilitative programs, educational and recreational programs – while under much stringent restrictions, which could be argued to be torture itself, hence its nickname, "Guantanamo North". In actuality, the KIHC functioned as a legally accepted space of legal exceptionality that not only allowed for the discrimination against individuals of a certain profile – male and Muslim, which made them potentially of use to terrorist organizations[36] – but also provided a physical space which served to formally legitimize its illegality.

Although certificate detainees were eventually granted conditional release from the KIHC, they were given excessively strict bail conditions that involved constant supervision of the detainee and their family - so excessive that in 2009, Mahjoub made the decision to return to custody to spare his family of his conditions of release, though he was released later the same year[37]. To date, both Mahjoub and Harkat still reside in Canada with security certificates issued against them, with Harkat recently facing

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[34] Wala et al, *supra* note 25.

[35] *Ibid*; Perkel (24 May 2016), *supra* note 30.

[36] Sherene Razack, *Casting Out: The Eviction of Muslims From Western Law and Politics* (Toronto: University of Toronto Press, 2008).

[37] Perkel (25 October 2013), *supra* note 30.

removal on the recommendation of the CBSA[38]. In 2014, the Supreme Court of Canada found the security certificate regime to be constitutional and it presently remains so[39]. The decision signified a harrowing reality to how the Canadian government truly functions, where due process and rights may be suspended, and an individual's life ruined as a result, based on mere suspicions that they *might* be a terrorist.

Canada's Response to the Syrian Refugee Crisis

In 2011, conflict arose between the government of Bashar al-Assad and various forces in Syria, causing massive, ongoing displacement of its population both within Syria and to neighbouring countries that have provided protection to Syrian refugees including Lebanon, Jordan, Turkey, Iraq and Egypt[40]. Ostrand[41] speaks to the financial and social hardships experienced by these neighbouring countries as a result of the Syrian refugee crisis - particularly with increased rates of poverty, reduced resources to ensure shelter for refugees - and urges for increased international contribution and support, not only financially but spatially as well. Although Germany, Sweden, the United Kingdom, and the United States have contributed to the resettlement of Syrian refugees, it is maintained that more can be done from the international communities, as responses from the above are modest in comparison to that of the neighbouring countries to Syria[42].

Canada's response to the Syrian refugee crisis to date pales in comparison to the above-mentioned countries, though its recent response under the Liberal government may suggest a greater commitment to its contribution moving forward. In 2013, the Conservative government initially implemented a program to resettle 1,500 Syrian refugees between the summer of 2013 to the end of 2014 – this goal however, was not met until March of 2015[43]. The Conservative government had also promised to accept 10,000 Syrian refugees over the course of three years in January 2015, though with the contingency that the refugees had to be persecuted religious minorities from Syria (to be mostly privately sponsored) and by November 4, 2015, less than 1,300 refugees had been resettled into Canada[44].

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38 *Ibid*; Debra Black, "Mohamed Harkat girds himself for another fight to stay", *The Star* (2 August 2016), online: <https://www.thestar.com/news/immigration/2016/08/02/mohamed-harkat-girds-himself-for-another-fight-to-stay.html>.

39 Jim Bronskill, "Facing deportation, Mohamed Harkat plans to ask government to let him stay in Canada", *CTV News* (17 March 2016) online: <http://www.ctvnews.ca/politics/facing-deportation-mohamed-harkat-plans-to-ask-government-to-let-him-stay-in-canada-1.2820814>.

40 Nicole Ostrand, "The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States" (2015) 3:3 Journal on Migration and Human Security 255 at http://doi.org/10.14240/jmhs.v3i3.51; Canadian Council for Refugees, *Canadian Immigration Responses to the Syrian Crisis – Backgrounder* (Fact Sheet) (Montreal: Canadian Council for Refugees, 2013), online: Canadian Council for Refugees <http://ccrweb.ca/en/syrian-crisis-backgrounder>.

41 Ostrand, *supra* note 40.

42 *Ibid.*

43 The Canadian Press, "5 things to know about Canada's Syrian refugee program: Canada is officially resettling more Syrian refugees than many other countries*"*, *CBC News* (29 February 2016) online: <http://www.cbc.ca/news/politics/syrian-refugees-by-the-numbers-1.3469080>.

44 Stephanie Levitz, "How Canada's timeline for resettling Syrian refugees jumped from years to months", *CTV News* (1 January 2016), online: <http://www.ctvnews.ca/politics/how-canada-s-timeline-for-resettling-syrian-refugees-jumped-from-years-to-months-1.2720551>.

The Liberal government in turn, promised to resettle 25,000 Syrian refugees by the end of 2015. Levitz[45] however, outlined concerns that arose with this ambitious promise. Concerns pertained to the terrorist attacks in Paris that led to the concern for Canada's security, the idea of resettling 25,000 refugees in a matter of weeks to Canada, and where the money to fund the process would come from. The Liberal government in turn delayed the resettlement process to February 2016 to reassure Canadians and a multi-layered security screening approach – involving names provided by the UNHCR that have met specified qualifications set by Canada, interviews with prospective candidates, examination of biometric data including fingerprints to be checked with Canadian and US databases, and identification checks and rechecks – was developed to be implemented overseas. Once the refugees arrive to Canada, they would be welcomed and processed, after which they become permanent residents[46].

The delay to February 2016 allowed for the shift to accepting 10,000 privately sponsored refugees by December 2015, and 15,000 government assisted refugees by February 2016, with a total of 25,000 government assisted refugees by the end of 2016. However, the question of where the money required would come from was not formally answered – though there was a formal request for the corporate sector to contribute financially to the process[47].

There are over 31,000 Syrian refugees who have resettled to Canada since the Liberal government came into effect[48]. Prime Minister Trudeau was applauded for this progress, however, the resettlement process has not been without its issues. Raj[49] notes that there is an urgent need for mental health resources as many of the resettled refugees may suffer from post-traumatic stress disorder as stories of torture, extreme fear, paranoia, and sexual harassment have been recounted by refugees. Language classes and adequate youth programming are also needed in order to ensure successful integration into Canada. However, the biggest issue underscored was that of financial hardship and stresses that arise from Canada's loan program.

Originally created in 1951, the loan program essentially loans refugees the money for travel costs to Canada (plus expenses) as Canada does not pay for any refugees' transportation. As a result, refugees enter Canada with a debt to be repaid with interest[50]. This places significant stress on refugees and impedes with their ability to afford basic necessities. The Liberal government as a response, made an exception to waive the loans for refugees arriving after November 4, 2015, however Lynch[51] notes

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[45] *Ibid.*

[46] Public Safety Canada (PSC), Briefing Note for the Minister: Operation Syrian Refugees (not dated); obtained through ATI request no. A-2015-00314 to PSC.

[47] Levitz, *supra* note 44.

[48] Government of Canada, *#WelcomeRefugees: Key figures* (accessed December 13, 2016) online: <http://www.cic.gc.ca/english/refugees/welcome/milestones.asp>.

[49] Althia Raj, "Senate Report Reveals 'Quiet Suffering' of Syrian Refugees in Canada", *Huffington Post* (4 July 2016) online: <http://www.huffingtonpost.ca/2016/07/04/senate-report-syria-refugees-canada-jim-munson_n_10804708.html>.

[50] Laura Lynch, "Liberal's waiving of travel costs for Syrian refugees created 2-tier system", *CBC News* (19 January 2016) online: <http://www.cbc.ca/news/canada/refugee-travel-costs-loans-1.3406735>.

[51] *Ibid.*

that the implications for this decision creates a 2-tier system of refugees – where classes among refugees are created, those who benefit from arriving after November 4, 2015, and those who continue to suffer the effects of the loans, before the Liberal Government came into effect. Similarly, Raj[52] also postulates the creation of a two-tiered system, though between Syrian refugees who are sponsored privately (who benefit from a better support system) and those who are sponsored by the government (who seem to be faring worse).

It is also worth noting that, despite having pushed back the deadline for resettling a set amount of Syrian refugees to Canada, and having already resettled over 31,000 refugees, the Liberal government has not actually been meeting its own targets in this matter. About 8,500 privately sponsored and 14,343 government sponsored Syrian refugees had arrived in Canada as of February 2016, and approximately 16,500 government sponsored Syrian refugees have arrived in Canada as of September 25, 2016[53]. This suggests that the government of Canada may not be as equipped or as willing to assist in their own response to the Syrian refugee crisis compared to its citizens - as the number or privately sponsored refugees as of September 25, 2016 was 11,695, a difference of 3,168 since late February, contrasted with a difference of 2,237 in government sponsored refugees.

However, the issues surrounding the implementation of Canada's Syrian refugee resettlement program do not take away from its positives. The fact that Canada has provided protection to as much Syrian refugees in such a short period of time is an incredible accomplishment and is celebrated as an inspiration to others[54]. With continued support from the government, private sector, non-governmental organizations, and the public in general, it is optimistic that Canada can make significant and positive contributions to the Syrian refugee crisis.

Emerging Themes

The concept of the security certificate regime and Canada's recent response to the Syrian refugee crisis fundamentally differ from each other – the former being to prevent and remove non-citizens from living in Canada under the precaution of national security, and the latter being to welcome and ensure that non-citizens can live in Canada, in spite of national security concerns. Nevertheless, the development and portrayal of the two phenomena both interact with themes of security, (il)legality pertaining to non-citizens/refugees, and social exclusion/inclusion.

Since 9/11, there has been increased concern for the security of Canada and a fundamental shift in how immigration operates presently. A shift from integrating self-sufficient and independent immigrants to contribute to the economic state of Canada to that of warding suspicious foreigners from the Canadian state. This is significant to note because national security procedures have been described

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[52] Raj, *supra* note 49.

[53] Government of Canada, *supra* note 48.

[54] Nicholas Keung, "Canada 'an inspiration' on Syrian refugee resettlement", *The Star* (29 March 2016) online: <https://www.thestar.com/news/immigration/2016/03/29/canada-an-inspiration-on-syrian-refugee-resettlement.html>.

as mechanisms of power employed by the state against those in opposition to it[55]. Essentially, they are procedures of social organization where those who do not fit the expectations of the state (inclusion criteria) instead become points of marginalization (exclusion criteria) and excluded as the 'other'.

Abu-Laban[56] discusses the shifts in the parameters of exclusion and inclusion that arise from the inequalities of citizenship and notes that more recently, immigration and refugee practices have shifted from the inclusion/exclusion of non-citizens based on their economic capabilities, to that of overt racial and ethnic targeting of Arabs and Muslims. Security certificates and Canada's response to the Syrian refugee crisis depicts a version of the dichotomy of the citizenship exclusion and inclusion today where the use of security certificates identifies the criteria for exclusion – male and Muslim – and the response to the refugee crisis provides the criteria for inclusion – women and children.

Though Canada does not have an issue with illegal refugees or non-citizens in the formal sense – such as foreign nationals entering and living in Canada undocumented – the normalization of a pre-determined terrorist profile allows for "legal" non-citizens and refugees in Canada to be recognized as "illegal". The security certificate regime functions as a process of legitimizing the illegality of non-citizens. Once a certificate subject is identified, they are essentially branded as a terrorist, an enemy of the Canadian state, automatically designating their existence as an illegality in Canada. Their status of illegality is then reinforced when they are not treated within the parameters of Canadian law and such exceptional treatment is upheld by legal authority – albeit illegally in the face of the *Charter*. In the case of Canada's response to the refugee crisis, there is less consideration for the illegality as opposed to legality of a refugee. Rather it is the illegality of the refugee – where they have become stateless – which allows for them to be legally accepted into Canada. This is not surprising as both situations operate towards opposing desired outcomes. However, the legal and political status of non-citizens and refugees in both cases remains comparable.

Nyers[57] emphasizes the importance of citizenship in his evaluation of the refugee status where the lack of citizenship ensures not only a denial of political rights, but also the capacity to act and to be regarded as someone of political identity. Although certificate subjects technically possess a legal status in Canada, they can (and are) subjected to the denial of basic, fundamental rights set out in the *Charter* by way of the security certificate mechanism. Similarly, in the case of the Syrian refugees, despite appearing to have legal status in Canada, they can still at any time be issued with security certificates (as seen with the Secret Trial Five), that is until they obtain Canadian citizenship. Pertaining to the political status of non-citizens and refugees, their political status is not only pronounced, but also retained through the citizens of the Canadian state. Consider certificate subjects and Syrian refugees, they occupy the voice of the public as a means of gaining political and legal status. For example, public support for the release of the Secret Trial Five from the KIHC and the waiving of the loan program for Syrian refugees. Though this could allow for the potentiality of either exacerbating concerns of national security where possible terrorists may "turn" citizens against its own government – legitimizing the

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[55] Gary Kinsman et al., *Whose National Security: Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines, 2000).

[56] Yasmeen Abu-Laban, Rethinking Canadian Citizenship: The Politics of Social Exclusion in the Age of Security and Suppression in Leah F Vosko, Valerie Preston & Robert Latham, *Liberating Temporariness?: Migration, Work, and Citizenship in an Age of Insecurity* (Kingston: McGill-Queen's University Press, 2014).

[57] Nyers, *supra* note 13.

need for security certificates – or the potentiality to look past the obsession with security and allow for Canadian citizens and foreign nationals to co-exist without fear.

However, issues of security are inherent within immigration practices. Whenever a foreign national enters a state, they are questioned as to the purpose of their visit or their intentions to stay, whether or not they possess a criminal record, and what they are bringing to the country to ensure that they will not be a risk to the state's or its people's security. Syrian refugees were subjected to a multi-layered security screening process prior to their departure to Canada. The security certificate detainees depict the vast extent to which security is entrenched in immigration law where it allows essentially, for the pre-emptive criminalization of a non-citizen and violations of their constitutional rights because they *may* be a threat to Canada's security.

Guild[58] postulates that political actors cast foreigners into a continuum of insecurity through various categorizations – including migrants, refugees, non-citizens – and construct them as problems, burdens, and security threats to the state. These categorizations in turn function as points of exclusion and inclusion in the determination of whether or not an individual is safe (admissible) or a present a substantial risk (inadmissible) to the Canadian state. This is can be problematic because these categorizations and constructions become normalized within society and can be easily manipulated by political actors[59]. This underscores the significance in understanding how categorizations of foreign nationals are framed and constructed by the state, and its people, as they may serve as criteria to determine an individual's admissibility. A social constructionist perspective is employed most commonly within studies examining how non-citizens are socially constructed.

Employing a Social Constructionist Perspective

How do you introduce an acquaintance to someone? By their appearance, personality, employment, and/or lifestyle? In any case, how would you have this knowledge pertaining to your acquaintance? It would have required either having personal experience socializing with the acquaintance, or having heard it from another acquaintance of yours. Adopting a social constructionist perspective (social constructionism) would recognize these various social processes/interactions that people engage in and how much of a role they play within our everyday lives in how we experience, define, and/or interpret the things or people we come into contact with[60].

This approach is best suited for this qualitative research because it allows for a wide range of perspectives to be considered. In particular, it allows for the researcher to understand that there are various social processes involved in constructing and framing what we believe to be a group of people, an event, and so forth. This is important to consider because these constructions and definitions are what go on to be the basis or rationale behind the creation of programs, policies, and laws which can go on to mandate how certain groups are treated and possibly how certain groups must comport themselves within society.

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[58] Guild, *supra* note 12.

[59] *Ibid.*

[60] Lynn & Lea, *supra* note 11.

It can be argued that perhaps the social constructionist perspective may be an engagement of three theoretical approaches: the social constructionist perspective, symbolic interactionism, and the labelling theory. For example, people interpret the actions/behaviours of others (symbolic interactionism) and form opinions/definitions of the individuals based off of their interaction with them (social constructionism) and these constructions become adopted and used to describe certain individuals (who may or may not fit the description) who react to this label and go on to behave according to what the construction consists of (labelling theory).

This underscores further the value in adopting a social constructionist perspective because it also allows for the researcher to identify implications that may arise from the construction itself – particularly when the notion that categories, identities, and statuses are socially constructed is embraced by different perspectives and approaches today. Agozino and Pfohl[61] make a similar suggestion with respect to the three interactive theories when they note that the social constructionist perspective has been called interchangeably with the societal reaction perspective/labelling theory and the interactionist perspective – this is not surprising as all three perspectives drew on the work of G. H. Mead when they emerged during the 1960's[62].

The nature of social constructionism follows that knowledge is created by the interactions of individuals within society[63]. However, not all individuals come to the same conclusions in how they construct knowledge/meanings, thus there could be many forms of knowledge or definitions regarding a single topic, and many realities that exist – this is indicative of a relativist perspective where many definitions/realities may exist to different people/groups. This would contrast with a positivist approach as the social constructionist perspective has been criticized for not employing objectivity in knowledge formation[64]. This is worth considering because while a constructionist view credits human understanding and thinking, it does not provide for a means to verify whether or not these understandings are accurate representations whereas a positivist perspective could do so through the use of scientific methods to measure and verify compiled information to identify an objective or 'real' definition of a topic/concept[65].

However, this is not to say that a positivist approach is always synonymous with rigour, accuracy, and a commitment to truth. Young[66] posits that positivism denies the idea of human creativity, the ability for humans to act differently under the same circumstances, and suggests that the essentialization – having a set script or definition – of social knowledge is unattainable because social realities/definitions exist in myriads. Rather, what is of more significance, is to whom the social truths

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61 Biko Agozino & Stephen Pfohl, *Counter-Colonial Criminology: A Critique of Imperialist Reason* (London: Pluto Press, 2003).

62 *Ibid*; Sandro Segre, "Social Constructionism as a Sociological Approach" (2016) 39:1 Human Studies 93 at doi:10.1007/s10746-016-9393-5.

63 Tom Andrews, "What is Social Constructionism?" (2012) 11:1 The Grounded Theory Review 39 online: <http://groundedtheoryreview.com/2012/06/01/what-is-social-constructionism/>.

64 *Ibid.*

65 Larry J. Siegel & Chris McCormick, *Criminology in Canada: Theories Patterns, and Typologies,* 5th ed (Toronto: Nelson Education, 2012).

66 Jock Young, *The Criminological Imagination* (Cambridge: Polity Press, 2011).

are told to, and what that audience can do with it[67]. This is particularly relevant to note because admissibility in Canada is a politically constructed concept that has been contested, and fluid among differing immigration practices such as the security certificate regime and Canada's recent response to the Syrian refugee crisis.

Social Construction of Non-Citizens

A social construction can be described as knowledge of something that is shaped by everyday life, social processes, and experiences - an opinion that one has formed about a certain person, group, or collective based on what one hears, sees, or experiences from their peers, the media, or public figures. Schneider and Ingram[68] define the social construction of particular groups/populations as cultural characterizations or popular images of the persons in question – this is especially true when we recognize the different ways in which certain people (or objects) are referred to, or different categorizations designated within certain groups, particularly with non-citizens.

As it is favourable to know an individual that one is allowing into their home, the same logic can be applied when countries admit foreign nationals to their land. There is an anticipation of what type of individuals they are, and rules are created specifically for the individuals to follow. Protocols exist for what non-citizens can and cannot do, what privileges and benefits they have and do not have. However, these regulations are further differentiated among separate categorizations of non-citizens. For example, Olsen et al.[69] note that the Interim Federal Health Program (IFHP) in Canada offers different healthcare plans for refugee claimants – refugee claimants from non-designated countries of origin, claimants from designated countries of origin, and rejected refugees. It should be recognized that the 'refugee' is a categorization in itself, originating from the 'non-citizen' that has been divided into differently constructed states of foreign identities – including the immigrant, the migrant, the temporary worker, the asylum seeker, and the visitor/tourist; and further constructions within them.

The social construction of an identity serves as an important mechanism of power. It grants the ability to define and/or redefine a concept[70]. In the case of the non-citizen, the individual is constructed and described in much detail as a means to define, and identify, the non-citizen. In doing so, it presents also, a means for identifying the citizen – in effect, redefining them as someone who is not the 'other'. The construction then serves to differentiate one from the other, however this in itself can be problematic. Lynn and Lea[71] posit that this means of differentiation fosters a us-versus-them mentality, where there is a tendency to depreciate the 'other' (non-citizen) in the process to differentiate the 'self' (citizen) in a more positive light. Further, when these constructions are realized through legislation, they legitimise the practices behind depreciating the 'other'. Immigration laws and

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[67] Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Cambridge, UK: Polity, 2001).

[68] Anne Schneider & Helen Ingram, "Social Construction of Target Populations: Implications for Politics and Policy" (1993) 87:2 The American Political Science Review 334 (JSTOR).

[69] Christopher Olsen et al, ""Other" Troubles: Deconstructing Perceptions and Changing Responses to Refugees in Canada" (2014) 18:1 Journal of Immigrant and Minority Health 58 (Springer).

[70] Lynn & Lea, *supra* note 11.

[71] *Ibid.*

regulations that involve the consideration of negative constructions of non-citizens – for example "risk subjects" – places them in the role of a scapegoat who can be blamed for social problems that may arise from their existence[72]. Lynn and Lea[73] also suggest that in differentiating the 'other' (non-citizen) from the 'self' (citizen), it affirms hierarchical power, where citizens hold more power than non-citizens in the country. This can be seen with Canada's recent response to the Syrian refugee crisis, where the public expressed concern for security, the government implemented more rigorous screening methods overseas for the Syrian refugees.

Social constructions also play a role in the determination of certain policies and agendas; in particular, they determine which populations are awarded benefits or burdens. Oftentimes it is the rich and powerful populations that are awarded benefits from programs/policies over the dependent and vulnerable, especially so for those who speak out against the discrepancy, who are on the receiving end of policies that bring more burden than benefit[74]. This is not surprising as the rich and powerful have the resources to control and shape their constructions in the society in a positive light, where the disadvantaged do not possess the means to alter public perception towards them if they have been painted in a negative light – this is particularly applicable for refugees.

The general discourse surrounding constructions of non-citizens, in particular, refugees, is not positive. Since 9/11, there has been increased concern and projects in limiting the mobility of Muslim nationals. Barbero[75] underscores the use of cultural, specifically orientalist, discourses used to ensure the securitization of migration from Muslim countries, and notes that in Spain, the Muslim world has long been considered the "archenemy". Further, Hanson-Easey and Augoustinos[76] suggest that discursive discourses stressing nationalism and cultural differences can proliferate racist discourse. Cultural frameworks in these contexts have been used in Canada in the determination of a non-citizen's admissibility. An example of this would the Secret Trial Five certificate detainees who, Razack[77] emphasizes, all have the profile of being a male and Arab and/or Muslim and were held under the guise of national security.

Media discourses in Canada have suggested that there is more of a negative perspective attached to refugees, particularly on a national level in contrast to a local level, though it has been noted that refugees arriving by boat seem to bear a more negative response than those who arrive by plane[78]. The discrepancy noted by Mannik[79] between local and national constructions refugees in her discussion

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[72] Iker Barbero, "Citizenship, identity and otherness: the orientalisation of immigrants in the contemporary Spanish legal regime" (2016) 12:3 International Journal of Law in Context 361 (Cambridge Core) at 369.

[73] Lynn & Lea, *supra* note 11.

[74] Schneider & Ingram, *supra* note 68.

[75] Barbero, *supra* note 72 at 363.

[76] Scott Hanson-Easey & Martha Augoustinos, "Out of Africa: Accounting for refugee policy and the language of causal attribution" (2010) 21:3 Discourse & Society 295 (SAGE).

[77] Razack, *supra* note 36.

[78] Lynda Mannik, "Remembering Arrivals of Refugees by Boat in a Canadian Context" (2013) 7:1 Memory Studies 76 (SAGE).

[79] *Ibid.*

of the arrival of *Amelie* – a boat in which 174 passengers seeking asylum from political persecution arrived in Charlesville, Nova Scotia from Rotterdam in 1987 – highlight the importance of personal experience in creating and asserting social constructions.

From the national perspective, it is doubtful that every individual asserting the dangerousness/ riskiness of the *Amelie* refugees had direct knowledge as to the characters and mannerisms of the refugees – whereas the locals held an accurate construction of the refugees as a result of their direct interaction/experience with them. However, there was more support for the national perspective on the event as journalists and reporters came from outside of Charlesville to confirm that perspective, despite the dissenting voices of the locals who provided food and shelter for the refugees. This is indicative of Schneider and Ingram's[80] position where the advantaged (more resourceful) are in a better position to control social constructions than the disadvantaged – the locals in this case. Which is particularly problematic when legislation and policies are enacted with the consideration of negative social constructions of non-citizens, especially when these social constructions are created by individuals – eg. state officials – who have an ulterior agenda in mind. These constructions can then become internalized and accepted as common knowledge among the population (citizens) and this knowledge, becomes a power for the socially powerful to use[81].

This power can be described as a symbolic power that allows those who possess it (the socially superior) to construct their own social world/reality – where, in addition to defining who the non-citizen is, hierarchies can be established, or emphasized, to demonstrate whose power the non-citizen is subjected to. For example, the non-citizen is subject to the border officer, who is subject to his/her manager, who is subject to the policy makers of the institution they manage, who is subject to the state. This can be seen immediately upon their arrival to Canada where non-citizens are managed by the border officers who enforce immigration laws and policies as trained by their superiors, who teach these practices set by policy makers and legislators, who are ultimately approved by the Canadian government - it is made clear at the outset that the non-citizen is at the bottom of the hierarchy. It is worth nothing as well, that the non-citizen is also subject to the citizen within the hierarchy where citizens themselves serve as a means to define the non-citizen – often through the distinction of their national identity and legal birthrights.

Much of the social construction surrounding refugees revolves around an image of the vulnerable, dependable, and helpless individual. Constructions of the 'bogus' or 'fake' refugee arise when the individual does not fit exactly within the frail image of a refugee. Olsen et al.[82] for example, note the distinction between refugees arriving from a designated country - a country that has been designated 'safe', thus unlikely to produce refugees – who are processed (rejected) within a shorter timeframe and receive lesser healthcare than refugees arriving from a non-designated country. There also exists an expectation on the part of the receiving country for the refugee to be grateful and accepting of any meager resources afforded to them. Any opposition or dissent voiced regarding

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[80] Schneider & Ingram, *supra* note 68.

[81] Lynn & Lea, *supra* note 11; Guild, *supra* note 12.

[82] Olsen et al, *supra* note 69.

injustices and maltreatment are rejected since refugees hold no power nor legal standing to the authoritative state.

But what happens when the individual does not quite fit the accepted image of what the state accepts as a genuine refugee? Lewis[83] notes the case of Namigadde who fled from Uganda to the UK to escape persecution as a result of her sexual orientation. Her orientation was not believed by the judge due to her lack of knowledge and interest in LGBTI literature. Here, Namigadde presents as an overlap of the admissible refugee and inadmissible non-refugee - where she is a refugee seeking protection in the UK as a lesbian, yet not considered to be a refugee when she does not express herself as a 'proper' or 'genuine' lesbian in Uganda.

However, if Namigadde had pretended to have had interest and knowledge in LGBTI literature as part of her "fully engaging in the lifestyle" and subsequently been found out for misrepresenting herself, would she not still be considered a 'bogus' refugee as a result of her false representation? Social constructions of the different refugee profiles then serve as a double-edged blade. On the one hand, the state requisites genuine, truthful claimants, yet on the other hand, such claimants are not necessarily believed unless they tell a certain truth or fit a certain image. Yet if they speak this certain truth, but not 'the truth', the refugee claimant runs the risk of being found as a bogus refugee regardless.

In actuality, this situation sets the refugee up to fail. It forces claimants who wish to be accepted as refugees to portray a version of themselves that may not be representative of who they actually are[84] – being 'bogus' to themselves and the admissions official – to run the risk of being found out and deported, or be themselves, which may very result in their deportation as well. This is not to say that there are not any genuine refugees. However, the idea of the genuine refugee existing in this context then becomes less recognizable due to the rarity of its existence[85].

It can be argued then, that the construction and labelling of 'refugee' on an individual demands a specific set of behaviour, appearance, and narrative to be exhibited in order to be accepted. The labelling of the refugee identity imposes a separate identity to perform in different contexts. For example the vulnerable, helpless refugee who has relocated to a new country – however at the same time, the self-sufficient, resourceful refugee who has managed to escape persecution. And it is worth recognizing the overlap as the identity of a person is not singular nor permanent – an individual may have several contradictory selves that may be determined or reinforced through the individual's social experiences[86]. This social construction serves as a mechanism of control which reemphasizes the powerlessness of the non-citizen where the receiving state dictates the kind of migrant they must be so that they can then control them, and if the state cannot control the non-citizen, they can relinquish their responsibility by deporting them.

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[83] Rachel Lewis, "Deportable Subjects: Lesbians and Political Asylum" (2013) 25:2 Feminist Formations 174 (Project MUSE).

[84] Olsen et al, *supra* note 69.

[85] Lynn & Lea, *supra* note 11.

[86] *Ibid.*

Another construction of non-citizens is that of the "deportable subject"[87]. Migrants who depict a contrary image or official construction to what is stated or alluded to in immigration laws and policies of what a migrant/refugee should be, may become subject to a constant fear of removal, and the removal process itself. The construction of the 'deportable' minimizes the possibility of a non-citizen landing in the country. It defines non-citizens solely as individuals waiting to be removed from the country, insinuating a wrongdoing on their part that has resulted in our nation's refusal of their presence, perhaps even existence. This construction then legitimizes other negative constructions that involve questions of security surrounding the presence of the non-citizen – this includes constructions of the "risky refugee", the "bogus/fraudulent" refugee claimant[88], or the "oriental/dangerous other"[89].

These constructions also serve to allow for and even require the legitimization of illegitimate practices against non-citizens[90]. Because refugees and migrants are constructed with images of insecurity and uncertainty, they demonstrate the need for exceptional mechanisms to remedy the perceived fear – an example being the security certificate procedure. However, this also serves as a means to further marginalize, or rather, legally discriminate, against non-citizens, regardless of any accepted status they may hold – such as the majority of the ST5 who were granted refugee status in Canada, that which should be afforded the most protection – reinforcing the contention that non-citizens are ultimately, deportable subjects.

Another social construction of non-citizens refers to those who are "deserving" or "underserving" in obtaining status or staying in a country[91]. This construction depicts the immigration process not as a system based on the merits of presented cases, rather, as a system that is based on the whims of the state's proxy – the immigration/border officers. Satzewich notes that immigration officers determining the validity of a couple's marriage for spousal sponsorships exercise discretion in their decisions based on how credible the relationship appears to be – and whether it fits a "normal" typification of marriages[92]. In this case, the determination process utilizes again, a learned construction by immigration officers as to what a real marriage should be, in their respective cultures, and the degree to which the spouses appear (to the officer) to conform to the framework of the marriage. The objective then, is not to have a genuine marriage, rather it is to have a marriage that appears to be genuine to the processing officer. This suggests that there is no formal/official consideration of who the non-citizen personally is in their case, and in not recognizing the actual individual, it is indicative of a system and state that has no intention to ever recognize the non-citizen as part of its national identity.

This underscores the importance of studying admissibility in a critical manner. Critical migration studies look to deconstruct the concept of migration, beyond what is claimed by the state, to

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87 Lewis, *supra* note 84.

88 Pratt, *supra* note 14 at 92 (in Chapter 5).

89 Barbero, *supra* note 72 at 362, 373.

90 Lynn & Lea, *supra* note 11.

91 Vic Satzewich, "Canadian Visa Officers and the Social Construction of "Real" Spousal Relationships" (2014) 51:1 Canadian Review of Sociology/ Revue Canadienne De Sociologie 1 (Wiley Online Library) at 9, 10.

92 *Ibid* at 10-18.

understand how migration is realized through the agency of individuals[93]. Because immigration is a process of "delegated discretion", determinations of admissibility would heavily rely on those who enforce immigration laws, particularly immigration officers[94]. Deconstructing admissibility and understanding how admissions policies are enforced from the perspective of immigration officers and how they perceive non-citizens would provide more practical conceptualization of admissibility within Canadian immigration laws and policies.

It is interesting to note, how most constructions of refugees and migrants are negative in general. There has been a shift from refugees being seen as heroic or political individuals, to an image of poverty-stricken women and children[95]. Popular constructions of what a refugee is do not take into account that refugees are also survivors. Refugees are individuals who have been pervasively persecuted and forced into displacement – they are victims of psychological and/or physical traumas. However, the fact that they are able to secure their escape or come into means of doing so, be it from aid organizations or friends, shows that they have survived their dangers, physically at least, and are capable of moving forward with their lives. While there are constructions of the frail and vulnerable refugee, these constructions do not take consider the courage it takes to uproot oneself from their home to start a new life somewhere else – by no means are all refugees helpless – rather than be feared or concerned, a refugee's relocation should be celebrated. Yet only recently in the wake of Canada's response to the Syrian refugee crisis, depicted a more positive perspective of a refugee's arrival in Canada.

An alternative to common constructions of the non-citizen would be the "refugee warrior"[96] which refers to a refugee (or a descendant of one) who employs violence for political purposes, they are autonomous actors attempting to achieve their own objectives – oftentimes by overthrowing a political regime or government. Nyers[97] also notes that the "refugee warrior" is the creation of failed states that cause conditions for forced displacement and emergency situations and failed international communities/systems to provide aid to resolve these conditions. Although the concept of the refugee warrior may be representative of resistance groups fighting against corrupt and destructive states – as heroes of a repressed community/society – it can be argued that this construction may serve to emphasize the illegality, and criminality, of refugees/non-citizens.

A refugee warrior is generally construed as a misnomer – as refugees are supposedly agentless, voiceless, and victims escaping from violence, those who engage in political violence no longer qualify for refugee status – one cannot be both a refugee and a warrior. If one were to be a refugee warrior, they would be considered as a 'failed refugee' because they do not fit within the norms of refugeeness[98]. As a result, they can be criminalized or recognized as enemies of the state. However,

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93 Guild, *supra* note 12.

94 Vic Satzewich, *Points of Entry: How Canada's Immigration Officers Decide Who Gets In* (Vancouver: UBC Press, 2015) at 37-58 (Chapter 2).

95 Mannik, *supra* note 79.

96 Nyers, *supra* note 13 at 102, 103 (Chapter 5).

97 *Ibid.*

98 *Ibid.*

even as a refugee, the argument can also be made that they are regarded as criminals as refugees are afforded minimal protections or rights by the state and subject to conditions in order to remain in the host state.

What is of particular significance with the conceptualization of the refugee warrior however, is that the refugee warrior shatters conventional constructions of refugees as a passive, non-agents who does not belong to a political community. Rather than being cast as an inverted 'mirror image' of a citizen, the refugee warrior voices, demands, that they are recognized as political agents in their own right and afforded the rights and protections that they are entitled to.

It is worth noting that the description of a refugee warrior provided above could also be used to describe terrorist groups. For example, the Taliban in Afghanistan are a group of non-citizens (in the sense that they are recognized as enemies of the Afghan state) fighting to overthrow the government in power to realize what they believe to be a "rightful" governance. It could be argued that this similar description projects negativity on refugee warriors and refugees in general (for example, the Secret Trial Five who are suspected of being terrorists), and reinforces the illegality, and criminality, of non-citizens, particularly when they are rejecting both the state's and/or international community's maltreatment towards them.

Emerging Themes

The negative social constructions of refugees and migrants depict themes of hostility towards non-citizens. Constructions of the vulnerable and helpless suggest a target of control, the bogus or fake refugee whose purpose is to steal resources from deserving citizens, and the deportable subject whose purpose in the country is to leave the country – these constructions suggest subordinance of non-citizens to citizens where their fates are determined and manipulated by the state and its people in how they define the non-citizen. Rather than being welcomed, non-citizens are instead scrutinized and subject to our control and perceived with disdain.

Social constructions also describe points of exclusion and inclusion. By being able to identify or define the non-citizen, we are in effect, excluding them from the citizen. This acts, at the same time, as a means to identify/define who should be included as a citizen. This can be seen with constructions of non-citizens that are dichotomic – for example, the bogus refugee vs the genuine refugee, and the deserving and undeserving. This can be problematic, particularly when the negative construction is more accepted than its positive counterpart. Leudar et al[99] suggest that as hostility towards refugees imbues into everyday aspects of society, it fosters environments of social exclusion - as the distinction between citizens and refugees grows, refugees are described in a more hostile manner, appearing to be morally and legally questionable.

It is worth noting that citizenship, while denoting permanence, also serves also as a point of exclusion in its emphasis of the temporariness of non-citizens[100]. Because non-citizens may technically still possess citizenship in another state/country – for example, a refugee who has fled from their

[99] Ivan Leudar et al, "Hostility themes in media, community and refugee narratives" (2008) 19:2 Discourse & Society 187 (SAGE Publications).

[100] Robert Latham et al, "Introduction" in Vosko, Preston & Latham, *supra* note 56.

country, but has not formally renounced nationality to their state of origin – they may be expected to return to their original country and are not expected to stay on a permanent basis as they are not legal subjects of the host state. However, issues arise when the non-citizen is seeking asylum or permanent residency, to remain on a permanent basis when they are expected to leave. As a result, the 'temporary' are constructed as problems and risks to the host state, through policies, practices and enforcement artifacts that facilitate the expulsion of a foreign national[101]. This has harmful implications non-citizens who intend to reside in Canada because only citizens are afforded full rights and protections – permanent residents do not enjoy the same benefits as citizens (despite being 'permanent residents') and are subject to removal procedures such as security certificates[102]. The permanence of a non-citizen in their original state in turn, produces their temporariness in the host state. As a result, the illegality of a non-citizen is underscored by their citizenship elsewhere.

The illegality of the non-citizen is also emphasized by their social constructions. Mannik[103] suggests that because the non-citizen is uprooted from their country and 'rootless', they are considered to be less trustworthy, as someone to be suspicious of. As a result, they are considered and treated as criminals even though they may not be. Upon arrival, non-citizens are subject to security and health checks, they may be searched and questioned under more scrutiny, they are expected to report to immigration officers regularly, and because they are not legal subjects of the state, they are subject to removal. The deportable subject and dangerous constructions of non-citizens such as risky refugees and fearful subjects emphasize the illegality of non-citizens and is reinforced through immigration practices.

Another theme that arises is uncertainty. Because the image(s) we have of non-citizens, refugees, and migrants are predominantly negative, feelings of uncertainty arise as to whether or not they are safe or trustworthy individuals that can be accepted into our society. This uncertainty is realized through immigration processes that demand full disclosure from applicants. However, uncertainty is also experienced by non-citizens. Refugees are subjected to the country's laws however at the same time, they are not afforded the same rights and protections because they are not citizens while they await approval of their status. This waiting creates uncertainty as to the refugees' legal status as they seem to be 'forever at the border'[104]. In particular, this gives rise to the uncertainty of the refugees' personal identity where they are faced with the dilemma between being who they are, and becoming who they are expected, or rather, constructed to be.

Thoughts to Consider

Reoccurring themes of exclusion and inclusion, security, and the (il)legality of non-citizens have also been identified in this literature review. While it appears that admissibility may be framed differently among different immigration practices – where inadmissibility is emphasized with the

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101 *Ibid.*

102 *Ibid.*

103 Mannik, *supra* note 79.

104 Kristen Sarah Biehl, "Governing Through Uncertainty: Experiences of Being a Refugee in Turkey as a Country for Temporary Asylum" (2015) 59:1 Social Analysis 57 (Berghahn Journals).

security certificate mechanism and admissibility is realized in Canada's recent response to the Syrian refugee crisis – immigration and non-citizens in general, are presented in a negative light. These negative constructions contribute to contentions of whether or not a foreign national's intention to Canada is sincere/genuine – and this particularly affects refugees and/or non-citizens seeking asylum. Rather than assisting vulnerable individuals, the admissibility process could become instead, an investigation in seeking out the "legitimate refugee" from the "deportable subjects". This suggests that admissibility, in general, may also be negatively constructed and framed within immigration laws and policies.

Methods

For this research project, I engaged in a qualitative, multi-phase research design involving three phases of data collection: 1) Information collected from interviews with practitioners in the field of immigration law, 2) Hansard transcripts obtained from the Parliament of Canada's website, and 3) Records obtained from governmental agencies/bodies through Access to Information (ATI) requests. Since there was not any literature which spoke directly to admissibility that I could refer to, I drew data from these three sources to obtain a more well-rounded understanding of admissibility works. The interview data was intended to inform upon my analysis of both the Hansard and ATI data as it would be able to provide an experiential overview of how the immigration system works – particularly from the perspective of those who are processed through the immigration system as my participants were both immigration lawyers who specialize in refugee law. The Hansard transcripts served to present an "official" perspective of how admissibility is constructed within immigration laws and policies – specifically what is intended by the government. Finally, the ATI data would provide a window into the inner-workings of government practices – specifically, how they implement any admissibility, or inadmissibility, standards. These three data sources together be able to provide insight into how admissibility is constructed and framed officially, practically, as well as experientially.

The data collected pertained to two Canadian immigration practices of opposing objectives: 1) The use of security certificates (removing non-citizens from Canada) and 2) Canada's recent response to the Syrian Refugee Crisis (admitting non-citizens to Canada). As this project was of an exploratory nature into how the concept of admissibility – who can enter and who must leave Canada – is conceived and implemented within Canadian immigration laws and policies, a qualitative approach was best suited because it allows for the opportunity to gain understanding into how individuals come to define the situations they experience[105]. A qualitative design also allows for the discovery of new ideas and emerging themes rather than confirming what is already known[106]. Specifically, for this research project, applying a qualitative approach allowed me to delve into how the Canadian government, and citizens, conceptualize the admissibility of non-Canadian citizens and how that conceptualization is reflected (or appears to be reflected) in immigration practices. With the various types of information that I collected and reviewed, I was able to approach the data with multiple perspectives to conduct a comprehensive analysis.

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[105] DK Van den Hoonaard, *Qualitative Research in Action: A Canadian Primer* (Ontario: OUP Canada, 2012).

[106] *Ibid.*

While this chapter provides a concise overview of interview and Hansard data collection procedures, a more thorough and in-depth discussion of ATI procedures is provided. Although filing information requests initially seemed like a straightforward process, it became a separate learning process entirely which I believe is worth sharing. Specifically, ATI methods regard processes as data, where we can learn about the politics of security and immigration by using legal mechanisms to obtain government records about these topics.

Interviews

Participant Recruitment

In this first phase of data collection, a purposive sampling method was employed in the recruitment of participants in which potential participants were specifically selected based on their expertise and involvement within the field of immigration. This sampling method was appropriate given that the number of established individuals in the field is not a large sample in itself. Potential participants included lawyers practicing immigration law, advocates, and activists. As participants would be experts with firsthand experience within the field of immigration laws, they would be able to offer valuable insight as to how the Canadian immigration system operates - this could assist in identifying any existing or 'official' constructions and approaches to admissibility in Canadian immigration law in addition to providing a window into how these processes actually work.

Initial prospective participants were identified by my project supervisor, Mike Larsen, and subsequently contacted by myself. Snowball sampling had also been employed, though unintentionally, as a method in participant recruitment where a number of prospective participants kindly recommended and introduced other professionals whom they felt would be interested in this study. Although several individuals were invited to participate in an interview session, only two individuals, Michael Thompson – a lawyer who has practiced immigration law in Canada under the previous immigration act and is currently practicing under the *Immigration and Refugee Protection Act* (IRPA) - and John Smith – a lawyer currently practicing immigration law in Canada as well - were able to participate in this project[107]. This suggested to me that the field of immigration is constantly engaged and that those who work within the field are very busy. Even scheduling a time and date to interview the participants required rescheduling as a result of work suddenly coming up – a specific example being Mr. Smith having to reschedule two days prior to our initial interview date due to an urgent matter he received that day before the Refugee Protection Division. It would be remiss to not mention that I was very fortunate to able to interview both participants despite their busy schedules.

Interview Approach

The interview style that I selected for this method of data collection was to employ semi-structured one-on-one interviews with a previously prepared interview guide, as this would allow for the opportunity to obtain a richer set of data since the interviews would not have to follow a strict script

[107] Both participants chose not to be identified in this study and the pseudonyms Michael Thompson and John Smith were created to protect the participants' identities.

as in structured interviews[108]. Further, this structure also allows for deviation from a structured interview in the case where unexpected answers arose and required further discussion. One-on-one interviews were chosen over focus group interviews because in group settings, regardless of a moderator who is present to ensure that all participants are heard, there would still remain the possibility that selected participants may not interact well together. More importantly, with focus groups, the interviewer/moderator is not afforded full control over the direction of the conversation[109], this would present as an issue should there be little relevant data generated as a result since the objective of the interviews in the case of this research was to provide certain perspectives to inform upon the data analysis of the Hansard and ATI records.

I conducted a total of three interviews – two with Mr. Thompson (with one being a follow-up interview) and one with Mr. Smith. Both participants were interviewed in a conference room located at their respective places of employment. The duration of each interview lasted from approximately an hour to an hour and a half. Prior to each interview, greetings were exchanged and participants were asked if they had a chance to review the informed consent form and if they would like to go over the form prior to signing. Although both participants stated they did not require explanations pertaining to the form, the items where documented authorization was required were briefly reviewed – consent to being audio-recorded, consent to being identified, and where their signature was required. Participants both consented to audio-recording for the duration of the interviews – each recording began after the consent form had been completed by the participants and after they had been notified that the recording device will be engaged.

Each interview was conducted with reference to an interview guide[110] that I had prepared. My objective with the interviews was to get a sense of how the immigration system functions in terms of how individuals are admitted into Canada and how they are deemed to be removed. To do so, I wanted to pose general questions about their work in immigration, their thoughts on current immigration laws and policies, security certificates, and Canada's response to the Syrian refugee crisis – this not only provided for a practical account of how the immigration system functions but also allowed for an open-ended discussion on the participants' part for what they considered to be important issues pertaining to certain topics. In particular, my inquiry into the participants' work – "I understand you are a _____, but I would like to hear from you about your work", and the follow-up item on how/why did they get into their field" (see Appendix B) – proved to be an efficient gateway question which led to discussions about a variety of topics including the IRPA, CBSA and discretionary powers. Another objective that I had with the interviews was to know how admissibility functioned – whether there is a specific way to determine admissibility and if it was done so consistently across different immigration practices. This I tried to achieve by including questions about admissibility throughout the different speaking topics as follow-up items – for example under Participant General Views I included follow-up items of "Criteria in determining admissibility", "How is admissibility defined within the Canadian immigration law?", and "How should admissibility be defined?". In addition, questions as to how admissibility is defined and whether there is a difference in how they are realized were included in the discussions pertaining to

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[108] Earl Babbie & Lucia Benaquisto, *Fundamentals of Social Research* (Toronto: Nelson Education, 2010).

[109] *Ibid.*

[110] See Appendix B "Interview Guide"

security certificates and the response to the Syrian refugee crisis. It should be noted that not every question on the guide was posed during the interviews nor were they all posed in the same manner as indicated in the interview guide - this occurred as some responses answered other questions that I was going to ask later during the interview and also depended largely on the flow of our conversation.

Analyzing the Data

The analysis methodology for the interview data consisted of two processes. The first process occurred alongside the transcription process of the interviews where I both listened-through the interviews, and then read-through the interview transcripts to further familiarize myself with the interview content. The next step then was to conduct open-coding – identifying latent content[111] - on the transcripts – this involved highlighting phrases/passages to identify themes relating to how admissibility determined, which could act as lenses to guide the analysis of the Hansard and ATI data. I also underlined and made notes on specific quotes and terms which could be further explored in the analysis of the other material. It is important to note that the purpose of this first phase in the methodology and analysis was to sensitize me to relevant themes that later assisted in the analysis of the textual data.

Hansard Transcripts

Data Compilation

In this phase of the data collection, I compiled Federal Parliament Hansard transcripts (from http://www.ourcommons.ca/Parliamentarians/en/PublicationSearch) containing deliberations regarding the Syrian refugee crisis and the security certificate mechanism as my open source data from online government websites. Hansard transcripts provide insight into how legislation regarding, and surrounding, the research topic came to fruition. More importantly, Parliament represents a form of performance as speeches are crafted for public consumption; this could be reflective of "official" political narratives in how the government approaches certain topics/events and how they are prioritized. What is of particular interest, is that these transcripts are readily available online, as opposed to ATI data which should be available to the public, yet are not readily accessible nor are they necessarily targeted toward the general public – thus analysing Hansard transcripts would be a good way to explore the differences, if any, between what the government purports to do, and the actions that are taken in actuality.

Pertaining to the compilation of transcripts for Canada's response to the Syrian refugee crisis, the key words 'Syria' and 'Refugees' from the search suggestion terms were used for this data collection phase. To gain a current perspective on admissibility, the date range that I used for this search was the current 42nd Parliament, 1st Session, starting from December 3, 2015, to present – for the purposes of this project, the 'present' date was set to February 2, 2017. Although this search totalled approximately 900 results on the Parliament website, not all transcripts were used in the data compilation of this case study because the search yielded both results for 'Syria' and 'refugees' as separate terms – oddly enough, there is no one search term for 'Syrian refugees' in the website's search

[111] Van den Hoonaard, *supra* note 107.

engine. As a result, when I went through the results to compile the transcripts, I excluded ones which did not mention or have any direct connection to the Syrian refugee crisis or Syrian refugees.

For the compilation, I copied and pasted each transcript onto a Word document indicating the speaker, which region and government party they are representing, the date and time of their speech, and the contents of their speech[112]. Each transcript was ordered starting from the most recent Hansard discussion (denoted by the number indicated – for example "Hansard – 44") to the oldest and for every new Hansard discussion a page break was inserted for better differentiation between different discussions - totalling a number of 571 pages (see Figure 1 for photo of compiled data). I used the same process for the transcript compilation regarding the security certificate mechanism however with a couple of differences.

Since there has not been much recent discussion regarding security certificates, and particularly since there had only been three Hansard discussions pertaining to security certificates under section 77 of the IRPA during all of the 42nd Parliament, the date range for this search was extended into the 41st Parliament, including both the 1st and 2nd Session. The search term used in this case was 'Security certificates' as recommended by the Parliament search engine. Again, posts that were not related to the Canadian security certificates were not included in this compilation. Although the previous Parliament discussions were included in this data source, there was still significantly less discussion on the topic of security certificates when compared to discussion regarding the Syrian refugee crisis where the compilation for security certificates only had 103 pages in total – this was expected, however there was still enough data to work with pertaining to this project.

Analyzing the Data

The first part of the analysis portion of the Hansard material was conducted during the collection phase where an initial read-through was done of the transcripts and notes were made of some initial themes to keep in mind. The second part of the analysis for this data involved open-coding – identifying manifest content[113] - where I highlighted passages and/or phrases which portrayed the purposes, motivations, and actions of the government and identified key themes and concepts which arose from the text in relation to how admissibility may be conceptualized. Where there were specific terms or quotes/passages that I wanted to specifically refer to, I also underlined or boxed the text directly on the page as well and used a post-it note to mark the page. The final procedure of my analysis involved closed-coding where I made specific notes – either directly on the page or on a post-it note which would be stuck onto the page – on how the highlighted portions from the open-coding process could depict how admissibility is conceived by the respective speaker – or rather, the represented Party.

[112] See Appendix C "Example of Hansard transcript compilation"

[113] Van den Hoonaard, *supra* note 107.

Figure 1. Photo of Compiled Data

Access to Information Records

Once again I ask for readers to bear with me throughout this lengthy section as I provide my account of the ATI process. While this line of methodology on the face of it can seem like a straightforward/simple process – fill out a request form, pay five dollars, and wait for the information to be delivered – the ATI process I experienced involved delays, negotiations, and complaints (a more complex process than what I was expecting), and I think it this is worth sharing as this methodology is poorly understood in general. Additionally, the process itself is data. One can learn about how topics are constructed – in this case, admissibility, and immigration as well – by considering how related issues are documented and how this information is handled, controlled, and disclosed/withheld.

For this phase of the research design I had filed both informal and formal (original) ATI requests[114], however the focus will be on the original ATI records for the purposes of this project, with the information from the informal requests serving as a supplementary source of data in the case where the original requests did not generate much disclosure. It is worth noting that this phase of the data collection was conducted prior to both interview and Hansard phases in anticipation of time delays – despite still being incomplete – and I will discuss this further later in this chapter. The use of ATI requests was chosen because not only are they a viable means of producing textual data, they also provide a 'backstage' access to past and ongoing government operations[115]. Walby and Larsen[116] note

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[114] Informal requests refer to requests made to access previously disclosed files of ATI records whereas formal requests refer to new/original requests made for government records.

[115] Kevin Walby & Mike Larsen, "Access to Information and Freedom of Information Requests: Neglected Means of Data Production in the Social Sciences" (2011) 18:1 Qualitative Inquiry (SAGE) [1]; Kevin Walby & Mike Larsen, "Getting at the Live Archive: On Access to Information Research in Canada" (2012) 26:3 Canadian Journal of Law and Society (Project MUSE) [2].

[116] *Ibid* [1].

the advantages of accessing the live archive where not only can historical documents be accessed, requesters are also able to see how these artefacts are implemented by government agencies, and how government agencies from different levels – federal, provincial, and/or municipal – engage with one another.

Another reason why I chose to this line of data collection is that with ATI requests, we also have the chance to see how the government responds to civilians regarding certain topics (data as process) – although requesters do not confer with legislatures or policy creators regarding the requests, the way in which the ATI request is handled is data in itself into how the Canadian government operates – particularly since government records are supposed to be public records[117]. For example, if I were to be denied information to how screening processes were created and activated, I could still observe from that, that the government may not actually have a consistent means of admissions criteria, nor do they have a definition for the admissibility of a non-citizen, and suggest that there is a need to establish one.

Informal Requests

Prior to filing the original requests, I first searched through previously filed ATI requests on the Open Government website at data.gc.ca where if you click on the "Open information" link located down the middle of the webpage and then click on the link to "Access to information" on the right side of the webpage, and then finally the link to "Search Access to Information Requests" on the left side of that following webpage, you will find a "Completed Access to Information Requests" webpage which will allows individuals to search for previously released ATI records. For this search, I used "Syrian refugee" as my search term and looked through the descriptions of previously released files and noted the file numbers that I thought could be useful to my research – I noted 31 previously released files which seemed to be helpful and interesting. In Fall of 2016, my project supervisor and I both filed for these records however only nine have been completed to this day – which was expected in a sense, as informal requests do not have a time limit on when they need to be completed as opposed to original requests, which have a 30-day statutory completion limit[118].

Original Requests

The original ATI requests were made to two government agencies, Immigration, Refugees and Citizenship Canada (IRCC), and Public Safety Canada (PSC); both agencies were selected as they are among the primary government institutions concerned with immigration practices and regulations, and enforcement. The following types of records were sought from the above-mentioned agencies: 1) Letters from Canadian citizens and organizations regarding the security certificate mechanism and the SRC, 2) Copies of public opinion research and analysis, including poll results, regarding the security certificates and the SRC, and 3) Briefing notes and memorandums to the Minister and Assistant Deputy Ministers regarding these issues. A total of 11 original requests were made in the Fall of 2016.

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[117] Mike Larsen & Kevin Walby, *Brokering Access: Power, Politics, and Freedom of Information Process in Canada* (Vancouver, UBC Press, 2012); *Access to Information Act*, R.S.C 1985, c. A-1 [ATIA].

[118] Section 7 of the ATIA.

With my research topic, I hoped to be able to access documents which illustrate the origins of admission criteria for foreign nationals into Canada and how these criteria are implemented, or meant to be implemented, across different agencies - particularly with the request of briefing notes and memorandums. With respect to the request for letters and public opinion analysis, they would be able to demonstrate data that is two-tiered where I would be able to see on one hand, the public's view regarding the two case studies and on the other, whether the government has responded to said view in our present context. Further, Lynn and Lea[119] (2003) in their evaluation of how asylum-seekers are socially constructed in the United Kingdom reviewed opinion letters sent to news media noted that letters provide authentic opinions and/or concerns from writers as they would not have to concern themselves with public or confrontational criticism.

Information Being Sought

In filing the original requests, I used the following wording for the details below:

Security certificates

1) Letters, including 'open letters', submitted by individuals, groups, and organizations regarding security certificates issued under Division 9 of the IRPA received between January 1, 2015 and present.
2) Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present.
3) Copies of public opinion research and analysis, including poll results, regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 – present.

Syrian refugee crisis

1) Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present.
2) Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 - present.
3) Copies of public opinion research and analysis, including poll results, regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 – present.

Each of the above requests were sent to both the IRCC and PSC except for the request of briefing notes, reports and memorandums regarding security certificates to PSC. Because my project supervisor had previously made a similar original request to PSC, I was granted access to his file once he received it from the organization[120].

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[119] Lynn & Lea, *supra* note 11.

[120] ATI research is collaborative in nature – with respect to researchers who may share disclosed government documents with one another to circumvent processing fees of $5.00 and long processing times, the exchanges between government agencies/departments in the consultation of the disclosure of government records, as well as the government activities which are increasingly integrated and collaborative across agencies. See Mike Larsen, *Access in the Academy: Bringing ATI and FOI to academic research* (Vancouver: BC Freedom of Information and Privacy Association, 2013); Walby & Larsen, *supra* note 117 [1].

The process in filing these requests were relatively the same for both organizations where I had to provide details of the information that I wanted, the method of access preferred – to receive either a paper copy of the records, an electronic copy (normally the institution will send the records through mail on a CD, or they may email the file to you), or to examine the records in person – my personal details – name, address, whether or not I am a Canadian citizen – they also want you to note if you are representative of media, academia, business, organization, member of the public, or if you decline to identify the above – or if the information is being requested by a corporation in Canada, and a payment of $5.00 CAD. The difference was that with the IRCC, I was able to make the requests to the organization online whereas with PSC, I had to mail in my original requests.

To file an original request online, the same steps in making an informal request can be taken, however rather than selecting "Search Access to Information Requests", one would select the open "Request Access to Information" instead. On the displayed webpage is a link to the "ATIP Online Request Portal" under the section "Make an online request" – clicking on the link will open the online request website where original ATI requests can be made online. Also on the same page (before clicking on the ATIP Online Request Portal), are links to the Access to Information Request Form and information of ATIP Coordinators (individuals and addresses to mail requests to) for different government institutions that is needed for mailing in original requests. Another difference between making online requests and making physical, or mailing in, requests is that the for physical requests, the $5.00 payment has to be made out to the Receiver General for Canada either by cheque or money orders – mailing a five-dollar bill is not accepted. Although I was fortunate to have someone to write the cheques for me, this was initially an issue because I do not own a chequebook and the bank account I use does not include free cheques. This speaks to the actual level of accessibility that the government grants in purporting to have open access because although writing a five-dollar cheque might not seem like a big issue, those who are not able to gain access to cheques without charge may be discouraged in going through with making an original request – I for one felt discouraged when I was informed that the bank was going to apply a service charge of two dollars to every five-dollar cheque they could help me write.

The Analysts

After sending in the original requests, the analysts assigned to a file will typically get in touch with the requester to present an official receipt of the five dollars and the request via email[121]. In my case, I was emailed within a week of sending out my requests, however one of the analysts from PSC who was in charge of three of my files (Analyst 3 – refer to Table 1) never did so – I had only heard from the analyst when they needed to ask me a question regarding one of the files. It is worth noting that for my requests to PSC, under the advice of my project supervisor, I had specifically sent each request out one day at a time in the hopes of getting different analysts for each file so that it would not be one analyst receiving multiple files of mine and then taking out extensions to complete all the files. However regardless of this strategy, my files were divided between two analysts from PSC – similarly, the six original requests made to the IRCC also were assigned to two analysts. Below is a table denoting my requests, the assigned file numbers to each request, and the analyst that was assigned to each file. Each analyst will be referred to by their job title in this paper. I will also be referring to each

[121] See Appendix E – 1 "Example email receipt of file from an analyst"

request as either “IRCC File X” or “PSC File X” – please refer to Appendix D for a table of the corresponding file numbers.

Table 1 – Analysts Assigned to Original Requests

Analyst IRCC	**Request (shown in Receipt emails except for Analyst 3)**	**File Number**
Senior ATIP Administrator 1	Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present. October 24, 2016	A-2016-26704
Senior ATIP Administrator 1	Copies of public opinion research and analysis, including poll results, regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present, October 24, 2016.	A-2016-26697
Senior ATIP Administrator 1	Letters, including 'open letters', submitted by individuals, groups, and organizations regarding security certificates issued under Division 9 of the IRPA received between January 1, 2015 and present, October 24, 2016.	A-2016-26684
Senior ATIP Administrator 2	Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding Syrian refugee crisis. The date range for this request is January 1, 2015 - present, October 24, 2016.	A-2016-26708
Senior ATIP Administrator 2	Copies of public opinion research and analysis, including poll results, regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 - present, October 24, 2016.	A-2016-26695
Senior ATIP Administrator 2	Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present, October 24, 2016.	A-2016-26691
Analyst PSC		
Consultant	Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 - present.	A-2016-00242
Consultant	Copies of public opinion research and analysis, including poll results, regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 – present.	A-2016-00248
Consultant	Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present.	A-2016-00243
ATIP Consultant	Copies of public opinion research and analysis, including poll results, regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 – present. November 1, 2016	A-2016-00246
ATIP Consultant	Letters, including ‘open letters’, submitted by individuals, groups, and organizations regarding security certificates issued under Division 9 of the IRPA received between January 1, 2015 and present. November 1, 2016	A-2016-00241

Although my requests were received by the institutions fairly quickly, the rate at which they were processed is a different story. It is worth noting that while there is a 30-day limit for processing original requests and while I filed far in advance (Fall 2016 in mid-October) from intended my data collection deadline (end of January 2017), I have yet to gain access to all of my files. This is largely due to provisions in section 9 of the *Access to Information Act*[122], where extensions may be taken if they fall

[122] Section 9 of the *Access to Information Act*

under the following conditions (particularly that of section 9(1)(b) – consultations with other government bodies)[123]:

> **9** (1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if:
>
> (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,
> (b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or
> (c) notice of the request is given pursuant to subsection 27(1)
>
> by giving notice of the extension and, in the circumstances set out in paragraph (a) or (b), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

My initial thoughts after having read through this section in the *Access to Information Act* was that this is a provision designed to allow institutions to both restrict access to information and for analysts to procrastinate. The key aspect of this section I noticed was that it does not specify a limit for the extension. Thus, technically speaking, an extension of 365 days or even more could be taken and by then the file could be forgotten by both the analyst and requester – in this sense the records in question would be restricted from the requester. Perhaps 'procrastinate' is an inaccurate word to use as it should be recognized that analysts are assigned multiple cases at a time and may be very busy, however this section certainly serves as a delay tactic – a "technique of opacity"[124] - to disclose government information to the public – especially when analysts have the ability to tell requesters on the thirtieth day that they will not be receiving their data for an extended period of time without any consequence (I personally experienced this)[125]. It seems to me that this provision serves as a mechanism in maintaining government secrecy for as long as possible in addition to possibly discouraging the use of ATI requests in the future.

There were a few requests which were completed faster than others, however this was due to the fact that the analysts determined there were no records to be disclosed. This included the PSC File 2, PSC File 4, and PSC File 5 and IRCC File 2 and IRCC File 3. For the remaining files I received notifications of extension from the analysts, save for one file, IRCC File 6, which I will discuss in detail shortly. Although extensions were expected on my part, especially since I had filed these requests in advance back in Fall of 2016, it was still unsettling to receive the notifications since they predicted a date of completion set in the middle of May 2017. Needless to say, any information derived from PSC File 1 and IRCC File 4 will not be part of the analysis portion for this data as well. However, with

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[123] This is a challenge when researching immigration and security issues, which are inherently collaborative given the interrelating government processes involved – for example, the security screening process that was implemented in the resettlement of the Syrian refugees involved agencies including the IRCC, CBSA, CSIS, the RCMP. This would allow government agencies to cite section 9(1)(b) to obtain (lengthy) extensions as they could have documents pertaining to other government bodies which necessitate consultation as to whether or not they can be disclosed. See Walby & Larsen, *supra* note 117 [1].

[124] Larsen & Walby, *supra* note 119 at 20.

[125] Appendix E – 2 "Email notification of extension for IRCC File 4"

IRCC Files 1 and 5, even though extensions had been taken, were completed and provided to me on December 29, 2016, and February 8, 2017 respectively, and will be included in the analysis.

~~Working~~ Negotiating with Analysts

The overall impression left to me from interacting with the analysts was quite unsatisfactory. I do not mean to imply that all ATIP analysts are difficult to work with, however it necessitates effective communication between requester and analyst – something which is not easily achievable when one is assigned an analyst who is well versed in speaking politically (where there is a lot of ambiguity and double-talk in their responses), or an analyst who has a tendency to not respond to correspondence. Walby and Larsen[126] note the process of "access brokering" where negotiation, contestation, and technological mediation is inherent in gaining access to the information of processed ATI requests. Although I had only experienced this with one analyst, Senior ATIP Administrator 2, I found that speaking with the analysts had not made the process any more efficient than not having communicated with the analyst.

IRCC Analysts

Senior ATIP Administrator 1

Generally speaking, the analysts who received my requests from the IRCC were more interactive than those from PSC. Although Senior ATIP Administrator 1 did not ask me any questions regarding my requests, they did answer my questions within a day's time and provided some insight into how my requests were processed – though all but one of them came back with no results. Through Senior ATIP Administrator 1, I learned that it was possible to submit a request without a date range[127] (though I imagine that another analyst would still ask for a specified date range), that the organization uses key word searches to compile information, and how correspondence is stored as data[128]. At the same time, the description which was provided to me suggested a narrow search process and that my file regarding letters pertaining to security certificates resulted in no records due to a technicality.

It is worth noting that while I had not engaged in access brokering with this analyst, my inquiry into of the processing of IRCC File 3, letters regarding security certificates, certainly left me feeling as though I was negotiating for further information. Because there had been campaigns surrounding security certificates, particularly the Secret Trial 5, I was certain that there had been letters written regarding this subject – especially since it had been reported that letters had been written and sent by the public, with the most notable one of them written by Alex Trudeau[129]. I asked the analyst if they had considered these letters was adamantly given the response, twice, that "correspondence is logged by key words and [my] request made no mention of individual names" and that the search was based on

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126 Walby & Larsen, *supra* note 117 [2].

127 Appendix E – 3 "Email response regarding IRCC File 2"

128 Appendix E – 4 "Email correspondence regarding IRCC File 3"

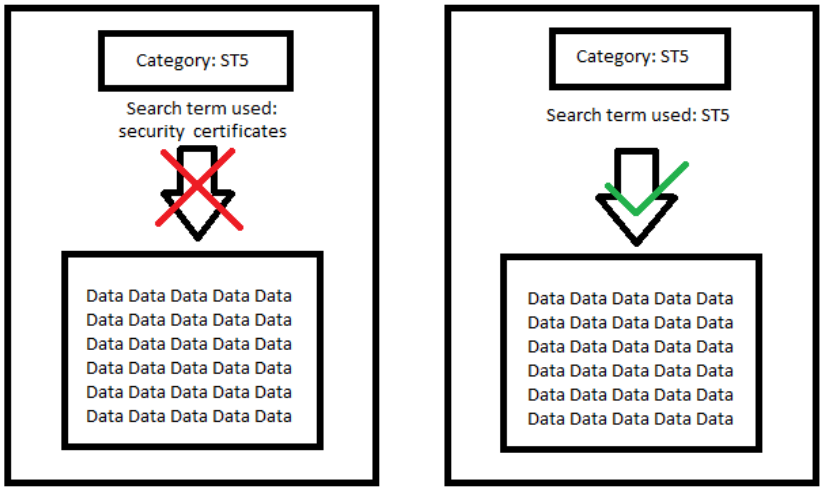
129 Bronskill, *supra* note 39; Andrew Duffy, "Trudeau's Brother Asks Government to Keep Harkat in Canada", *Ottawa Citizen* (1 March 2016), online: <http://ottawacitizen.com/news/local-news/trudeaus-brother-asks-government-to-keep-harkat-in-canada>.

the wording of my request in which the key words "security certificate" and "division 9" were used (see Appendix E-4).

In Appendix E-4, the analyst stated that in the case of Mohamed Harkat of the ST5, correspondence would be stored under "Harkat" instead of security certificates. This suggested to me that the IRCC logs information in a mutually exclusive manner as a mechanism to maintain government secrecy regarding certain topics – where letters written by the public may reflect a different perspective on certain topics than what is presented by the government in actuality.

The analyst's response indicated that certain records are stored under certain categories which are accessed only by key word searches using the category's name in the processing of a request (see Diagram 1 for depiction) and rather than storing records which would relate to different key words under all relating categories, they are stored under only one category and excluded from the others. For example, in the case of IRCC File 3, letters about of the ST5 would not be considered as information pertaining to security certificates, despite the cases of the ST5 being entirely about security certificates. This appears to be an accurate representation of the search process and record keeping of the IRCC since I was told by the analyst twice that I would have to include an individual's name for the search of those records to even take place.

Diagram 1 – Correspondence Search Process Based on Senior ATIP Administrator 1's Description



This is problematic because unless the "correct" words are used in a request, it is unlikely that access to the records which are being sought can be attained, even though they may exist. Even more troubling is that this suggests that the way in which information is filed under different categories is arbitrary, where the data can be stored under a category in which the key word is so obscure that it may not be generally used by individuals. It would be interesting to see if a request into the search process - particularly for a list of what all category key words that exist for an organization's information database are - would garner any records because such information would significantly increase the disclosure rate for requests, provided that the information they are seeking does exist in the database.

However the fact that Senior ATIP Administrator 1 had not asked me any questions pertaining to my request for letters regarding security certificates indicated to me that they were most likely not knowledgeable in the topic[130]. This presents a significant concern because it creates a loophole allowing for the exclusion of whatever data that the institution may not disclose. It is possible that the lack of knowledge on the part of the analyst could be exploited by program experts where the existence of information could be kept secret from the analyst, who then reports the non-existence of records to the requester. It would be more efficient in my opinion, for program experts to receive requests and speak with the requesters themselves, rather than having an analyst acting as a liaison.

There was one major issue with Senior ATIP Administrator 1 where it appears that they lied about IRCC File 3. I happened to look up security certificates for previously released ATI files recently and saw that apparently 3 pages had been disclosed for the file (see Appendix E-5). This was confusing to me since I had been informed that the search conducted for my request resulted in no records. Needless to say, I was displeased and this matter is currently being pursued. It could however, be a mistake in the IRCC's file keeping since also on Appendix E-5, it also says that the records for IRCC File 1 do not exist – which is incorrect since I did receive the records from them, unless it is another tactic in upholding government secrecy. In light of this, it is worth looking up completed files on the Completed Access to Information Requests page for requesters once their files have been completed – even if it is simply a typo on the part of the government institution, they still have an obligation to be accountable in their reporting, no matter how busy the department is.

Senior ATIP Administrator 2

Senior ATIP Administrator 2 appeared to be friendly and helpful at the beginning stages of processing my files – they offered to provide pro-active disclosure[131] to me and even suggested speaking on the phone, something that the other analysts never even brought up. However the issue with pro-active disclosure is that while you may gain access to records in a short amount of time, you will also not gain access to the information that would have been provided in an original request - in other words, any new information. While this may seem helpful depending on the circumstances of the requester, I would argue that ultimately it is a tactic in reducing government transparency because when a request is abandoned, not only does the information remain unknown (until the request is made again and completed later), but the existence of the information remains unknown as well. In my case, the analyst offered pro-active disclosure for two of my requests, IRCC Files 4 and 5, to which I declined for both.

Initially I did not know what the term "pro-active disclosure" meant. I had assumed that the analyst would provide the previously released files while they continued working on my request for an extended period but to be safe, clarification was requested. Since I had two files with this analyst where pro-active disclosure was offered, I asked for clarification on both email chains for each file. The response was interesting because in one email chain, the analyst stated that they had made the clarification in the other email chain, however in actuality they had not – though they did make the

[130] Larsen, *supra* note 122. Larsen notes that analysts are frequently versed in the technicalities of the ATI process, however not in the substantive work of the government body in question – oftentimes it is the requester who is more familiar with the material that they are seeking.

[131] Providing previously disclosed information in exchange for abandoning a request.

clarification that the file would be closed upon providing pro-active disclosure in the email chain claiming to have already answered my question in the other. It seemed to me at that point, that the analyst may not be as meticulous in keeping track of their workload.

For IRCC File 6, letters regarding the Syrian refugee crisis, I was asked to by Senior ATIP Administrator 2 to provide key words (though I think they could have used Syrian refugee crisis or Syrian refugees as key words) and secondary topics (which in my opinion were the same as key words) for open letters (see Appendix E-6) – a negotiation tactic noted by Walby and Larsen[132] where the analyst attempts to have the requester narrow his or her request[133]. The analyst also asked if I wanted all letters addressed to the Minister of the IRCC. This seemed odd to me since the request asked for letters submitted to the IRCC - why would letters addressed to the Minister of the IRCC sent via email not be considered as letters addressed to the IRCC in general? My response was that I wanted those letters in addition to written ones addressed to the IRCC so as to not indirectly exclude letters mailed to the IRCC through courier and post services. I also took the opportunity to inquire about how the search system works and whether there were any other addresses where letters to the ministry were sent (this question was completely ignored). The analyst did inform me that the search engine that they use is similar to that of an internet search engine – however this response at the time confused me since Senior ATIP Administrator 1 had described a process where specific key words were required to access a specific subset of data, whereas with an internet search engine, using a search term would yield all results relating to the term, even if the term itself was not present in the record itself.

While I provided key words and secondary topics to the analyst, I also took notice of a coercive nature to "working" with analysts to ensure that files are processed "in a timely fashion", to quote Senior ATIP Administrator 2. Throughout my correspondence with this analyst, I was informed that my file would be put on hold until I responded with the information they want and given a warning that the request will be abandoned if I did not respond within a month's time. It is as if the analyst is holding the progress of my file hostage until I meet their demands and narrow down my request, and if I do not narrow the scope of my request, I am more or less threatened with a lengthy extension. What is most troubling is that analysts can suspend processing and designate a request as abandoned if they do not hear from the requester (though nowhere in the ATIA is there a provision allowing this), while they suffer no consequences for ignoring a requester's correspondence.

The key words that I provided for IRCC File 6 were: refugee, Syrian, admissibility, screening, security, status, and culture/cultural to capture themes and issues which I thought would have come up pertaining to how the resettlement of Syrian refugees into Canada came to fruition. As for the topics, I provided the following to: security, resettlement, culture/cultural considerations, and challenges. Although this may seem like a lot, I had asked the analyst if there was a limit to how many key words and secondary topics I could provide and was told that they would not be able to assess the amount until they see the ones I provide. The response to my key words and topics was that they wanted to speak with me via telephone "to assist how [they] can process accordingly given that [I] may be

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[132] Walby & Larsen, *supra* note 117 [2].

[133] It should be noted that while narrowing the scope of a request may result in pertinent information being excluded from disclosure of a file, there is also merit to focusing the scope of a request where one can ensure that only relevant data is compiled for a request file while excluding data which would be irrelevant to the requester's research interest. This however, would depend entirely on how the institution's data storage system is configured.

seeking to get this information sooner than later"[134]. This speaks to the coercive nature of negotiating with ATIP analysts where they are in the position to dictate how a file should progress – since they were not satisfied with my response, the analyst for this file requested to speak with me on the phone to further negotiate with, or rather persuade, me to further narrow the scope of my request.

It is worth noting specific language that was used by Senior ATIP Administrator 2 – it was stated that "..the wording of [my] request could involve a significant volume of records to search through and ***can paralyze the department***" (see Appendix E-7). This response was interesting to me since I had been told that the search process was akin to an internet search, something that is straightforward in general, although I am cognizant of the fact that compiling records do take some time to complete from my experience with the Hansard transcripts.

Phone Call

Prior to the phone call taking place, I asked the analyst which key words or topics had resulted in the significant amount of records that was mentioned and was told that it would be better to use primary key words and sub-key words – although I had not really seen a difference from the initial process that was recommended to me. At the same time, I was told that[135]:

> *"We don`t generate the systems as such, but we are of the view that the process could encounter touching base with you once confirmed by the program area, if they are faced with unforeseen volume from the Minister`s email address."*

This suggested to me that my request was to be outsourced to another department instead of being handled by the analyst – which took away from the previous comment in which my request could paralyze their department.

The actual phone call was amiable, the analyst seemed friendly and understanding. However my main takeaway from the call was that the new department (the IRCC used to be Citizenship and Immigration Canada – technically only new in name) was under a lot of requests and that due to the nature of my requests (wide scope), they would need to sift through a lot of records which may take up to 18 months since records are collected from many difference offices which engage with different departments and may require consultations. The analyst also used the term "paralyzing" again, though it did sound as if the concern was genuine through their voice – however at the same time, this confirmed for me that the key directive followed by ATIP analysts is to minimize the amount of record processing rather than upholding government transparency and fulfilling their duty to assist requesters. Overall, the phone call was, in my opinion, another way to negotiate for a significantly reduced workload - particularly since I was offered pro-active disclosure again. Table 2 presents the options discussed for all three of my files under the analyst's care.

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[134] See Appendix E – 7 "Email correspondence regarding IRCC File 6".

[135] See Appendix E – 8 "Email correspondence (2) regarding file IRCC File 6".

While the phone call in theory was supposed to move along the progress of my requests with Senior ATIP Administrator 2, the opposite effect took place. At the end of the phone call, the analyst had informed me that detailed emails of our phone call would be sent to me to encapsulate our conversation regarding the three files, the only email that fully depicted what was discussed was that of IRCC File 6 (see Appendix E-9). The emails received for IRCC Files 4 and 5 (see Appendix E-10) were extremely uninformative as to our telephone conversation – both emails only hint accepting pro-active disclosures (the emails do not explicitly say that we discussed accepting pro-active disclosures – I imagine largely because there was no such agreement), neglecting to mention that for IRCC File 5 the analyst had stated they would check to see if there were new public opinion analysis conducted since the previously disclosed files they offered to disclose, and for IRCC File 4 the analyst completed disregarded the fact that they recommended that I provide sub-topics to help narrow the search. Had I not been paying attention or taking notes throughout the call, I would have had no idea what the analyst was talking about in those two emails.

Table 2 – Options for Requests Discussed Over the Phone with Senior ATIP Administrator 2

File #	Options Discussed by Analyst	My Decision to Proceed
IRCC File 6	Providing less key words to garner a more focused and narrow scope.	I provided 5 key words for the analyst to proceed on an initial basis – Syrian, refugee, admissibility, screening, and security.
	Mentioned that I could file a separate request for the other key words (topics) I had previously provided – culture, resettlement, and challenges – and she could get the fee waived.	I asked how this would work but was never given an answer – I suspect it was a tactic for me to drop that part of the search, but given my research topic, the 5 terms I presented would provide adequate information, thus I was alright with the outcome.
	Brought up pro-active disclosure again and mentioned that they had worked with another thesis student who was happy to receive the disclosure.	I responded saying that I needed to ensure due diligence on my part in the data collection process.
	Asked if I had filed requests with other agencies such as PSC, CSIS, or CBSA	I mentioned that I did for PSC but not the latter two agencies since I thought that they would take a long time to fulfil the request – the analyst agreed with me.
IRCC File 5	Offered pro-active disclosure again and mentioned that they could provide me with the previously disclosed information and if I required more I could submit another request to which they could get the fee waived	I asked the analyst if they thought that there would be other records outside of the disclosed files to which I was told no. I requested for the analyst to check if there were new records, if not then I would take the pro-active disclosure.
IRCC File 4	Offered me pro-active disclosure and mentioned that there were too many briefing notes in general for this scope.	I opted to decline this offer.
	Analyst mentioned that providing sub-topics would help focus the search.	I provided the analyst with two options: 1) using key word searches with the primary term being Syrian refugee, and sub-key words of security, screening, admissibility, and welcoming; and 2) using topic search with the topic searches being security, screening, admissibility, and welcoming. Note: I provided the same terms because I had no idea if the searches would be conducted in a completely different manner.

It is important to note that I do not mean to imply that Senior ATIP Administrator 2, or any other ATI analyst, do not carry out their duties to the best of their abilities. Analysts have multiple files assigned to them at a given time and from my conversation with Senior ATIP Administrator 2, their department is oftentimes understaffed - thus it is likely that sometimes requests may be improperly handled. This however, is no excuse – specifically in the case of IRCC File 6, which will be discussed in further detail below.

Since my requests had been revised subsequent to the telephone conversation, a new receipt would have been required to be provided to me. This did not occur until almost a month after – though I did not mind at the time because I was not aware they had to send another official receipt. What irked me instead was that the new date of receipt had been December 9, 2016, and on January 9, 2017, Senior ATIP Administrator 2 sent me notifications of extension for IRCC Files 4 and 5, coupled with the fact that I did not receive any records pertaining to IRCC File 6. Both extensions were granted under section 9(1)(a), where the provision allows for an extension in the case of the department needing to search through a large amount of data which requires more than 30 day's time - IRCC File 5 (public opinion analysis regarding the SRC) indicated an extension of up to 90 days and IRCC File 4 (briefing notes, reports, and memorandums regarding the SRC) indicated an extension of up to 120 days. I posed a few questions regarding the extensions for both files.

Pertaining to IRCC File 5 (public opinion analysis regarding the SRC), I presumed that there had been new research conducted since the extension was required and asked the analyst if it was the case, what was currently being worked on, and whether or not it was possible to get an interim release package[136]. I was informed that there had been no new records found – which left me disappointed and wondering why it took so long to confirm when the analyst at PSC was able to do so within a month's time.

Regarding IRCC File 4, because the email had stated that there *may be a delay,* I asked if that meant that a delay may not be required and if the analyst could find out and whether the extension was for locating documents or reviewing located documents. An update was also requested to the analyst and whether or not they could tell me how many records had been found. The analyst's response was essentially that they did not know. Since the search process had been outsourced to program experts or "program areas" is the term the analyst uses, they would not know until they heard back from the program area, in which case the analyst had not. This would suggest that an analyst's role in processing a request is minimal and perhaps even redundant since they do not retrieve the data themselves – rather they are merely told what to redact, exclude and scan, and act as liaisons between requesters and program experts; tasks which could be easily accomplished by program experts. In this case, it could be argued that ATI analysts themselves serve as a means to uphold government secrecy[137].

A CD for IRCC File 5 arrived on January 24, 2017, to which I was pleasantly surprised since the extension had originally indicated up to 90 days. This feeling did not last long however, when it turned out that the CD did not work. To be certain that this was not merely an issue of computer

[136] A partial release of records already processed and ready for disclosure.

[137] However at the same time, I am also mindful of the fact that there are analysts out there who are very willing and thoughtful in their assistance to requesters in locating files/information relevant to their requests.

compatibility, the CD was tested on two other computers, only to be unsuccessful. I emailed Senior ATIP Administrator 2 regarding this issue on January 26, 2017, and inquired if the file could be emailed to me instead but received no response. Another email was sent on February 2nd in case the analyst missed my initial email, however this email went unanswered as well. Within this same period, I also inquired about my request for letters regarding the SRC, IRCC File 6, on January 29th since I had not received any records nor notification of an extension pertaining to this file – this email also went unanswered. A letter[138] had to be issued to the Access to Information and Privacy Coordinator of the IRCC[139] detailing the issues for both files, with the analyst to the email carbon copied (Cc'd) to the email to elicit a response. Specifically, also under the advisement of Project Supervisor Larsen, I asked whether IRCC File 6 had entered into *deemed refusal status*[*140*] and included the term in the email subject title to intensify the gravity of my concerns.

I received an email response from the analyst the next day stating that the CD may have been damaged during transit and to please be advised that they had been away from the office for two weeks[141]. What is important to note is that while the analyst emphasizes that client service is important and they are trying to get a response from the office area regarding IRCC File 6 (in addition to the many typos in the email), the status of my file being deemed refusal was never confirmed. The data pertaining to IRCC File 5 was sent to me on February 8th, however no updates were provided to me regarding IRCC File 6. I followed up on the analyst's response twice after to see if they had heard back from the office area and to also confirm the status of the file – no response from the office area had been received, nor would the analyst confirm whether the file had entered into deemed refusal status. However, on the second follow-up response, the analyst stated:

> *"Unfortunately, an extension for this file was not taken. It was an oversight and when we noticed it was too late."*

This response indicates that the file has indeed entered deemed refusal status, in addition to the fact that this analyst was negligent in the management of this file. I ended up filing a complaint for this file because while there are no substantial consequences (criminal or otherwise), the institution in question, the IRCC, can still be held accountable (though technically on paper)[142] for their refusal to comply with the ATIA and disclose public records.

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[138] See Appendix E – 11 "Email letter to ATIP Coordinator Audrey White".

[139] This information can be found at this link < http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/atip-aiprp/coord-eng.asp>

[*140*] Pursuant to section 10(3) of the ATIA, where the government institution fails to grant access to records requested under the ATIA within the specified time limit, the institution will have been deemed to refuse access. While there may not be any consequences for the analysts processing the file in question, there would be consequences for the institution and their ATIP record.

[141] See Appendix E – 12 "Email response from Senior ATIP Administrator 2 regarding my letter to ATIP Coordinator White.

[142] The Office of the Information Commissioner of Canada conducts investigations into complaints filed against government institutions regarding ATI requests and publishes a performance report annually.

PSC Analysts

My correspondence with the PSC ATIP analysts is minimal in comparison to my correspondence with IRCC ATIP analysts. However, through my experience in access brokering with Senior ATIP Administrator 2, it is difficult to say whether the processing of my requests would be benefitted if the PSC analysts had been more engaging. It seems to me that both negotiating with analysts and not interacting with analysts can result in reduced processing of a requesters file. For example, negotiations may result in the narrowing of the request and the reduction of information generated. A lack of communication, or rather clarification, from the analyst may also result in the reduction of information generated as they are in the position to exercise their discretion to facilitate and/or disregard certain records from the search process.

Consultant

Although official receipts for PSC Files 1, 2, and 3 were never provided by this Consultant, I was first contacted when the analyst asked if I wanted a docket of correspondence to be included in the processing of PSC File 3 (see Appendix E-13). This appeared to be a good start to the processing of my request and my initial impression was that Consultant was a thoughtful analyst since they consulted me rather than automatically deeming the records as irrelevant to my request. Though the docket of letters would result in an extension 60 days to process, I informed Consultant that I would like to have the docket included since there would still be some time remaining before the data collection phase of this project was set to end. The next, and last, time I heard from Consultant was when I inquired about the notifications of extension which were sent for PSC Files 1 and 3, which indicated completion dates in May 2017.

Pertaining to PSC Files 1 and 3, Consultant was asked if it would be possible for the files to be completed by end of January 2017 to meet the deadline for the data collection phase of this project and whether it would be possible to receive an interim release package at that time if the former was not possible. The analyst stated that they would do their best, however could not guarantee any results. I attempted to follow up with Consultant regarding the progress of my files on January 29th but did not receive any response.

On February 16th, I received an email from a new analyst, informing me that they had taken over PSC File 1 for Consultant and sought clarification as to whether I would like for them to omit records which were Cabinet Confidences[143] from the processing of the request. The presence of a new analyst led me to wonder if perhaps my other request had also been transferred from Consultant to another analyst, which could explain why I was not receiving any responses, as it would not be their responsibility reply anymore. Regardless, another email was sent to Consultant on February 16th to follow up on the previous email sent on January 29th – to which has gone ignored. In the meantime, the new analyst (ATIP Analyst) was instructed to omit records which were clearly Cabinet Confidences and was asked if an interim release of the file could be provided to contribute towards the data collection of my project. Almost a month and a half went by before I heard back from this analyst. While the analyst apologized for the delay in their response and offered to provide a copy of another file that included

[143] Pursuant to section 69 of the ATIA, Cabinet Confidences or Confidences of the Queen's Privy Council are not subject to the ATIA and will ultimately be excluded from disclosed files.

documents pertaining to the planning efforts of the Syrian refugee resettlement initiative which would be released the week after while they continued to work on my request. Though I accepted this offer, I have yet to receive any copies of the mentioned file, as well as a response from the analyst.

ATIP Consultant

Other than sending official receipts of PSC Files 4 and 5, ATIP Consultant has never responded to my emails. Both of these files had been completed early on (though no records had been found). While I had expected no records for PSC File 4, public opinion analysis regarding security certificates, I decided to ask if no records were found as a result of the date range, or if it was a matter of content where the records did not exist at all in the institution. A different individual responded to the questions stating that they held no relevant records which would respond to the request. It was perplexing how the analyst would not respond to my emails personally, particularly since the official receipts state to contact the analyst for any questions, as well as on the request/file completion letters.

General Remarks on the ATI Process

What I took away from this experience was that it is important to plan ahead before utilizing this method of research and to expect delays in obtaining the information that you are seeking. It is also important to communicate with the analyst assigned to your file, as they may not be experts in the material that is being requested, so you can ensure that they understand what it is that you are looking for because they are essentially the "process" that determines the outcome of your request. Further, if the analysts do not ask for any clarification (or in my case if they do not reply emails) it would be worth telephoning them as a way to get a response from, as well as get in contact with, them – something which I will be doing more with future ATI research.

Something that really struck me throughout the ATI process was that while filing ATI requests can facilitate access to government records, at the same time, the process also facilitated government secrecy – particularly through the analysts. Although it may not be apparent during the process, negotiating with the analysts (or in my case, being ignored by analysts) can restrict the amount of records that the researcher ultimately gains access to - and this process is accepted by researchers who engage in ATI research. In this sense, government secrecy is not only facilitated, but also entrenched by those who engage in the ATI process.

Analyzing the Data

The analysis of ATI data commenced with an initial read-through of the documents and relevant passages/sections were either highlighted or marked with a post-it note. The next part of the ATI data analysis involved the coding of relevant passages to identify key themes and concepts which arose from the text. After key themes and concepts were identified, memos and notes were made to relate the identified themes/concepts to how admissibility is determined or conceived through immigration practices and policies. In addition, specific terms or passages that I wanted to further explore or mention were either underlined or marked with a post-it note.

Three Data Sources

While at first glance these three sources of data may seem independent of one another, I believe that when considered as a whole, they serve to compliment each other in providing a well-rounded account of how admissibility is constructed. The interviews provided experiential accounts of the formal and informal processes that shape immigration law and policy in general. Although neither participant was a specialist in security certificates or the response to the Syrian refugee crisis, they were particularly helpful in developing an understanding of politics and power in the context of Canadian immigration. The Hansard transcripts provided a textual account of the political narratives that framed, and continue to frame, both case studies – especially that of the response to the Syrian refugee crisis – and immigration in general. In particular, because these narratives are prepared for public consumption, it can be inferred that they are an "official" representation of how the Canadian state constructs admissibility. Finally, the ATI data presented a practical account of immigration directives by providing insight into the inner-workings of government institution with backstage texts[144], in addition to also having provided insights into the politics of information control pertaining to these issues.

Limitations

It is important to note that this research was conducted with an incomplete set of data – specifically, I had not received records for several of my ATI requests as some came back with no results and others required extensions to complete. In particular, there could have been more points of admissibility to be identified (to be discussed in the Discussion & Conclusion chapter), however since I was only able to obtain two previously released records pertaining to briefing notes, reports and memorandums regarding the Syrian refugee crisis, my findings were limited in that regard. In addition, the analysis of public opinion data regarding the Syrian refugee crisis should also be considered as incomplete since my requests for letters regarding the Syrian refugee crisis both required extensions to complete and only one of the public opinion analysis requests was completed. The records for the letters request to PSC pertaining to the Syrian refugee crisis was received recently, but they were not included in this project as it came well after the data collection period - they can however, be included in this thesis for future editing as well as for future research. For future research requiring the use of ATI records, I would recommend filing requests at least eight months in advance to account for delays and extensions.

A key limitation in this project is that only two case studies were examined, thus these findings may not reflect those of other immigration practices. It is possible that studies into other immigration practices may yield completely different results – as such, for possible future research, it would be worth analyzing a bigger sample of immigration practices. In addition, although my objective was to understand how admissibility is constructed and framed within Canadian immigration laws and policies, I did not conduct an in-depth analysis of all Canadian immigration laws and policies– only the discussions surrounding the case studies and reports (which I was able to obtain) pertaining to the implementation of the two case studies. It would be worth conducting an analysis on Canadian immigration laws for future research into how admissibility is conceptualized.

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[144] Walby & Larsen, *supra* note 117 [2].

Another limitation in this project is the limited amount of interviews which were conducted. While both participants offered valuable insight into how immigration is conducted in Canada, this project would have benefited from more interviews conducted with a diverse pool of participants. This could include other professionals working within the field of immigration – such as immigration officers, members of the Immigration and Refugee Board, or program officials – activists or advocates, as well as refugees and immigrants themselves to provide for a more well-rounded outlook into how admissibility is conceptualized within Canadian immigration laws and policies. Specifically, it could be particularly fruitful to interview those who are processed through the immigration system – refugees, immigrants, and certificate detainees – for future research because they are the ones whose lives are directly impacted by the immigration system and juxtapose their perspectives with those of CBSA officers who handle their claims and applications to obtain a more practical examination of how admissibility is constructed.

Findings and Analysis

The interviews with both participants proved to be very insightful and provided useful context/ background information into how certain parts of the Canadian immigration system works. Although they were supposed to inform upon my approach to the Hansard and ATI data, I found myself being able to draw conclusions early on due to the data being very rich and it really would be worth conducting interviews with more individuals for future research. The information and perspectives that the participants shared underscored several different themes which sensitized my analysis of the Hansard and ATI data. In particular, the ambiguity of admissibility within immigration law – or rather, it is not even defined in law – juxtaposed with the clarity and focus on grounds relating to inadmissibility allowed me to consider admissibility as a multi-faceted construct and process which foreign nationals are navigated through and identify different ways in which admissibility may be conceived, once non-citizens pass the pre-requisites of disproving their inadmissibility to the Canadian state. Additionally, the political nature of immigration and refugee policy – intertwined with security politics – cut across all three data sources – though most emphasized by the Hansard data.

For the analysis of the textual data – Hansard and ATI documents – I found that I drew upon the Hansard transcripts more than the ATI records regarding the response to the Syrian refugee crisis and the opposite pertaining to the use of security certificates. This was not surprising as there was not much discussion surrounding the initiation of the security certificate process (in addition to there not having been as much discussion in general, and the fact that a lot of my ATI requests came back with either no records or have not yet been completed) as opposed to the refugee resettlement program (though those results are minute as well) – however for both case studies, the Hansard material provided for a descriptive account surrounding the politics of immigration and refugee policy (however not all spoke to the two cases studies specifically). Regarding the ATI records, I relied largely on the four following files in Table 3. Although I had received more informal requests, most were not relevant to the topic of this project and thus excluded from the analysis.

The ATI process itself left me with the impression that admissibility, and immigration in general, is a topic that the Canadian state wants to maintain a certain image for when addressing to the public - and to a point, remain unknown or ambiguous to the Canadian public – as evidenced by the

few results garnered from my formal requests for government information where most were found to not have corresponding records, and others delayed. In particular, through my correspondence with Senior ATIP Administrator 2, I specifically informed them that I was looking for records that speak to the admissibility of the Syrian refugees – and if I am to believe that this was relayed to program experts – the delay (both remaining files[145] have gone into deemed refusal status now) in the release of this information to me implied that they do not want the information disclosed. Perhaps this could be because the information would paint the government in an unfavourable light and reveal that the objective of certain immigration policies is to find individuals inadmissible, rather than admissible, to Canada - although it could also just be that the ATIP department at the IRCC is extremely busy and forgot about my request. Nevertheless, the obscurity surrounding how admissibility, as information, is managed and controlled suggests that the concept within Canadian immigration law and policy is ambiguous in nature.

It is also worth noting that during the compilation of the Hansard material, I noticed that there were several transcripts that came up in the search results but did not speak to either of case studies. Many of these transcripts pertained to terrorism/terrorists as well as calls to increase military action to reduce or prevent radicalization (largely brought up by the Conservative Party). This suggested to me early in the project, that immigration in general, may be inherently linked to certain issues – in this case, the (in)security of Canada regarding the war on terror.

Table 3 – ATI files used in analysis

Obtained Through Formal Request		
File Number	**File Description**	**Obtained from**
A-2016-26704 (IRCC File 1)	Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present. October 24, 2016	IRCC
A-2016-26695 (IRCC File 5)	Copies of public opinion research and analysis, including poll results, regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 – present, October 24, 2016	IRCC (Pro-active disclosure)
Obtained Through Informal Request		
A-2016-00129	Reports, Memorandums of Understanding (MOUs), and briefing documents related to the security certificate regime (including security certificate policy and practice and reports, MOUs and briefing documents related to individual security certificate cases). Date range: January 1, 2016 -> present (July 8, 2016).	PSC (shared by Project Supervisor Larsen)
A-2015-00314	Final version of briefing notes prepared for the Minister re: Syrian refugees (Nov. 4, 2015 to Jan 21, 2016).	PSC (This file includs information pertaining to the screening process involved in Canada's response to the Syrian refugee crisis).

[145] Letters received pertaining to the Syrian refugee crisis, and briefing notes, reports, and memorandums pertaining to the Syrian refugee crisis.

Interview Data

The overall impression left to me by both participants was that Canadian immigration laws and policies are highly political processes which serve more as a mechanism to remove foreign nationals, at least those who are not wanted by the Canadian state, rather than a means to facilitate the relocation of an individual to Canada – particularly in relation refugees. Further, these laws are primarily enforced by CBSA officers who are granted wide discretionary powers in the determination of an individual's admissibility to Canada – or rather, an individual's inadmissibility to Canada.

It's not really, straightly speaking, defined.

To answer my research question of how admissibility is constructed and framed within Canadian immigration law, I first needed to know how admissibility is defined, or if a definition exists at all in this context. From my conversations with both participants (and having gone through the IRPA myself), admissibility is not formally defined within the IRPA. Instead, there are provisions which state various circumstances which would result in an individual's inadmissibility to Canada – these are set forth in Division 4 of the IRPA[146]. At first glance it appears to be reasonable. There are certain conditions that one must meet in order to not be considered inadmissible to Canada - that is, in order to not have to leave or be removed from Canada. However, this does not guarantee admissibility into Canada in any way – rather, only guarantees of inadmissibility are made. Further, different programs in which foreign nationals can be admitted into Canada have separate criteria which have to be met before individuals can even be considered for entry into Canada - and even when these criteria are met, an individual's admissibility is not guaranteed.

An example brought up by both participants was that of the Express Entry program[147] (EE), which operates on a points-based ranking system that allows for skilled foreign workers to submit an online profile for a chance to be invited to apply for permanent residency in Canada. In this case, not only to applicants have to meet the standards of not being inadmissible to Canada, they must also meet the standards of the EE ranking system, and subsequently the standards of how permanent residency is determined – and even then, admissibility is not 100% guaranteed. This suggests that admissibility functions as a multi-step process where there are multiple points of determination with regards to whether or not a foreign national can enter and remain in Canada.

Since the IRPA does not carry any provisions which would guarantee an individual's admissibility while it does provide for guarantees to an individual's inadmissibility to Canada, it could be implied that the Act serves to facilitate and create resources for negative findings for non-Canadian citizens' applications to Canada[148] – the lack of acknowledgement of what admissibility should be within the Act suggests that admitting non-Canadian citizens is not the priority. This places an

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[146] Pursuant to Division 4 of the IRPA, inadmissibility can be found under reasons of security, human or international rights violations, serious criminality, criminality, organized criminality, health grounds, financial reasons, misrepresentation, non-compliance with the Act, and accompanying family members who have been found inadmissible to Canada (see Appendix A-1). See also Edelmann, *supra* note 1.

[147] For more detail, see Government of Canada, *How Express Entry Works* (Government of Canada, 2017), online: Government of Canada <http://www.cic.gc.ca/english/express-entry/>.

[148] Similar to that of an obstacle course, where one has to pass multiple barriers to win – in this case, barriers of not being inadmissible under Division 4 of the IRPA, and subsequent barriers (different criteria) within different immigration and refugee programs.

imposition on foreigners to prove themselves to the Canadian state in a system that appears to allow for multiple opportunities to exclude foreign citizens from Canada. During my interview session with Mr. Smith, he noted the numerous ways in which the Minister can attempt to have a refugee claimant removed[149]:

> *"For a hearing, a hearing is scheduled, notice is sent to the Minister of Public Safety and Emergency Preparedness. They have the option then of saying, "Based on the evidence we have on our investigation, this person is ineligible to enter Canada." They'll then forward that […] they can decide to forward that to ineligibility, and then it will go to the Immigration Division, before the Refugee Protection Division hearing. They also have the decision to, so they get two kicks at the can really, they have the decision to just intervene and do it at the Refugee Protection Division hearing."*

This presents an unfair process for refugees, and non-Canadian citizens in general, as they would be subjected to multiple hearings, trials essentially, to prove their perilous circumstances – something which I would argue is not fully possible to begin with.

Imagine yourself being targeted by a radicalized group and that your life has been specifically threatened in a country that does not have reliable law enforcement or security agencies available. Would you wait and subject yourself to danger so as to document the threats to and attempts on your life before escaping to safety or would you grab the bare essentials (passport, any other identification cards/documents on hand, and some form of money) and run for your life? Many would opt for the latter as it would decrease the chances for my death. Mr. Smith posed another example worth considering - picture a scenario in which you are a political dissident being persecuted by the government of your country of origin. You are now seeking asylum in Canada and you are asked to provide information which can only be obtained from government records – how would you be able to produce such evidence?

Concerns arise as to the fairness of the immigration system and whether it ensures due process for those who are processed through it. Although it is called the Immigration and Refugee *Protection* Act, protection is only awarded to those who are considered as refugees, and nowhere in the Act does it guarantee a refugee's status indefinitely after having received it – ie. a non-citizen's refugee status can still be revoked thereafter, and the same can be said for permanent residents and even Canadian citizens who possess dual citizenship. The insinuation then, is that protection is non-existent, at best temporary, for any foreign nationals in Canada[150]. I do not mean to imply that the system allows for the arbitrary removal of foreign nationals from Canada, or that they are subject to maltreatment. However, until a formal definition is provided for admissibility, it would appear that the immigration process is ambiguous and highly discretionary as one cannot ground a claim to admissibility in a clear legal definition.

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[149] Interview with Participant John Smith.

[150] Pratt also speaks to this in her discussion of how the IRPA serves more to uphold the security and integrity of the Canadian border, public and administrative systems rather than protecting refugees. See Pratt, *supra* note 14. Comack also notes that immigration in Canada serves more as a process of exclusion than it is about welcoming foreign nationals to Canada. See Comack et al, *supra* note 7. Additionally, this is also reminiscent of Larsen's (2014) discussion of the state of "permanent temporariness". See page 85 of Mike Larsen, "Indefinitely Pending: Security Certificates and Permanent Temporariness" in Vosko, *supra* note 56.

You're fighting CBSA, you're fighting the government, to get people who deserve to be here into the country.

The theme of fairness – or rather, unfairness – of how admissibility is determined was identified early on during the interviews. When asked if participants thought that Canadian immigration law presents a bias against foreign nationals, both answered yes without hesitation. Unexpectedly - though at the same time, not unexpectedly given their role in immigration processing, as well as the literature surrounding CBSA officers[151] - both participants spoke to procedural and evidentiary biases against non-citizens which arise from the IRPA, specifically at the hands of the CBSA. This was an interesting response because the participants had brought up CBSA very early during our conversations without any prompting on my part.

Both participants identified that CBSA officers have increased discretionary power in the outcome of refugee claims. Specifically, the Immigration Division[152] appears to serve as a proxy to the CBSA with respect to the hearings they conduct and both participants noted that the Immigration Division serves as a "rubber stamp" for what CBSA wants – ultimately an inadmissible finding subject to removal. Mr. Smith underscored the unfairness of this arrangement when he stated "…ineligibility itself is really a losing case, almost always…I would imagine that ineligibility is effectively a rubber stamp"[153], and that he has been told to "[not] even bother with an ineligibility, you'll lose, you're guaranteed to lose"[154]. Mr. Thompson also noted that once the facts are made out by the CBSA officers in a section 44 report[155] which has gone before the Immigration Division, there is no actual guideline for Immigration Division members to follow in determining a claimant's admissibility except for whether CBSA officers are satisfied with the issues at hand – and even when they are satisfied, there is no obligation for them to act on it either[156]:

> *"The presumption is, that CBSA will bring your client before the Immigration Division and say, "We're not satisfied with identity", but they don't have to! It's discretionary! That should be taken away from CBSA. Because you can have, and it has happened, you can have an officer whose file it is and they get sick, and your client just sits in custody. Or you can have an officer that's so busy, doesn't bother looking what*

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[151] Satzewich suggests that immigration officers are more likely to reject applications and claims because they anticipate the rejections to be successfully appealed – more than they believe is warranted. See Satzewich, *supra* note 96.

[152] The Immigration Division of the Immigration and Refugee Board conducts admissibility hearings for non-citizens who meet certain inadmissibility provisions in the IRPA and matters of detention under the IRPA. This is separate from hearings conducted before the Refugee Protection Division. For more information, see Immigration and Refugee Board of Canada, *Immigration Division* (Immigration and Refugee Board of Canada, 2018), online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/Eng/detention/Pages/IdSi.aspx>. See also Immigration and Refugee Board of Canada, *Refugee Protection Division* (Immigration and Refugee Board of Canada, 2018), online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/Eng/RefClaDem/pages/RpdSpr.aspx>.

[153] Interview with Participant John Smith

[154] *Ibid.*

[155] A section 44 report refers to a report which states relevant facts to an individual's inadmissibility to Canada that an immigration officer may prepare if they believe a permanent resident or foreign national is inadmissible. This report is then forwarded to the Minister and depending on the circumstances, an inadmissibility hearing in front of the Immigration Division can be called or a removal order may be issued. See section 44 of the IRPA for more detail online: <http://laws.justice.gc.ca/eng/acts/i-2.5/section-44.html>.

[156] Interview with Participant Michael Thompson

> *has come into the file and your client just sits in custody until 30 days. Meanwhile what's keeping him in custody has been disproven, or proven in the case of identity."*

It was evident from the interview sessions that discretionary powers play a significant role in determinations of admissibility for foreign nationals. Particularly on the part of CBSA – so much so that Mr. Smith described refugee law as "fighting CBSA" rather than tribunals such as the Immigration Division or the Refugee Protection Division which are supposed to make the determinations. This could carry a presumption of arbitrariness in how decisions are made[157].

The pendulum had swung

If we consider Canadian immigration events – specifically Canada's recent response to the Syrian refugee crisis and the security certificate regime – there would be no surprise in identifying an overarching political theme. It is no secret that the resettlement of 25,000 Syrian refugees into Canada by February 2016 (originally intended for December 2015) was an election promise made by Prime Minister Trudeau. Not to belittle the tremendous work that was done to ensure the safety of many Syrian lives however, it is worth acknowledging that this decision was made with the intention to sway the votes of Canadian citizens in the 2015 federal election. Similarly, if we consider the use of security certificates, it was not until Canada had been under the rule of the Harper Government that security became such an increased concern, and that the use of certificates had been increasingly reported in the media. Though it is worth recognizing the dual ownership of the security certificate regime by both the Liberal and Conservative government where the ST5 certificates were issued under the Liberal government and subsequently upheld (by the Supreme Court of Canada) under the Conservative rule – and both these federal parties have made political use of the imperatives of national security. This suggests then, that immigration matters are and carried through the whims of whoever is currently in power and those who wish to be in power. As a result, there is the implication that the way in which admissibility is conceived is fluid and subjective across different immigration policies, practices, and even within the law – which brings about an air of arbitrariness.

This can be very dangerous because the way that admissibility is constructed within immigration law can directly affect the lives of human beings, especially if one is a refugee who is at serious risk of bodily harm, torture, or death in their country of origin. If the way that an individual's admissibility is determined in an inconsistent manner, then there is no telling whether or not one can truly be safe trying to seek asylum in Canada, especially since they could still be found inadmissible and subject to removal proceedings even after they have already arrived in Canada. If the focus of who Canada wants to resettle is dictated by political motivations or ideologies fueled by whatever is then popular in the media, then the only protection that is afforded, is to the Canadian State rather than immigrants and refugees.

Mr. Smith spoke to the shift in attitudes toward non-citizens where the Prime Minister Trudeau's announcement of taking in 25,000 Syrian refugees softened public opinion from the Harper

[157] Especially when we consider how immigration proceedings exemplify an adversarial process, yet they do not provide for the same standards of due process associated with criminal law even though individuals are facing a much worse punishment – deportation – than detention.

Government where "the pendulum had swung" back from the view that all refugees are criminals to "we're happy being a multicultural society" again[158]. Mr. Thompson had a similar view as well, where he noted that that people are more relaxed now as opposed to an angry and insular attitude which was left from the Conservative Government. This adds to the premise that admissibility is a fluid, and multifaceted, construct which is open to influence.

Canadian leaders have pandered to our worst fears.

A theme which arose in connection to politics was that of security. While both participants had only a general sense of what security certificates are, both shared the perspective that security certificates should not exist as they blatantly violate the Charter rights of those who are most in need of protection. However, both participants also noted that the security certificate regime is upheld to this day because of security and fear of insecurity. There exists a presumption that ensuring security is more important than liberty and this is reflected in the current configuration of immigration policy and law as well. The original timeline of resettling Syrian refugees to Canada had been pushed to February 2016 to implement increased security screening on refugees due to concerns that terrorists could be among those arriving in the wake of the Paris bombings. Mr. Thompson postulated that this mentality had seeped down throughout the years since 9/11, and now that national security has become such an integral concern, any decision made which could be constructed to lessen the security of Canadians would not be favourable in elections. This certainly appears to be the case, given that the security certificate regime remains upheld.

While security can be a legitimate concern in the matter of determining whether a non-citizen is admissible to Canada, the degree to how much security is favoured to date can present as an issue. Security and/or national security could easily be used as props to garner political success – which raises the question of whether or not Canada's security is genuinely at risk. This is something I considered in my review of the Hansard and ATI data as I examined the role in which security plays in the conceptualization of admissibility within the immigration context – although I was already of the mind that security is inextricably linked in the determination of admissibility for foreign nationals. This is readily reflected in the criteria set for inadmissibility within the IRPA under Division 4 – specifically regarding security concerns, criminality, organized criminality, serious criminality, human or international rights violations, health concerns, and even financial concerns – all of which constructs those who may be a risk to the security of Canadians, be it physically or financially, to be inadmissible. Foreign nationals have to prove that they do not present these "security" threats before they can even be considered to become admissible to Canada.

The Canadian ethos

Is there however, a difference in how admissibility is determined among different categories of foreign nationals? Regarding certificate detainees, both participants held the same opinion that admissibility is determined on a stricter level - a much more draconian process of admissibility, described by Mr. Thompson – in comparison to other non-citizens. Mr. Thompson also believed that the Syrian refugees were subjected to a more rigorous process of admissibility – particularly through

[158] Interview with Participant John Smith.

the screening process – compared to other individuals seeking to enter Canada. This would suggest that there are different levels of admissibility where certain individuals are scrutinized more than others. Consequently, this would also suggest that there are certain individuals who are more welcome to Canada than others.

Mr. Smith noted that from his experience doing refugee work, he has observed that individuals from certain countries are more likely to have successful claims than others due to the situation in the country of origin. This would imply that admissibility is determined on the level of vulnerability that a non-citizen possesses – or rather the level of vulnerability that Canada believes that a non-citizen possesses. I say this not to be snide, but because Canada references designated countries of origin[159] when making determinations of refugee claims. While it is a necessary mechanism in ensuring that the refugee process is not abused, it makes the assumption that all individuals from those countries are bogus refugees and intends for their accelerated removal from Canada. It could be worth identifying whether those who are at the outset believed to be non-genuine refugees are evaluated through an entirely different perspective of admissibility for future research.

Mr. Thompson stated that there is an emphasis on skilled workers and those who can contribute to Canada's economy due to its aging population. This was not surprising given that refugees and non-citizens have been painted as financial burdens and dependents to the Canadian State – despite the fact that Canada is a signatory to the Geneva Convention which obligates the government to assist refugees rather than finding excuses not to do so. A point of interest arose when Mr. Thompson spoke of the moralities of taking in skilled workers from countries that more likely than not need those workers more than Canada does. Take for example, a doctor from South Africa. While it is perfectly fine that the surgeon may want to live in a better place, Canada would be depriving the country of professionals that they are in dire need of. It could then be inferred that foreigners are afforded the protections of the IRPA, so long as they are useful to Canada, and those who are not are subject to removal.

It is worth recognizing that even if non-citizens arrive in Canada seeking refugee status without much money to their person, it does not necessarily mean that they will become burdens to Canada. On the contrary, being able to travel to Canada necessitates a certain level of skill and comfort in administrative settings to being able to obtain, not to mention afford, a visa, secure a means of transport, and seek out an immigration office to apply. I would imagine that these individuals could, with training, easily contribute to Canada in no time. This could then suggest that admissibility is determined based on the level of contribution to Canada that an individual appears to be able to provide. Thus, another theme that informed upon my review of the Hansard and ATI data was contribution.

Both participants called for increased inclusionary practices with regards to admitting foreign nationals into Canada. Mr. Smith expressed that while Canada's response to the Syrian refugee crisis was to be commended, ultimately it was an election promise driven by what was in the media cycle at the time. Rather than solely reacting to the Syrian crisis, Mr. Smith expressed that he would have supported the response more if it had offered to take in 100,000 refugees regardless of where they were

[159] Designated countries of origin refers a list of countries that do not normally produce refugees, they are considered as "safe" countries which ensure that human rights and state protection is afforded to their population. For more detail, see Government of Canada, *Designated countries of origin* (Government of Canada, 2017), online: Government of Canada <http://www.cic.gc.ca/english/refugees/reform-safe.asp>.

coming from – and I completely agree. When specific groups of non-citizens are singled out, be it to provide assistance to or withhold assistance from, it creates tiers among different groups of individuals. It presumes that certain groups' lives are worth more than others, and this should never be the case. Something worth doing in my subsequent analysis, I think, would be to note the different points of inclusion/exclusion that are assigned within immigration laws and policies and how they are carried out in practice. Mr. Thompson also had a similar response in the sense that Canada should not be picking/choosing who can be admissible to Canada. Rather, any one should be able to move to Canada if they wished to and that by favouring skilled workers, Canada has forgone its origins – the Canadian ethos – where what has made the land so great were the farmers and labourers who settled here from different lands[160].

This is important to consider given the negative constructions of foreign nationals and non-citizens/refugees that exist today. They are indicative of increasingly exclusionary practices where Canada is able to pick and choose who they want in Canada, and essentially designate certain individuals/groups as unacceptable to Canada. Take for example the refugee category which has become highly contested over years. Constructions of the "bogus refugees" and "queue jumpers" call into question the legitimacy of every refugee seeking asylum in Canada and this has become reflected in immigration practices today if we consider the increased discretionary powers afforded to CBSA officers and the Minister in the determination of refugee claims. Rather than offering protection to refugees, the objective instead seems to be identifying the "legitimate refugees" – that is, those who Canada deems to be legitimate – and at the same time, deporting those who do not qualify. This suggests that admissibility can be selectively constructed among individuals of authority.

Language used

In reviewing the interview transcripts, I also took note of the language used, such as descriptors and how topics were framed. Something that caught my attention early on in the interviews was how Mr. Smith described practicing refugee law as "fighting" CBSA and the government and that the CBSA have been called "storm troopers" by others. This is indicative of battle/war-like language, from which one could infer that determining admissibility is a process of conflict between the foreign national and Canadian State. Rather than being offered protection and rights, non-Canadian citizens must defeat the government (disprove allegations against inadmissibility) to obtain them and remain in Canada - this illustrates an "us versus them" mentality as Canada (us) goes against non-citizens (them/the other) in a war of determining admissibility. Additionally, the use of certain descriptors for refugees came up during the interview sessions – including "undesirables" and "bogus refugees" – and underscored how entrenched negative perspectives of non-citizens have become in Canadian society as they are readily used. This is reminiscent of Leudar et al's discussion of the hostility towards non-citizens and how it can foster environments of social exclusion as it becomes entrenched in society[161]. This hostility within the Canadian context is reflected by immigration practices which have become increasingly exclusionary – particularly with refugees where resources and discretionary powers are granted to facilitate negative determinations for refugee claimants.

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[160] Interview with Participant Michael Thompson

[161] Leudar et al, *supra* note 101.

Hansard & ATI Data

Merely partisan political decisions

It was apparent early on from my review of the Hansard transcripts for both case studies – Canada's recent response to the Syrian refugee crisis and security certificates issued under Division 9 of the IRPA – that admissibility, and immigration in general, is very much politically driven. Although the Hansard transcript compilation had totalled over 700 pages, I found that not every result pertained directly to the case studies. Rather, many of the speakers utilized the two cases as trade-offs or points of contestation for other topics[162] where arguments including "we did this, why can't we do that" or "this shouldn't happen since that happened[163]" were made. In other words, these cases often came up as symbols of broader issues and evidence to support political positions, rather than as substantive matters for discussion – suggesting that these cases are important, in part, because of what they may represent. One recurring example to the former was the call to resettle Yazidi girls and women to Canada[164]:

> *"Mr. Speaker, does 25,000 refugees by December 31, 2015, ring a bell? This is the epitome of hypocrisy. My question to the minister is this. We have a reasonable motion that has been accepted by all parties in here, which has tangible action for the Yazidis. Why on earth can the government not stand up and say that it will bring Yazidi sex-slave girls to Canada?"*

It is evident that there is a negotiation aspect when it comes to determining the admissibility of certain groups of individuals (at least in the Parliamentary level), and the speaker here, the Hon. Michelle Rempel from the Conservative Party of Canada (CPC), is utilizing the response to the Syrian refugee crisis as a bargaining chip to widen the scope of admissibility to include Yazidi female victims. Of further consideration is the Liberal Party's response by the Hon. John McCallum[165]:

> *"Mr. Speaker, nothing makes me prouder than the fact that we brought, in 2016, three or four times more refugees than the Conservatives did. In four short months, we brought in 25,000 Syrian refugees. I, as a Canadian, am very proud of that accomplishment. In addition, we will work to bring in Yazidis and others who have been oppressed by Daesh in the years going forward."*

Here the accomplishment of resettling Syrian refugees is used as a deflection from responding to the Conservative Party's concern. Rather than answering why Canada had not yet announced to bring in Yazidi girls and women, McCallum only proclaims his pride in Canada's response and that the Liberal Party will work to bring in Yazidis, not that they *will* bring in Yazidis. We can see from this that the

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[162] Other topics included Yazidi girls and women, Canada's military contribution to combatting terrorism (more specifically ISIL/Daesh), and Bill C-6.

[163] This I observed largely with the transcripts pertaining to security certificates, where parties argued against certain bills - including Bill C-4, Bill C-31, Bill S-7, and Bill C-51 - and conversely the Conservative Party has also used the constitutionally upheld security certificate regime to argue for some of the same bills.

[164] See Appendix F – 1 "Excerpt from Hansard 94 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 94 (20 October 2016) at 5920 (Hon. Michelle Rempel).

[165] See Appendix F – 1 "Excerpt from Hansard 94 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 94 (20 October 2016) at 5920 (Hon. John McCallum).

stated objectivity and neutrality of the law and its processes frequently contrasts with the political discourse that frames the discussion.[166] Although Canada, as a signatory to the Geneva Convention, is obligated to assist all refugees, there is often contestation surrounding who and how many to resettle into Canada and there is a sort of power play between government parties in these deliberations on why certain individuals are not being helped when other are.[167]

Another use of the deflection tactic that I noted was in discussions of issues arising from the resettlement of Syrian refugees in Canada – an example of this was when Jenny Kwan from the New Democratic Party spoke to the delayed funding provided to the refugees[168]:

> *"Some refugee families in Saskatoon waited nearly three weeks without money for food or rent. They had to rely on charity just to feed their families and avoid being evicted. They said they are frustrated, worried, embarrassed, and feel like they have to beg to survive. This is not acceptable. How many other families are in this situation, and what action will the minister take to ensure this does not happen to anyone else?"*

The response from the Liberal Party was that "there are always bumps along the road" however then shifted the issue to celebrating the fact that 90% of the refugees acquired permanent housing[169]. I also found multiple transcripts which served to praise how welcoming and generous Canada and Canadians are, and their role in the resettlement of the Syrian refugees. Comments from Karen Ludwig from the Liberal Party caught my attention[170]:

> *"I want to give special mention to the individuals and community groups who have welcomed more than 25,000 Syrians. I want to thank these volunteers who constantly remind us of what it means to be Canadian.*
> *The leadership of our Prime Minister is inspiring volunteers in our country and around the world to be open, generous, and welcoming."*

Here, there is a construction of "Canadian-ness" that is associated with humanitarian acts – ie. we do this because it is the "Canadian" thing to do. While can be a good thing, at the same time, this type of narrative can be, and is, used as props within political discourse in determining future conceptualizations of admissibility within immigration laws – such as arguing for the admissibility and

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166 Comack et al, *supra* note 7.

167 An example of this can be seen in Appendix F – 2 "Excerpt from Hansard 72 in SRC Hansard Compilation" for PM Trudeau's response to the Conservative Party's questioning of why Yazidi girls have not been a resettlement target.

168 See Appendix C "Hansard 44 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 44, (21 April 2016) at 2547 (Jenny Kwan).

169 See Appendix C "Hansard 44 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 44, (21 April 2016) at 2547 (Hon. John McCallum).

170 See Appendix F – 3 "Excerpt from Hansard 39 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 39 (14 April 2016) at 2242 (Karen Ludwig).

inclusion of another group for resettlement[171] – or as props to that will paint the speaker's Party in a more favourable light[172].

It is important to keep in mind that although Hansard transcripts show Parliamentary debates in which the speeches presented and exchanges between speakers are, to a certain degree, scripted for public consumption. Thus, while different parties may have legitimate issues to present, there is also a political agenda behind their position. This speaks to the presumption of arbitrariness in how admissibility is determined, as terms of admissibility can be open to influence depending on whichever party scripts their performance to best appease the Canadian public, as well as the other government parties. As a result, it would appear that an individual's admissibility is valued more as a political trade-off – be it to argue for more inclusionary or exclusionary practices, or to deflect blame/criticism from oneself – rather than a mechanism to assist foreign nationals in their relocation to Canada.

It is important to note that Canada's response to the Syrian refugee crisis has been described as having been a promise of settling an "arbitrary number of refugees by an arbitrary date"[173] within the Hansard transcripts. Although this comment was made by a member of an opposition party, the Conservative Party, it suggests that there is an acknowledgement that immigration matters are decided on the whims of whoever is in power - hence their ability to set a number and date to their liking and discretion.

It is worth noting that I found that with the ATI records, the material (that was not redacted or withheld) that I reviewed were fairly straightforward in terms of providing information and political gain was not the objective – a stark contrast to some of the very elegant speeches from the Hansard material. This could be due to the fact that since ATI documents are typically produced for the eyes of government officials rather than the public, thus there is no need to try to sway anyone's opinion. In addition, I think since politicians may rely on this information to make decisions, the "straightforwardness" is also necessary since they are not experts in the field. This is worth considering because on the one hand, we would have someone who would not be able to fully appreciate the aftermath of their decisions or on the other hand, the decisions made by the one in power could have been cultivated by the respective program expert.

There is no liberty without security

The most prevalent theme identified for both case studies was security. This was expected given that the terms of inadmissibility set forth in Division 4 of the IRPA refer to circumstances which would jeopardize the security – be it physically, medically, or financially – of Canadian citizens. The only difference from my analysis, is the degree to which security is a factor in determining an individual's admissibility under the two case studies - where a certificate detainee's admissibility relies entirely on how great of a security risk they pose, and security did not seem to be as much of a concern in the

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[171] For example, in the Conservative Party's attempts to have Yazidi girls and women resettled to Canada, there is often reference to why Canada's generosity and welcoming nature cannot be extended to these females as it had been to the Syrian refugees.

[172] Refer back to Appendices F-2 and F-3

[173] See Appendix F – 4 "Excerpt from Hansard 3 in SRC Hansard Compilation" or see Parliament, *Hansard*, 42nd Parl, 1st Sess, No 3, (7 December 2015) at 59 (David Tilson).

matter of the Syrian refugees' admissibility[174]. Since security is a prerequisite in how admissibility is determined for both case studies, it could be argued that security is inextricably linked to an individual's admissibility to Canada.

Specifically, one could posit that security shapes and frames admissibility narratives. Consider the screening process that was implemented overseas in the response to the Syrian refugee crisis - its particulars were described as the following[175]:

> "[…]
> - With respect to these people – our first layer of security and safety is the careful identification of those who would be the best prospective candidates to come to Canada from among some 8-million people in the refugee camps. The UNHCR will provide us with names according to qualifications that we have specified – the most vulnerable, the lowest risk, and the most likely to settle well, particularly families with small children.
> - The second layer is a thorough personal interview with each and every prospective candidate, including a 10-year biographical review. The interviews will be conducted by experienced immigration officers. In the event concerns are identified at any stage of the process, the application will be deferred.
> - The third layer is biometric data, including fingerprints.
> - Fourthly, all biographical and biometric information will be checked against both Canadian and U.S. databases.
> - Fifth, there will be identification checks and rechecks throughout the process to prevent infiltration.
>
> […]"

Here we see among the identification directives to ensure that there are no terrorists among the Syrian refugees, the admissible refugee framed as the "most vulnerable, the lowest risk, and the most likely to settle well, particularly families with small children". Conversely, if we consider what a refugee experiences, this framing is not entirely accurate. Refugees by definition cannot be "low risk" due to their persecution – rather they are at the most risk due to their predicament[176]. Additionally, it is unlikely that they will be able to settle well since they have been uprooted from their country of origin – especially when we consider language and cultural differences.

In an opposition critic briefing note obtained from PSC, Canada depicts its construction of the admissible and legitimate refugee in its instruction to the UNHCR – so as to "[minimize] security risks" – to "prioritize vulnerable refugees such as complete families; women at risk; and persons

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[174] Though security was a concern initially, after the implementation of the overseas security screening, security no longer appeared to be a concern – this was reflected in the Hansard deliberations as discussions concerning the Syrian refugees no longer spoke to security concerns.

[175] PSC, Talking Points for Minister Goodale for Syrian Refugee Resettlement Conference Call with Provincial and Territorial Counterparts Responsible for Public Safety and Emergency Management November 23, 2015 at 10:00AM EST (date redacted); obtained through ATI request no. A-2015-00314 to PSC.

[176] Especially if they are targeted by groups that have access to resources across regions.

identified as vulnerable due to membership in the LGBTI community"[177]. Although it is not explicit, there exists the insinuation that any one who does not fit the above description is not a refugee[178]. Specific constructions/framings (such as the above) can be problematic to other refugees - especially those who manage to enter Canada as claimants when they are not legally (not until after their claim has been found to be genuine) or politically recognized as legitimate refugees[179]. This is important to consider because the way in which security frames admissibility can affect – distort – perceptions/ constructions of foreign nationals (and vice versa); and become entrenched in other immigration, and citizenship, processes.

The security certificate regime presumes that those who fit a certain profile – male and Arab and/or Muslim – are, more likely than not, terrorists or will become terrorists[180] - consequently, it constructs foreign nationals who fit this profile are less likely to be vulnerable or legitimate refugees[181]. This construction of foreign nationals was reflected in the resettlement program of the Syrian refugees where the same opposition critic briefing note, mentioned above, stated that regarding the prioritization of vulnerable refugees, Canada instructed the UNHCR that "Single adult males will only be considered at this time if they are identified as vulnerable due to membership in the LGBTI community or accompanying their parents as part of a family" [182]. While the reason behind this exclusion of single adult Syrian males (who do not fit the above description) is not noted in the ATI document, it can still be seen how the construction of a foreign national who is male and Arab and/or Muslim has seeped across different immigration practices.

I think the fact that the Supreme Court of Canada upheld the constitutionality of the use of security certificates very clearly demonstrated how certain groups of individuals are considered as more inadmissible than others through the level of risk they are alleged to present to Canada. The presumption is that anyone who has a certificate issued against them is a terrorist, or is an associate of one, or they have committed serious crimes such as violating human or international rights – the highest levels of risk to the Canadian population. Let us consider how security certificates are described by Public Safety Canada[183] and section 77 of the IRPA:

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[177] PSC, Questions and Answers: Opposition Critic Briefing – Screening of Syrian Refugees (not dated); obtained through ATI request no. A-2015-00314 from PSC.

[178] I make the reference to "refugee" in general rather than "vulnerable refugee" because all refugees are vulnerable – this distinction made in resettlement programs is more likely than not, another way in which the Canadian state allows itself to be selective of who it wants to deem admissible to Canada.

[179] In a debate regarding why Yazidi females had not yet been resettled into Canada, the Hon. Michelle Rempel from the Conservative Party specifically noted that there are "two main ways for refugees to come into Canada" – the first being privately sponsored and the second, through government assistance. The lack of recognition for the "other ways" hints that refugees who manage to come to Canada through other means may not be as "refugee" as those who arrive through the two main ways. See Appendix F – 5 "Excerpt from Hansard 131 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 131 (1 February 2017) at 8351 (Hon. Michelle Rempel).

[180] Razack, *supra* note 36.

[181] Especially when we consider how almost all of the ST5 were declared to be refugees, by Canada.

[182] PSC, Questions and Answers: Opposition Critic Briefing – Screening of Syrian Refugees (not dated); obtained through ATI request no. A-2015-00314 from PSC.

[183] PSC, National Security Litigation: Security Certificates and AEN Civil Case (dated March 11, 2016); obtained from ATI request no. A-2016-00129 to PSC.

"Division 9 of the Immigration and Refugee Protection Act (IRPA) allows the Government to use and protect classified information in immigration proceedings, such as security certificates, when trying to prove inadmissibility to Canada"

"Certificate
Referral of certificate
77 (1) The Minister and the Minister of Citizenship and Immigration shall sign a certificate stating that a permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, and shall refer the certificate to the Federal Court.

Filing of evidence and summary
(2) When the certificate is referred, the Minister shall file with the Court the information and other evidence that is relevant to the ground of inadmissibility stated in the certificate and on which the certificate is based, as well as a summary of information and other evidence that enables the person named in the certificate to be reasonably informed of the case made by the Minister but that does not include anything that, in the Minister's opinion, would be injurious to national security or endanger the safety of any person if disclosed.

Effect of referral
(3) Once the certificate is referred, no proceeding under this Act respecting the person who is named in the certificate – other than proceedings relating to sections 79.1, 82, 82.31, 112 and 115 – may be commenced or continued until the judge determines whether the certificate is reasonable."

Although both definitions do not specify, security certificates serve as a removal process as opposed to an admissions process[184] – though they operate through the declaration of inadmissibility as evidenced by section 77(1). If we consider a typical/regular removal process, an immigration officer would already have the facts proving that the individual in question is inadmissible to Canada. However in the case of security certificate proceedings, it appears that officers would be able to continue trying to construct an individual as inadmissible and as a security risk despite already having commenced removal proceedings. This suggests that arbitrary removals can potentially be issued under Canadian immigration law as officers would not have to have concrete proof of an individual's inadmissibility to substantiate their decision[185] – consequently implying that an individual's admissibility can be arbitrary determined.

It appears that being declared "admissible" to Canada is not a permanent or one-time change in status. The ST5 were all found and declared to be admissible by the Canadian state – with the majority found to be refugees, the most vulnerable individuals in need of protection – yet years later, they were deemed to be inadmissible. This lends credence to the construction of foreigners as deportable subjects[186] given that permanent residents, refugees even, can at any given time be subject to removal

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[184] Section 80 of the IRPA "Effect of certificate" does however, state that the certificate "is a removal order that is in force without it being necessary to hold or continue an examination or admissibility hearing" once it has been determined to be reasonable. Additionally, in an ATI document which states how the security certificate process works, it states that the issuance of a certificate's objective is "removal from Canada of a non-citizen posing danger to public or security of Canada". Retrieved from: Citizenship and Immigration Canada (CIC) How the Security Certificate Process Works (not dated); obtained through ATI request no. A-2016-26704 to Immigration, Refugee and Citizenship Canada (IRCC).

[185] Especially when we consider how the standard of proof used in these proceedings are merely that which is "reasonable". This is encompassed in section 78 of the IRPA.

[186] Lewis, *supra* note 84.

and found to be inadmissible to Canada – and places all foreign nationals in a state of permanent temporariness as there is no guarantee of how long they may remain in Canada[187].

Another implication from the security certificate regime, is that the admissibility of an individual can be (or is, in this case study) pre-determined. The security certificate process more or less guarantees an individual's inadmissibility where detainees are not even afforded the opportunity to present a competent defence against the allegations against them - especially since the *Anti-terrorism Act, 2015* allows for the Minister to apply for non-disclosure of essential information that makes their case against the accused foreign national. The includes information[188]:

- *That is relevant to the case,*
- *On which the case is based, and*
- *That allows the person to be reasonably informed of the case*

From my interpretation, all three types of information are, for all intents and purposes, the same. Any information that is relevant would be that which a case is based on, and such information would be that which allows the accused to be reasonably informed of the case against them[189]. This is indicative of a very restricted scope of admissibility where once an individual falls within the category of "serious security risks", regardless of actual confirmation or facts to prove the allegation, they automatically become indefinitely inadmissible to Canada.

In contrast, while security was a concern in the resettlement of Syrian refugees to Canada – subsequent to the Paris bombing – a memorandum pertaining to a phone call obtained from an ATI request to PSC[190] stated that security was not considered as a concern during the planning stages of the resettlement program:

> *"We understand that the main issues identified during these calls were social and economic in nature (i.e., housing). Security was not discussed…"*

As the Syrian refugees which Canada was expecting to receive had been previously vetted by the UNHCR, it lends credence to the assertion that admissibility is determined by the level of security associated with certain categories of foreign individuals. In the case of the Syrian refugees, their admissibility is more likely to be granted (and upheld) since they present a lower security risk to Canada due to already having been screened by the UNHCR beforehand.

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[187] Larsen, *supra* note 152.

[188] CIC, How the Security Certificate Process Works (not dated); obtained through ATI request no. A-2016-26704 to IRCC.

[189] If a judge grants one of those non-disclosure applications, it would completely vitiate any decorum of due process. Although security certificates are rarely used to date, consider what would happen if they become increasingly used in the future and this practice becomes a regular process implemented within immigration law. Multitudes of individuals could be deported without ever knowing why – this would ultimately send the message that foreigners are not admissible to Canada, or at the very least that individuals who fit the "terrorist profile" are indefinitely inadmissible to Canada. This is reminiscent of Larsen and Piché's discussion on "ancillary expectations" in Larsen & Piché, *supra* note 24 at 225.

[190] PSC, Memorandum for the Minister: Your Participation in the Big City Mayor Caucus Call Led by the Minister of Immigration on November 23, 2015 at 11:00AM (date redacted); obtained from ATI request no. A-2015-00314 to PSC.

The amount of screening that the Syrian refugees went through spoke to Participant Thompson's comment on how the Syrian refugees went through a stricter process of admissibility than other refugees – having gone through the UNHCR (overseas), then screening by immigration officers (still overseas), and further screening upon reaching Canada to confirm the screening conducted overseas[191]. Here we see one of the ways in which security can frame an individual's admissibility – where the more screening a foreign national successfully passes through allows them to be perceived as a low security risk, and admissible. The issue then, is that it places an onus on refugees to prove and construct themselves as admissible, "legitimate" refugees – something that may not always be possible, especially if one lives in a state of conflict and instability[192] (or if they are subject to security certificates).

There does however, appear to be a direction away from security based determinations of admissibility from my review of Hansard transcripts pertaining to the Syrian refugees – though the same cannot be said regarding the security certificate regime[193]. Calls to exercise discretionary powers pursuant to section 25 of the IRPA to facilitate the resettlement of the Yazidi female victims (and even waive additional levels of screening for them)[194] and to fast track refugee applications for Canada of non-citizens (affected by the travel ban in the United States) whose applications had already been processed in the US and to reconsider the Safe Third Country Agreement with the US[195] suggest a directionality away from security and towards a more inclusive approach to determining admissibility – where instead of approaching non-citizens as potential criminals or threats to Canadian security, they are approached as those. Additionally, public opinion analysis shows that fewer Canadians (from 49% to 39%) are of the opinion that security screening is most important when planning to resettle a large number of refugees[196]. Although it should be noted that since the implementation of the travel ban, Canada has arrested over 60 non-citizens for illegally crossing the border[197] so it would appear that security remains a consistent factor in immigration law and policy in practice.

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[191]PSC, Talking Points for Minister Goodale for Syrian Refugee Resettlement Conference Call with Provincial and Territorial Counterparts Responsible for Public Safety and Emergency Management November 23, 2015 at 10:00AM EST (date redacted); obtained through ATI request no. A-2015-00314 to PSC.

[192] This speaks to Participant Smith's discussion of how the IRB may ask claimants for supporting documents/evidence that they cannot ever gain access to.

[193] Unfortunately there seems to be only one consistent party, the Green Party, that has called for the abolishment of securities throughout both the 41st and 42nd Parliament while other opposition parties argued the unfairness of certain aspects of the certificates, and the Conservative party rejoicing at how the security certificate regime was found to be constitutional.
See Appendix G – 1 "SC Hansard Compilation (pages 4 & 103)".

[194] See Appendix F – 6 "Excerpt from Hansard 94 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 94, (20 October 2016) at 5909 (James Bezan); and See Appendix F – 7 "Excerpt (2) from Hansard 94 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 94, (20 October 2016) at 5936 (Cheryl Hardcastle).

[195] See Appendix F – 8 "Excerpt from Hansard 130 in SRC Hansard Compilation" or see Parliament, *Hansard,* 42nd Parl, 1st Sess, No 130, (31 January 2017) (Jenny Kwan).

[196] Government of Canada, Tracking Canadian Views on Syrian Refugee Resettlement and Immigration Levels (dated January 21, 2016); obtained through ATI request no. A-2016-26695 to IRCC.

[197]Julien Gignac, "Canada arrests nearly 70 asylum seekers at US border following Trump travel ban", *The Guardian* (13 February 2017) online: <https://www.theguardian.com/world/2017/feb/13/canada-arrests-asylum-seekers-trump-travel-ban>.

Fully operating Canadians

Another theme that presented itself throughout the document analysis was integration and costs. Regarding the Syrian refugees, it was apparent that there was an expectation for refugees to be able to integrate both socially and economically as soon as possible so as to "become productive workers" – especially since language and job search programs had been established to help facilitate the process. Although I believe that such programs should be offered to refugees, the fact that there was already inquiry into how many refugees had found full-time employment by December of 2016[198] when they arrived earliest in February 2016, suggests that admissibility can be determined based on an individual's ability to contribute to the Canadian state and economy. It is understandable in a sense, so as to pay back the expenses that the government covered for the refugees. However if we consider Canadian citizens in general, many are not able to even obtain part-time employment themselves despite being in a better position to obtain employment, considering the language barrier.

This places an imposition on refugees, and foreign nationals in general, where they are expected to fill the roles of Canadian citizens – such as contributing to the state's economy – without actually being one. It is also particularly unfair, given the there appears to be a mutual recognition that Canada is expecting refugees to return to their country of origin after the state of instability and conflict subsides. This was demonstrated by a CPC speaker, the Hon. Peter Kent who stated the following without any opposition from other parties[199]:

> *"We know that however generously welcoming Canada and other developed countries might be during this massive refugee crisis, most of the millions of displaced survivors of the wars in Syria and Iraq, and the genocide,* ***can only hope that one day they will be able to return*** *to try to rebuild their homes, communities, and their lives."*

Another example of an expectation for non-citizens to return to their country of origin was expressed by a Liberal Party member Salma Zahid regarding the foreign nationals who fell victim to the travel ban in the US[200]:

> *"…any foreign nationals from the seven countries listed in the executive order who were transiting through Canada and are stranded will be provided temporary residence status* ***until they can make arrangements to return home."***

The question that arises then, is why Canada would expend as much resources as it did to resettle refugees despite there being an expectation for them to ultimately leave? An answer could be that Canada is generous. However, it could also be that this is a secondary method in acquiring skilled workers where those who successfully integrate into Canadian society become (or are more regarded

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[198] See Appendix F – 9 "Hansard 124 of SRC Hansard Compilation" or see Parliament, *Hansard*, 42nd Parl, 1st Sess, No 124, (8 December 2016) at 7853 (Hon. Michelle Rempel).

[199] See Appendix F – 10 "Excerpt from Hansard 94 of SRC Hansard Compilation" or see Parliament, *Hansard*, 42nd Parl, 1st Sess, No 94, (20 October 2016) at 5892 (Hon. Peter Kent).

[200] See Appendix F – 11 "Excerpt from Hansard 130 of SRC Hansard Compilation" or see Parliament, *Hansard*, 42nd Parl, 1st Sess, No 130, (31 January 2017) at 8292 (Salma Zahid).

as) skilled workers rather than refugees[201]. This would suggest that an individual's admissibility is conditional on whether they become useful to the Canadian state.

If this were the case, refugees are then regarded as tools to further Canada's economic prosperity and those who cannot be used for the long-term, are expected to leave when they have outlived their usefulness to the state. This plays into the notion that non-citizens are deportable subjects where foreign nationals, despite having been accepted into Canada, are living – or rather waiting – in Canada until they are told they have to leave. It would not be surprising given that Canada has an aging population and would need many working-age individuals to make up for the loss in the interim.

This is indicative of a cost-benefit application in determining admissibility, though this would require research in a different avenue to officially confirm - however I would imagine it is a regular practice with any government initiative since there are always concerns when it comes to balancing the Canadian state's budget. In addition, I found that within the Parliamentary debates pertaining to the Syrian refugees, cost was also a contended topic, largely concerning with accountability in how the money was appropriated to different services within the Syrian refugee initiative – this was also a concern of the Canadian public where there was an increase in public opinion (from 22% to 29% from November 2015 to January 2016) that the most important concern regarding the resettlement of the Syrian refugees should be whether or not municipalities have enough resources to do so[202].

Conversely, if we consider how cost is accounted for in the use of the security certificates, it is not exactly done so. The government maintains an implicit position that the extraordinary cost/expense of security certificates is not – cannot – be a factor in assessing the validity of its process, and this is evidenced by the costs of its implementation – the construction and maintenance of the now former KIHC, surveillance (and intelligence gathering) and security measures expended on certificate subjects/ detainees – and the fact that the constitutionality of the security certificate regime was upheld by the Court. This speaks to something that Participant Thompson mentioned during our interviews where the national security paradigm – an environment of "any minute we're going to get attacked" - has become entrenched in society that if a politician is seen to be soft on national security they can lose votes, and as an elected politician, that would be the opposite of what is desired.

Interesting, I noted specifically from the Hansard transcripts regarding security certificates, in an attempt to have amendments on Bill C-24 passed to allow for the authority to revoke Canadian citizenship from dual citizens under certain circumstances, the Conservative Party made the argument that no costs would be associated with the change[203]:

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[201] This would speak to what Participant Thompson noted about how there is an emphasis on skilled workers over other categories of immigration.

[202] Government of Canada, Tracking Canadian Views on Syrian Refugee Resettlement and Immigration Levels (dated January 21, 2016); obtained through ATI request no. A-2016-26695 to IRCC.

[203] See Appendix G – 2 "Excerpt of Hansard 138 in SC Hansard Compilation" or see Parliament, *Hansard*, 41st Parl, 2nd Sess, No 138 (4 November 2014) at 9153 (Hon. Chris Alexander).

> *"The amendments on the revocation of citizenship are merely technical. There is no cost to pursuing these amendments as a revocation decision making model is more efficient and less costly to the government."*

I would imagine however, that there would be more costs associated with the aftermath of the citizenship revocation – such as removal processes to deport the affected individuals and/or even the issuance of security certificates (which have even more costs associated with its process) on the affected foreign nationals if they (are believed to) have terrorist affiliations or are involved armed forces/groups. It may be more accurate then, to infer that admissibility, rather than consistently being determined by cost, may be informed upon economic narratives – as a condition of admissibility - when advantageous to the determiner of admissibility or political party in question.

Discussion and Conclusion

The objective of this research project was to understand and answer my research question of how admissibility – who can enter and who must leave Canada – is constructed and framed within Canadian immigration law and policy. Upon examining the two case studies – Canada's recent response to the Syrian refugee crisis in resettling 25,000 refugees by February 2016, and the use of security certificates issued under Division 9 of the IRPA – I found that rather than a straightforward concept (nor is there a single legal definition for admissibility), the admissibility of an individual constructed as a multi-faceted and conditional process in which there are different points of admissibility, and inadmissibility, that a foreign national must continually meet/fulfil in order to enter, and remain in, Canada.

I use the term "points of admissibility" to reference how there are multiple ways in which admissibility can be constructed within Canadian immigration laws and policies. Similar to how certain games require acquiring points to redeem prizes, I posit that admissibility is achieved by meeting certain points – conditions - set by the Canadian state to redeem the prize/ability to enter into (visa) and stay in (permanent residency then citizenship) Canada. However if or when an individual no longer meets the prescribed conditions (lose points), they may be subject to penalty (revocation of visa or residency/citizenship), and have to work their way back to re-obtain the points they have lost, oftentimes with increased difficulty.

Although I had hoped to identify a definitive way in which admissibility is conceptualized, one of the key findings from my data analysis revealed that admissibility is instead a fluid concept. Specifically, the data suggested that the way in which admissibility is determined is situational and contextual, motivated by political gain and ultimately open to influence - be it by the public or that which is currently popular in the media. Take for example Canada's response to the Syrian refugee crisis: it was no secret that the resettlement of 25,000 refugees had been realized as an election promise, and the continued use of security certificates is premised on fears of terrorism/terrorist activities which are reported in the media. As a fluid concept, the implication is that there are multiple ways, though they may not always be inclusive to each other, in which the admissibility of an individual or group can be decided. If we consider the two case studies, there are two respective points of admissibility in which the non-citizen must fulfil respectively to become admissible to Canada – the

former being a denominated Syrian refugee by the UNHCR, and the latter being a peaceful foreign national, specifically not a terrorist/terrorist associate or reasonably suspected of being one – however it should be noted that these points are not an exhaustive measure in determining an individual's admissibility, nor does meeting any points of admissibility guarantee an individual's admission into Canada.

Through my data analysis, I also discovered that other points of admissibility exist as well. Specifically, in my analysis of the documents pertaining to the Syrian refugee response, the ability to contribute to the Canadian economy was identified as another point of admissibility. This was not a surprise given Canada's aging population which would require individuals who can fill gap – such as immigrants/foreign workers. This also entails another point of admissibility where foreign nationals need to be able to be integrated into society not only economically, but also socially so that they will become independent and "fully operating" Canadians, as opposed to burdens who are dependent on the Canadian state - this insinuates that the construction of the (in)admissible other is directly connected to narratives about "Canadian-ness".

Further, this suggested the application of a cost-benefit analysis when it comes to deliberating the admission of foreign nationals to Canada where costs should not be so detriment to Canada that no benefits will be borne from resettling non-citizens. However, if we consider the act of finding foreign nationals inadmissible to Canada, removing individuals from Canada, cost does not appear to be an issue. Take for example, the implementation of security certificates. Notwithstanding the operating costs of the then KIHC[204], if we consider the costs associated with the secret trials, surveillance and security measures targeted towards the certificate detainees, they would go well into the millions[205] yet these costs are not contested when assessing the practice of removing non-citizens. This is important to note in the identification of cost as another point of admissibility because rather than being a straightforward matter of cost and benefit, it appears that the politics of admissibility can be informed by economic narratives, if and as this framing suits the interests of the parties in question.

Not having a definitive or consistent standard for admissibility is problematic because immigration is delineated as a selective process where Canada picks and chooses who will be admitted. This creates tiers among human beings and suggests that certain lives are worth more than others and it is worth considering this given the political undertones which guide Canada's decision in determining which refugees to assist and resettle – as well as whose refugee claim to accept. If such important decisions are guided by the objective of political gain, it depicts an air of arbitrariness in how Canada's immigration system is put into practice – though it could also be described as a calculated process within a political game. Considering the vast amount of refugees in the world, how can Canada assert its diversity and acceptance when they only react to what is popular in the media?

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[204] Noted costs included a $3.2 million start-up cost for the KIHC, and an annual operating budget which was quoted to be between $1.6 million and $2.6 million. Larsen & Piché, *supra* note 24 at 215.

[205] PSC, ATI evaluation of SC1; obtained through ATI request no. A-2011-00270 from PSC. This release package is composed of records related to the Evaluation of the Security Certificate Initiative, conducted between April 1, 2008 and September 30, 2009. The security certificate initiative is the term used by the Government of Canada to describe the range of measures - and associated funding - related to the legislative amendments to the IRPA certificate process that came into force in 2008. It cost $59 million over two years to implement these amendments. This does not represent an 'all-in' total cost of the certificate regime.

What is interesting, is that contrary to how admissibility was identified as fluid concept, inadmissibility is clearly defined in Division 4 of the IRPA which states the circumstances in which an individual may be found inadmissible to Canada. This suggests that inadmissibility is a static pre-requisite that must be met (or rather must not be met) in order to be considered admissible to Canada - which comports with the procedure where any foreign national seeking to enter Canada is subjected to screening processes to determine whether they will be a risk to Canada's security in any way. Specifically, both case studies emphasized that security was a condition that had to be met by non-citizens where the response to the Syrian refugee crisis necessitated an enhanced screening process overseas and in the case of certificate detainees, they must challenge assertions that they are not involved with terrorists/terrorism – ie. a risk to Canadian security.

This led to another key finding of admissibility being inextricably linked to, and consequently framed by, security – specifically, the security of Canada. In particular, security may play a greater or lesser role with respect different points of admissibility, however it will nevertheless remain a factor in determining a foreign national's ability to enter Canada. For example, while security was a major concern following the Paris bombing with regards to Canada's response to the Syrian refugee crisis, the data suggested that security was not the main concern during the planning of the resettlement, nor was there much discussion about it after. In contrast, security is arguably the only concern pertaining to the use of security certificates. This suggested that security functions as a framework that can be superimposed on any issue.

Security practices, screening processes in particular, have the capacity to (re)frame admissibility narratives as policies dictate – and construct at the same time – certain individuals and groups as legitimate refugees (or immigrants) admissible to Canada while deconstructing refugees/foreign nationals who do not fall under the narrated description to merely deportable subjects. And if we consider how the IRPA provides resources to facilitate and provisions which guarantee determinations of inadmissibility, but not admissibility, it could be postulated that immigration law serves more as a tool to identify desired individuals as "legitimate refugees" from the undesired, deportable subjects. The implication then, is that Canadian immigration practices may become more exclusionary and selective in the future unless clear terms of admissibility are stated, and guaranteed, in immigration law and policy.

In addition, security is a point of admissibility that has to be continually met, otherwise the individual in question could become indefinitely inadmissible[206] to Canada – particularly since the IRPA allows for multiple opportunities to reach, and uphold[207], an inadmissibility determination. If we consider security certificate detainees, once their point of inadmissibility has been met, they have little recourse in disproving any allegations of terrorism against them – despite the upheld constitutionality of the security certificate regime. Furthermore, once individuals are subject to security certificates, their inadmissibility continues to be constructed through surveillance, intelligence gathering, and secret trials to ensure either their removal from Canada or their continued detention. This is important to consider because not only is there an onus placed on the non-citizen to prove themselves to the Canadian state,

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[206] Larsen, *supra* note 152.

[207] Here I am referring to the interview discussions regarding the increased discretionary powers that the CBSA holds over the Immigration Division where participants have described the tribunal to function as a "rubber stamp" for immigration officers.

but it presumes that anyone seeking to enter Canada is a potential security threat - be it a criminal, terrorist, war criminal, or economic migrant – and foreign nationals have to continually validate their innocence.

This calls into question whether Canada is as welcoming and generous as it purports to be because there is an implication of admissibility being a conditional/temporary status. This was not surprising given that the Hansard discussions had made reference to an expectation of foreign nationals to return to their countries of origin once it is possible. Furthermore, immigration laws allow for the revocation of visas and permanent residency for security related concerns as well, not to mention how citizenship can be revoked for dual citizens for misrepresentation – even if the misrepresentation was unknowingly made. Rather than being able to start new lives in Canada as Canadians, foreign nationals are instead admitted only for as long as the Canadian state finds them acceptable.

Further/Concluding Thoughts

Throughout the analysis of the textual data, I noticed a stark difference in how non-Canadians were described between the two case studies. With the Syrian refugees, they were often referred to as vulnerable or needy individuals – painted in a sympathetic light. However, with certificate detainees, they were presented in a hostile light and often described as potential terrorists, threats to security, or dangerous individuals. It was interesting to see how the same group of individuals – foreign nationals – can be approached from completely opposite perspectives.

This presents an inconsistent – fluid – framing of foreign nationals and suggests that they are constructed and framed as they are needed by the Canadian state. In the case of Canada's response to the Syrian refugee crisis, refugees are constructed in a positive manner to elicit a response and support from the public, appeasing to Canadian values of acceptance and generosity to fulfil a political promise. With the use of security certificates, detainees are negatively framed to realize a political ideology where security, above all else, is crucial to maintain. It could be argued then, that the way in which non-Canadian citizens are constructed is linked to how admissibility is framed, as individuals are only granted or denied access to Canada so long as they are needed by the state to paint a narrative conducive to their position of power. This is important to consider because it implies that foreign nationals are expendable to Canada – and if this is really the case, then who is to say that Canadians are not, or will not become, expendable to the state someday since Canadian is "a land of immigrants"?

As a potential avenue of research, it could be worth examining the language used to describe foreign nationals in different immigration contexts and to see what their movements are subsequent to being admitted into Canada. For example, if the non-citizen remains in Canada, how "successful" have they become? Also, if the non-citizen has left or has been removed from Canada, how long after their admission into Canada did this occur and for what reason? Being able to answer these kinds of questions would allow for a more accurate representation of how an individual's admissibility is realized (or lost) as opposed to solely keeping track of how many foreign nationals relocate to Canada each year – admissibility, and immigration overall, is much more than simply being able to enter into Canada.

Something else that caught my attention through this research was that in one of the ATI documents pertaining to security certificates[208], the number of non-citizens subject to security inadmissibility cases in Canada who are not detained and not subject to any conditions was redacted (see Appendix H). This is interesting to consider because on the one hand, there could be a minute number of these "non-citizen security cases", suggesting that non-citizens in general are not dangerous individuals, thus there is no need for such legislation to be enacted. However on the other hand, there could be a large number of individuals who have found to be inadmissible due to security concerns who are not detained and do not have conditions imposed on them – suggesting that they were not found to constitute a danger to the Canadian public so as to require an imposition of conditions. Either way, I think if security is as serious a concern that the government proclaims it to be (though I am in no way asserting that there are no genuine threats), then there needs to be transparency in this regard, otherwise it will seem as if there is no actual need for them.

Not only with the redacted numbers in this case, but there needs to be justification for the implementation of exceptional/extreme exclusionary measures (eg. security certificates) – merely asserting that "for security concerns (or due to national security) the particulars of an issue cannot be divulged" is not enough. If we consider the way in which security certificate cases work, the assertion that evidence against the accused cannot be disclosed makes the case against the certificate subject seem unsubstantiated, or worse, that the case against them completely fabricated – essentially, one is accusing someone of being, or suspected of being, a terrorist however they cannot say why. This is worth contemplating if we consider how similar security certificate proceedings operate to those of criminal court proceedings – including *in camera* and *ex parte* hearings – who is to say that since security certificate proceedings have been found to be fair and constitutional, its functions will not seep into Canadian criminal court proceedings?

If that were to happen, an accused could theoretically be convicted of murder based on a reasonable suspicion, not beyond a reasonable doubt, and this could be done entirely without his or her knowledge. This would render the *Charter* and the rights and protections afforded to Canadian citizens null – which is why transparency is important to have and maintain in the use of exceptional measures (as well as regular measures), so they can be successfully challenged when necessary. If they remain secret, and we accept that its secrecy, exceptional measures/laws could become normalized and ultimately render the legal system we have in place arbitrary one day.

Of further consideration is how this research is reminiscent of how law is constructed within society where we have on the on hand, an ideal or official version of law[209] - which purports to be a self-sustaining system that is impartial, neutral, and objective – that is encompassed in the legislation we have and on the other hand, we have a practiced version of law – which is subject to discretion and open to interpretation – where it is operated (and created) by individuals who may not have the original

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[208] Canada Border Services Agency (CBSA), Regulations to Establish Prescribed Conditions for Security Inadmissibility Under the *Immigration and Refugee Protection Act*: For the Minister (dated February 19, 2016); obtained through ATI request no. A-2016-00129 to Public Safety Canada. This was a supplementary note regarding an evaluation conducted on security certificates, *Horizontal Evaluation of the Immigration and Refugee Protection Act Division 9/National Security Initiative*, which called for the implementation of the *Faster Removal of Foreign Criminals Act* with respect to imposing conditions on individuals who are alleged or determined to be inadmissible on grounds of security who are not subject to detention in a consistent manner – essentially they were seeking to impose mandatory bail conditions on non-citizens.

[209] Comack et al, *supra* note 7.

intentions of the law in mind. With admissibility, its official construction is set forth in the IRPA[210] where there is an a sense of bureaucracy, organization, and objectivity – apolitical and void of any influence - in how admissibility is conceptualized and determined as it would be rule-bound to the legislation enacted and while the laws in itself may be highly complex, it would still be informed by Canadian laws and values nonetheless. In contrast, my findings would represent the practical version of how admissibility is constructed (and administered) in actuality, where it is highly political and discretionary as points of admissibility are fluid and informed by a variety of factors (sometimes in competition with one) which can portray the process as disorganized and ultimately arbitrary.

It is not surprising that there is a disconnect between what a law intends for and how it is put into practice because those who administer the law, or those who make admissibility determinations, are humans who are by nature, partial to their own opinions and perspectives – which could reflect their decisions. This does not mean however, that there cannot be a more objective or consistent way in which admissibility is granted. I think the first step would be to set clear terms of admissibility (in addition to terms of inadmissibility), or at least a legal definition, in the IRPA. This way there would at least be a consistent manner in which admissibility is determined/guaranteed rather than foreign nationals having to continually maintain their admissibility even after they have entered into Canada. Although it would be equally important to keep in mind that those who create (or amend) laws may not be impartial themselves, which could in theory, call into question the objectivity and fairness of any laws we currently have.

[210] Though in this case it would technically be the official construction of inadmissibility as the IRPA does not have any provisions which specifically speak to an individual's admissibility terms into Canada, only terms of inadmissibility.

Appendix A-1: Division 4 of the *Immigration and Refugee Protection Act*

(d.5) the requirement for an employer to provide a prescribed person with prescribed information in relation to a foreign national's authorization to work in Canada for the employer, the electronic system by which that information must be provided, the circumstances in which that information may be provided by other means and those other means;

(e) the residency obligation under section 28, including rules for calculating applicable days and periods; and

(f) the circumstances in which a document indicating status or a travel document may or must be issued, renewed or revoked.

2001, c. 27, s. 32; 2012, c. 19, s. 705; 2013, c. 16, s. 37; 2014, c. 20, s. 302, c. 39, s. 309.

d.5) l'exigence pour un employeur de fournir, à la personne visée par règlement, les renseignements réglementaires relatifs à l'autorisation pour un étranger d'exercer un emploi au Canada pour cet employeur, ainsi que sur le système électronique au moyen duquel ces renseignements doivent être fournis, les cas où ils peuvent être fournis par tout autre moyen et le moyen en question;

e) l'obligation de résidence, et les règles de calcul des jours et périodes applicables;

f) les cas de délivrance, de renouvellement et de révocation de l'attestation de statut et du titre de voyage.

2001, ch. 27, art. 32; 2012, ch. 19, art. 705; 2013, ch. 16, art. 37; 2014, ch. 20, art. 302, ch. 39, art. 309.

DIVISION 4

Inadmissibility

Rules of interpretation

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Security

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;

(b) engaging in or instigating the subversion by force of any government;

(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

SECTION 4

Interdictions de territoire

Interprétation

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

Sécurité

34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

c) se livrer au terrorisme;

d) constituer un danger pour la sécurité du Canada;

e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

(2) [Repealed, 2013, c. 16, s. 13]

2001, c. 27, s. 34; 2013, c. 16, s. 13.

(2) [Abrogé, 2013, ch. 16, art. 13]

2001, ch. 27, art. 34; 2013, ch. 16, art. 13.

Human or international rights violations

35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*; or

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

Atteinte aux droits humains ou internationaux

35 (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :

a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

b) occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

c) être, sauf s'agissant du résident permanent, une personne dont l'entrée ou le séjour au Canada est limité au titre d'une décision, d'une résolution ou d'une mesure d'une organisation internationale d'États ou une association d'États dont le Canada est membre et qui impose des sanctions à l'égard d'un pays contre lequel le Canada a imposé — ou s'est engagé à imposer — des sanctions de concert avec cette organisation ou association.

(2) [Repealed, 2013, c. 16, s. 14]

2001, c. 27, s. 35; 2013, c. 16, s. 14.

(2) [Abrogé, 2013, ch. 16, art. 14]

2001, ch. 27, art. 35; 2013, ch. 16, art. 14.

Serious criminality

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

Grande criminalité

36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Criminality

(2) A foreign national is inadmissible on grounds of criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;

(b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or

(d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

Application

(3) The following provisions govern subsections (1) and (2):

(a) an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;

(b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a record suspension has been ordered and has not been revoked or ceased to have effect under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;

(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;

(d) a determination of whether a permanent resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and

(e) inadmissibility under subsections (1) and (2) may not be based on an offence

Criminalité

(2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits;

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions qui ne découlent pas des mêmes faits et qui, commises au Canada, constitueraient des infractions à des lois fédérales;

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation;

d) commettre, à son entrée au Canada, une infraction qui constitue une infraction à une loi fédérale précisée par règlement.

Application

(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :

a) l'infraction punissable par mise en accusation ou par procédure sommaire est assimilée à l'infraction punissable par mise en accusation, indépendamment du mode de poursuite effectivement retenu;

b) la déclaration de culpabilité n'emporte pas interdiction de territoire en cas de verdict d'acquittement rendu en dernier ressort ou en cas de suspension du casier — sauf cas de révocation ou de nullité — au titre de la *Loi sur le casier judiciaire*;

c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;

d) la preuve du fait visé à l'alinéa (1)c) est, s'agissant du résident permanent, fondée sur la prépondérance des probabilités;

e) l'interdiction de territoire ne peut être fondée sur les infractions suivantes :

(i) celles qui sont qualifiées de contraventions en vertu de la *Loi sur les contraventions*,

(i) designated as a contravention under the *Contraventions Act*,

(ii) for which the permanent resident or foreign national is found guilty under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or

(iii) for which the permanent resident or foreign national received a youth sentence under the *Youth Criminal Justice Act*.

2001, c. 27, s. 36; 2008, c. 3, s. 3; 2010, c. 8, s. 7; 2012, c. 1, s. 149.

(ii) celles dont le résident permanent ou l'étranger est déclaré coupable sous le régime de la *Loi sur les jeunes contrevenants*, chapitre Y-1 des Lois révisées du Canada (1985),

(iii) celles pour lesquelles le résident permanent ou l'étranger a reçu une peine spécifique en vertu de la *Loi sur le système de justice pénale pour les adolescents*.

2001, ch. 27, art. 36; 2008, ch. 3, art. 3; 2010, ch. 8, art. 7; 2012, ch. 1, art. 149.

Organized criminality

37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or

(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.

Application

(2) Paragraph (1)(a) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.

2001, c. 27, s. 37; 2013, c. 16, s. 15; 2015, c. 3, s. 109(E).

Activités de criminalité organisée

37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :

a) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;

b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.

Application

(2) Les faits visés à l'alinéa (1)a) n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou l'étranger est entré au Canada en ayant recours à une personne qui se livre aux activités qui y sont visées.

2001, ch. 27, art. 37; 2013, ch. 16, art. 15; 2015, ch. 3, art. 109(A).

Health grounds

38 (1) A foreign national is inadmissible on health grounds if their health condition

(a) is likely to be a danger to public health;

(b) is likely to be a danger to public safety; or

(c) might reasonably be expected to cause excessive demand on health or social services.

Motifs sanitaires

38 (1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement un danger pour la santé ou la sécurité publiques ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.

Exception

(2) Paragraph (1)(c) does not apply in the case of a foreign national who

(a) has been determined to be a member of the family class and to be the spouse, common-law partner or child of a sponsor within the meaning of the regulations;

(b) has applied for a permanent resident visa as a Convention refugee or a person in similar circumstances;

(c) is a protected person; or

(d) is, where prescribed by the regulations, the spouse, common-law partner, child or other family member of a foreign national referred to in any of paragraphs (a) to (c).

Financial reasons

39 A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themself or any other person who is dependent on them, and have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made.

Misrepresentation

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or

(d) on ceasing to be a citizen under

(i) paragraph 10(1)(a) of the *Citizenship Act*, as it read immediately before the coming into force of section 8 of the *Strengthening Canadian Citizenship Act*, in the circumstances set out in subsection 10(2) of the *Citizenship Act*, as it read immediately before that coming into force,

Exception

(2) L'état de santé qui risquerait d'entraîner un fardeau excessif pour les services sociaux ou de santé n'emporte toutefois pas interdiction de territoire pour l'étranger :

a) dont il a été statué qu'il fait partie de la catégorie « regroupement familial » en tant qu'époux, conjoint de fait ou enfant d'un répondant dont il a été statué qu'il a la qualité réglementaire;

b) qui a demandé un visa de résident permanent comme réfugié ou personne en situation semblable;

c) qui est une personne protégée;

d) qui est l'époux, le conjoint de fait, l'enfant ou un autre membre de la famille — visé par règlement — de l'étranger visé aux alinéas a) à c).

Motifs financiers

39 Emporte interdiction de territoire pour motifs financiers l'incapacité de l'étranger ou son absence de volonté de subvenir, tant actuellement que pour l'avenir, à ses propres besoins et à ceux des personnes à sa charge, ainsi que son défaut de convaincre l'agent que les dispositions nécessaires — autres que le recours à l'aide sociale — ont été prises pour couvrir leurs besoins et les siens.

Fausses déclarations

40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;

c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;

d) la perte de la citoyenneté :

(i) soit au titre de l'alinéa 10(1)a) de la *Loi sur la citoyenneté*, dans sa version antérieure à l'entrée en vigueur de l'article 8 de la *Loi renforçant la citoyenneté canadienne*, dans le cas visé au paragraphe 10(2) de la *Loi sur la citoyenneté*, dans sa version antérieure à cette entrée en vigueur,

(ii) subsection 10(1) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act, or

(iii) paragraph 10.1(3)(a) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act.

(ii) soit au titre du paragraphe 10(1) de la *Loi sur la citoyenneté*, dans le cas visé à l'article 10.2 de cette loi,

(iii) soit au titre de l'alinéa 10.1(3)a) de la *Loi sur la citoyenneté*, dans le cas visé à l'article 10.2 de cette loi.

Application

(2) The following provisions govern subsection (1):

(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and

(b) paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.

Application

(2) Les dispositions suivantes s'appliquent au paragraphe (1) :

a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

b) l'alinéa (1)b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.

Inadmissible

(3) A foreign national who is inadmissible under this section may not apply for permanent resident status during the period referred to in paragraph (2)(a).

2001, c. 27, s. 40; 2012, c. 17, s. 17; 2013, c. 16, s. 16; 2014, c. 22, s. 42.

Interdiction de territoire

(3) L'étranger interdit de territoire au titre du présent article ne peut, pendant la période visée à l'alinéa (2)a), présenter de demande pour obtenir le statut de résident permanent.

2001, ch. 27, art. 40; 2012, ch. 17, art. 17; 2013, ch. 16, art. 16; 2014, ch. 22, art. 42.

Cessation of refugee protection — foreign national

40.1 (1) A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.

Perte de l'asile — étranger

40.1 (1) La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant la perte de l'asile d'un étranger emporte son interdiction de territoire.

Cessation of refugee protection — permanent resident

(2) A permanent resident is inadmissible on a final determination that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d).

2012, c. 17, s. 18.

Perte de l'asile — résident permanent

(2) La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile d'un résident permanent emporte son interdiction de territoire.

2012, ch. 17, art. 18.

Non-compliance with Act

41 A person is inadmissible for failing to comply with this Act

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and

(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.

Manquement à la loi

41 S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.

Inadmissible family member

42 (1) A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

(a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or

(b) they are an accompanying family member of an inadmissible person.

Exception

(2) In the case of a foreign national referred to in subsection (1) who is a temporary resident or who has made an application for temporary resident status or an application to remain in Canada as a temporary resident,

(a) the matters referred to in paragraph (1)(a) constitute inadmissibility only if the family member is inadmissible under section 34, 35 or 37; and

(b) the matters referred to in paragraph (1)(b) constitute inadmissibility only if the foreign national is an accompanying family member of a person who is inadmissible under section 34, 35 or 37.

2001, c. 27, s. 42; 2013, c. 16, s. 17.

Inadmissibilité familiale

42 (1) Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants :

a) l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas;

b) accompagner, pour un membre de sa famille, un interdit de territoire.

Exception

(2) Dans le cas où l'étranger visé au paragraphe (1) est résident temporaire ou dans le cas où il a présenté une demande pour obtenir le statut de résident temporaire ou une demande de séjour au Canada à titre de résident temporaire :

a) les faits visés à l'alinéa (1)a) emportent interdiction de territoire seulement si le membre de sa famille est interdit de territoire en raison d'un cas visé aux articles 34, 35 ou 37;

b) les faits visés à l'alinéa (1)b) emportent interdiction de territoire seulement si le membre de sa famille qu'il accompagne est interdit de territoire en raison d'un cas visé aux articles 34, 35 ou 37.

2001, ch. 27, art. 42; 2013, ch. 16, art. 17.

Exception — application to Minister

42.1 (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

Exception — Minister's own initiative

(2) The Minister may, on the Minister's own initiative, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of a foreign national if the Minister is satisfied that it is not contrary to the national interest.

Considerations

(3) In determining whether to make a declaration, the Minister may only take into account national security and public safety considerations, but, in his or her analysis, is not limited to considering the danger that the foreign national presents to the public or the security of Canada.

2013, c. 16, s. 18.

Exception — demande au ministre

42.1 (1) Le ministre peut, sur demande d'un étranger, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de l'étranger si celui-ci le convainc que cela ne serait pas contraire à l'intérêt national.

Exception — à l'initiative du ministre

(2) Le ministre peut, de sa propre initiative, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de tout étranger s'il est convaincu que cela ne serait pas contraire à l'intérêt national.

Considérations

(3) Pour décider s'il fait la déclaration, le ministre ne tient compte que de considérations relatives à la sécurité nationale et à la sécurité publique sans toutefois limiter son analyse au fait que l'étranger constitue ou non un danger pour le public ou la sécurité du Canada.

2013, ch. 16, art. 18.

Appendix A-2: Division 9 of the *Immigration and Refugee Protection Act*

the *Federal Courts Act* may make rules governing the practice and procedure in relation to applications for leave to commence an application for judicial review, for judicial review and for appeals. The rules are binding despite any rule or practice that would otherwise apply.

Inconsistencies

(2) In the event of an inconsistency between this Division and any provision of the *Federal Courts Act*, this Division prevails to the extent of the inconsistency.

2001, c. 27, s. 75; 2002, c. 8, s. 194.

l'agrément du gouverneur en conseil, prendre des règles régissant la pratique et la procédure relatives à la demande d'autorisation et de contrôle judiciaire et à l'appel; ces règles l'emportent sur les règles et usages qui seraient par ailleurs applicables.

Incompatibilité

(2) Les dispositions de la présente section l'emportent sur les dispositions incompatibles de la *Loi sur les Cours fédérales*.

2001, ch. 27, art. 75; 2002, ch. 8, art. 194.

DIVISION 9

Certificates and Protection of Information

Interpretation

Definitions

76 The following definitions apply in this Division.

information means security or criminal intelligence information and information that is obtained in confidence from a source in Canada, the government of a foreign state, an international organization of states or an institution of such a government or international organization. (*renseignements*)

judge means the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice. (*juge*)

2001, c. 27, s. 76; 2002, c. 8, s. 194; 2008, c. 3, s. 4.

SECTION 9

Certificats et protection de renseignements

Définitions

Définitions

76 Les définitions qui suivent s'appliquent à la présente section.

juge Le juge en chef de la Cour fédérale ou le juge de cette juridiction désigné par celui-ci. (*judge*)

renseignements Les renseignements en matière de sécurité ou de criminalité et ceux obtenus, sous le sceau du secret, de source canadienne ou du gouvernement d'un État étranger, d'une organisation internationale mise sur pied par des États ou de l'un de leurs organismes. (*information*)

2001, ch. 27, art. 76; 2002, ch. 8, art. 194; 2008, ch. 3, art. 4.

Certificate

Referral of certificate

77 (1) The Minister and the Minister of Citizenship and Immigration shall sign a certificate stating that a permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, and shall refer the certificate to the Federal Court.

Filing of evidence and summary

(2) When the certificate is referred, the Minister shall file with the Court the information and other evidence that is relevant to the ground of inadmissibility stated in the certificate and on which the certificate is based, as well as a summary of information and other evidence that enables the person named in the certificate to be reasonably informed of the case made by the Minister but that does

Certificat

Dépôt du certificat

77 (1) Le ministre et le ministre de la Citoyenneté et de l'Immigration signent et déposent à la Cour fédérale le certificat attestant qu'un résident permanent ou un étranger est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée.

Dépôt de la preuve et du résumé

(2) Le ministre dépose en même temps que le certificat les renseignements et autres éléments de preuve qui se rapportent à l'interdiction de territoire constatée dans le certificat et justifiant ce dernier, ainsi qu'un résumé de la

not include anything that, in the Minister's opinion, would be injurious to national security or endanger the safety of any person if disclosed.

preuve qui permet à la personne visée d'être suffisamment informée de sa thèse et qui ne comporte aucun élément dont la divulgation porterait atteinte, selon le ministre, à la sécurité nationale ou à la sécurité d'autrui.

Effect of referral

(3) Once the certificate is referred, no proceeding under this Act respecting the person who is named in the certificate — other than proceedings relating to sections 79.1, 82 to 82.31, 112 and 115 — may be commenced or continued until the judge determines whether the certificate is reasonable.

2001, c. 27, s. 77; 2002, c. 8, s. 194; 2005, c. 10, s. 34; 2008, c. 3, s. 4; 2015, c. 3, s. 112(F), c. 20, s. 54.

Effet du dépôt

(3) Il ne peut être procédé à aucune instance visant la personne au titre de la présente loi tant qu'il n'a pas été statué sur le certificat. Ne sont pas visées les instances relatives aux articles 79.1, 82 à 82.31, 112 et 115.

2001, ch. 27, art. 77; 2002, ch. 8, art. 194; 2005, ch. 10, art. 34; 2008, ch. 3, art. 4; 2015, ch. 3, art. 112(F), ch. 20, art. 54.

Determination

78 The judge shall determine whether the certificate is reasonable and shall quash the certificate if he or she determines that it is not.

2001, c. 27, s. 78; 2005, c. 10, s. 34(E); 2008, c. 3, s. 4.

Décision

78 Le juge décide du caractère raisonnable du certificat et l'annule s'il ne peut conclure qu'il est raisonnable.

2001, ch. 27, art. 78; 2005, ch. 10, art. 34(A); 2008, ch. 3, art. 4.

Appeal

79 An appeal from the determination may be made to the Federal Court of Appeal only if the judge certifies that a serious question of general importance is involved and states the question. However, no appeal may be made from an interlocutory decision in the proceeding.

2001, c. 27, s. 79; 2002, c. 8, s. 194; 2008, c. 3, s. 4.

Appel

79 La décision n'est susceptible d'appel devant la Cour d'appel fédérale que si le juge certifie que l'affaire soulève une question grave de portée générale et énonce celle-ci; toutefois, les décisions interlocutoires ne sont pas susceptibles d'appel.

2001, ch. 27, art. 79; 2002, ch. 8, art. 194; 2008, ch. 3, art. 4.

Appeal by Minister

79.1 (1) Despite section 79, the Minister may, without it being necessary for the judge to certify that a serious question of general importance is involved, appeal, at any stage of the proceeding, any decision made in the proceeding requiring the disclosure of information or other evidence if, in the Minister's opinion, the disclosure would be injurious to national security or endanger the safety of any person.

Appel du ministre

79.1 (1) Malgré l'article 79, le ministre peut, en tout état de cause, interjeter appel de toute décision rendue en cours d'instance et exigeant la divulgation de renseignements ou autres éléments de preuve qui porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui, sans que le juge soit tenu de certifier que l'affaire soulève une question grave de portée générale.

Effects of appeal

(2) The appeal suspends the execution of the decision, as well as the proceeding under section 78, until the appeal has been finally determined.

2015, c. 20, s. 55.

Effet de l'appel

(2) L'appel suspend l'exécution de la décision ainsi que l'instance visée à l'article 78 jusqu'à ce qu'il soit tranché en dernier ressort.

2015, ch. 20, art. 55.

Effect of certificate

80 A certificate that is determined to be reasonable is conclusive proof that the person named in it is inadmissible and is a removal order that is in force without it being necessary to hold or continue an examination or admissibility hearing.

2001, c. 27, s. 80; 2008, c. 3, s. 4.

Effet du certificat

80 Le certificat jugé raisonnable fait foi de l'interdiction de territoire et constitue une mesure de renvoi en vigueur, sans qu'il soit nécessaire de procéder au contrôle ou à l'enquête.

2001, ch. 27, art. 80; 2008, ch. 3, art. 4.

Detention and Release

Ministers' warrant

81 The Minister and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.

2001, c. 27, s. 81; 2008, c. 3, s. 4.

Initial review of detention

82 (1) A judge shall commence a review of the reasons for the person's continued detention within 48 hours after the detention begins.

Further reviews of detention — before determining reasonableness

(2) Until it is determined whether a certificate is reasonable, a judge shall commence another review of the reasons for the person's continued detention at least once in the six-month period following the conclusion of each preceding review.

Further reviews of detention — after determining reasonableness

(3) A person who continues to be detained after a certificate is determined to be reasonable may apply to the Federal Court for another review of the reasons for their continued detention if a period of six months has expired since the conclusion of the preceding review.

Reviews of conditions

(4) A person who is released from detention under conditions may apply to the Federal Court for another review of the reasons for continuing the conditions if a period of six months has expired since the conclusion of the preceding review.

Order

(5) On review, the judge

(a) shall order the person's detention to be continued if the judge is satisfied that the person's release under conditions would be injurious to national security or endanger the safety of any person or that they would be unlikely to appear at a proceeding or for removal if they were released under conditions; or

(b) in any other case, shall order or confirm the person's release from detention and set any conditions that the judge considers appropriate.

2001, c. 27, s. 82; 2005, c. 10, s. 34; 2008, c. 3, s. 4.

Détention et mise en liberté

Mandat d'arrestation

81 Le ministre et le ministre de la Citoyenneté et de l'Immigration peuvent lancer un mandat pour l'arrestation et la mise en détention de la personne visée par le certificat dont ils ont des motifs raisonnables de croire qu'elle constitue un danger pour la sécurité nationale ou la sécurité d'autrui ou qu'elle se soustraira vraisemblablement à la procédure ou au renvoi.

2001, ch. 27, art. 81; 2008, ch. 3, art. 4.

Premier contrôle de la détention

82 (1) Dans les quarante-huit heures suivant le début de la détention, le juge entreprend le contrôle des motifs justifiant le maintien en détention.

Contrôles subséquents — avant la décision sur le certificat

(2) Tant qu'il n'est pas statué sur le certificat, le juge entreprend un autre contrôle des motifs justifiant le maintien en détention au moins une fois au cours des six mois suivant la conclusion du dernier contrôle.

Contrôles subséquents — après la décision sur le certificat

(3) La personne dont le certificat a été jugé raisonnable et qui est maintenue en détention peut demander à la Cour fédérale un autre contrôle des motifs justifiant ce maintien une fois expiré un délai de six mois suivant la conclusion du dernier contrôle.

Contrôles des conditions de mise en liberté

(4) La personne mise en liberté sous condition peut demander à la Cour fédérale un autre contrôle des motifs justifiant le maintien des conditions une fois expiré un délai de six mois suivant la conclusion du dernier contrôle.

Ordonnance

(5) Lors du contrôle, le juge :

a) ordonne le maintien en détention s'il est convaincu que la mise en liberté sous condition de la personne constituera un danger pour la sécurité nationale ou la sécurité d'autrui ou qu'elle se soustraira vraisemblablement à la procédure ou au renvoi si elle est mise en liberté sous condition;

b) dans les autres cas, ordonne ou confirme sa mise en liberté et assortit celle-ci des conditions qu'il estime indiquées.

2001, ch. 27, art. 82; 2005, ch. 10, art. 34; 2008, ch. 3, art. 4.

Variation of orders

82.1 (1) A judge may vary an order made under subsection 82(5) on application of the Minister or of the person who is subject to the order if the judge is satisfied that the variation is desirable because of a material change in the circumstances that led to the order.

Calculation of period for next review

(2) For the purpose of calculating the six-month period referred to in subsection 82(2), (3) or (4), the conclusion of the preceding review is deemed to have taken place on the day on which the decision under subsection (1) is made.

2008, c. 3, s. 4.

Arrest and detention — breach of conditions

82.2 (1) A peace officer may arrest and detain a person released under section 82 or 82.1 if the officer has reasonable grounds to believe that the person has contravened or is about to contravene any condition applicable to their release.

Appearance before judge

(2) The peace officer shall bring the person before a judge within 48 hours after the detention begins.

Order

(3) If the judge finds that the person has contravened or was about to contravene any condition applicable to their release, the judge shall

(a) order the person's detention to be continued if the judge is satisfied that the person's release under conditions would be injurious to national security or endanger the safety of any person or that they would be unlikely to appear at a proceeding or for removal if they were released under conditions;

(b) confirm the release order; or

(c) vary the conditions applicable to their release.

Calculation of period for next review

(4) For the purpose of calculating the six-month period referred to in subsection 82(2), (3) or (4), the conclusion of the preceding review is deemed to have taken place on the day on which the decision under subsection (3) is made.

2008, c. 3, s. 4.

Modification des ordonnances

82.1 (1) Le juge peut modifier toute ordonnance rendue au titre du paragraphe 82(5) sur demande du ministre ou de la personne visée par l'ordonnance s'il est convaincu qu'il est souhaitable de le faire en raison d'un changement important des circonstances ayant donné lieu à l'ordonnance.

Calcul du délai pour le prochain contrôle

(2) Pour le calcul de la période de six mois prévue aux paragraphes 82(2), (3) ou (4), la conclusion du dernier contrôle est réputée avoir eu lieu à la date à laquelle la décision visée au paragraphe (1) est rendue.

2008, ch. 3, art. 4.

Arrestation et détention — non-respect de conditions

82.2 (1) L'agent de la paix peut arrêter et détenir toute personne mise en liberté au titre des articles 82 ou 82.1 s'il a des motifs raisonnables de croire qu'elle a contrevenu ou est sur le point de contrevenir à l'une ou l'autre des conditions de sa mise en liberté.

Comparution

(2) Le cas échéant, il la conduit devant un juge dans les quarante-huit heures suivant le début de la détention.

Ordonnance

(3) S'il conclut que la personne a contrevenu ou était sur le point de contrevenir à l'une ou l'autre des conditions de sa mise en liberté, le juge, selon le cas :

a) ordonne qu'elle soit maintenue en détention s'il est convaincu que sa mise en liberté sous condition constituera un danger pour la sécurité nationale ou la sécurité d'autrui ou qu'elle se soustraira vraisemblablement à la procédure ou au renvoi si elle est mise en liberté sous condition;

b) confirme l'ordonnance de mise en liberté;

c) modifie les conditions dont la mise en liberté est assortie.

Calcul du délai pour le prochain contrôle

(4) Pour le calcul de la période de six mois prévue aux paragraphes 82(2), (3) ou (4), la conclusion du dernier contrôle est réputée avoir eu lieu à la date à laquelle la décision visée au paragraphe (3) est rendue.

2008, ch. 3, art. 4.

Appeal

82.3 An appeal from a decision made under any of sections 82 to 82.2 may be made to the Federal Court of Appeal only if the judge certifies that a serious question of general importance is involved and states the question. However, no appeal may be made from an interlocutory decision in the proceeding.

2008, c. 3, s. 4.

Appel

82.3 Les décisions rendues au titre des articles 82 à 82.2 ne sont susceptibles d'appel devant la Cour d'appel fédérale que si le juge certifie que l'affaire soulève une question grave de portée générale et énonce celle-ci; toutefois, les décisions interlocutoires ne sont pas susceptibles d'appel.

2008, ch. 3, art. 4.

Appeal by Minister

82.31 (1) Despite section 82.3, the Minister may, without it being necessary for the judge to certify that a serious question of general importance is involved, appeal, at any stage of the proceeding, any decision made in the proceeding requiring the disclosure of information or other evidence if, in the Minister's opinion, the disclosure would be injurious to national security or endanger the safety of any person.

Appel du ministre

82.31 (1) Malgré l'article 82.3, le ministre peut, en tout état de cause, interjeter appel de toute décision rendue en cours d'instance et exigeant la divulgation de renseignements ou autres éléments de preuve qui porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui, sans que le juge soit tenu de certifier que l'affaire soulève une question grave de portée générale.

Effects of appeal

(2) The appeal suspends the execution of the decision until the appeal has been finally determined.

2015, c. 20, s. 56.

Effet de l'appel

(2) L'appel suspend l'exécution de la décision jusqu'à ce qu'il soit tranché en dernier ressort.

2015, ch. 20, art. 56.

Minister's order to release

82.4 The Minister may, at any time, order that a person who is detained under any of sections 82 to 82.2 be released from detention to permit their departure from Canada.

2008, c. 3, s. 4.

Ordonnance ministérielle de mise en liberté

82.4 Le ministre peut, en tout temps, ordonner la mise en liberté de la personne détenue au titre de l'un des articles 82 à 82.2 pour lui permettre de quitter le Canada.

2008, ch. 3, art. 4.

Protection of Information

Protection of information

83 (1) The following provisions apply to proceedings under any of sections 78 and 82 to 82.2:

(a) the judge shall proceed as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;

(b) the judge shall appoint a person from the list referred to in subsection 85(1) to act as a special advocate in the proceeding after hearing representations from the permanent resident or foreign national and the Minister and after giving particular consideration and weight to the preferences of the permanent resident or foreign national;

(c) at any time during a proceeding, the judge may, on the judge's own motion — and shall, on each request of the Minister — hear information or other evidence in the absence of the public and of the permanent resident or foreign national and their counsel if, in the

Protection des renseignements

Protection des renseignements

83 (1) Les règles ci-après s'appliquent aux instances visées aux articles 78 et 82 à 82.2 :

a) le juge procède, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et selon la procédure expéditive;

b) il nomme, parmi les personnes figurant sur la liste dressée au titre du paragraphe 85(1), celle qui agira à titre d'avocat spécial dans le cadre de l'instance, après avoir entendu l'intéressé et le ministre et accordé une attention et une importance particulières aux préférences de l'intéressé;

c) il peut d'office tenir une audience à huis clos et en l'absence de l'intéressé et de son conseil — et doit le faire à chaque demande du ministre — si la divulgation des renseignements ou autres éléments de preuve

judge's opinion, its disclosure could be injurious to national security or endanger the safety of any person;

(c.1) on the request of the Minister, the judge may exempt the Minister from the obligation to provide the special advocate with a copy of information under paragraph 85.4(1)(b) if the judge is satisfied that the information does not enable the permanent resident or foreign national to be reasonably informed of the case made by the Minister;

(c.2) for the purpose of deciding whether to grant an exemption under paragraph (c.1), the judge may ask the special advocate to make submissions and may communicate with the special advocate to the extent required to enable the special advocate to make the submissions, if the judge is of the opinion that considerations of fairness and natural justice require it;

(d) the judge shall ensure the confidentiality of information and other evidence provided by the Minister if, in the judge's opinion, its disclosure would be injurious to national security or endanger the safety of any person;

(e) throughout the proceeding, the judge shall ensure that the permanent resident or foreign national is provided with a summary of information and other evidence that enables them to be reasonably informed of the case made by the Minister in the proceeding but that does not include anything that, in the judge's opinion, would be injurious to national security or endanger the safety of any person if disclosed;

(f) the judge shall ensure the confidentiality of all information or other evidence that is withdrawn by the Minister;

(g) the judge shall provide the permanent resident or foreign national and the Minister with an opportunity to be heard;

(h) the judge may receive into evidence anything that, in the judge's opinion, is reliable and appropriate, even if it is inadmissible in a court of law, and may base a decision on that evidence;

(i) the judge may base a decision on information or other evidence even if a summary of that information or other evidence is not provided to the permanent resident or foreign national;

(j) the judge shall not base a decision on information or other evidence provided by the Minister, and shall return it to the Minister, if the judge determines that it is not relevant or if the Minister withdraws it; and

en cause pourrait porter atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

c.1) il peut, sur demande du ministre, exempter le ministre de l'obligation de fournir une copie des renseignements à l'avocat spécial au titre de l'alinéa 85.4(1)b), s'il est convaincu que ces renseignements ne permettent pas à l'intéressé d'être suffisamment informé de la thèse du ministre;

c.2) il peut, en vue de décider s'il exempte ou non le ministre au titre de l'alinéa c.1), demander à l'avocat spécial de présenter ses observations et peut communiquer avec lui dans la mesure nécessaire pour lui permettre de présenter ses observations, s'il est d'avis que les considérations d'équité et de justice naturelle le requièrent;

d) il lui incombe de garantir la confidentialité des renseignements et autres éléments de preuve que lui fournit le ministre et dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

e) il veille tout au long de l'instance à ce que soit fourni à l'intéressé un résumé de la preuve qui ne comporte aucun élément dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui et qui permet à l'intéressé d'être suffisamment informé de la thèse du ministre à l'égard de l'instance en cause;

f) il lui incombe de garantir la confidentialité des renseignements et autres éléments de preuve que le ministre retire de l'instance;

g) il donne à l'intéressé et au ministre la possibilité d'être entendus;

h) il peut recevoir et admettre en preuve tout élément — même inadmissible en justice — qu'il estime digne de foi et utile et peut fonder sa décision sur celui-ci;

i) il peut fonder sa décision sur des renseignements et autres éléments de preuve même si un résumé de ces derniers n'est pas fourni à l'intéressé;

j) il ne peut fonder sa décision sur les renseignements et autres éléments de preuve que lui fournit le ministre et les remet à celui-ci s'il décide qu'ils ne sont pas pertinents ou si le ministre les retire;

k) il ne peut fonder sa décision sur les renseignements que le ministre n'a pas fournis à l'avocat spécial en raison de l'exemption et il lui incombe de garantir la confidentialité de ces renseignements et de les remettre au ministre.

(k) the judge shall not base a decision on information that the Minister is exempted from providing to the special advocate, shall ensure the confidentiality of that information and shall return it to the Minister.

Clarification

(1.1) For the purposes of paragraph (1)(h), reliable and appropriate evidence does not include information that is believed on reasonable grounds to have been obtained as a result of the use of torture within the meaning of section 269.1 of the *Criminal Code*, or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention Against Torture.

Appointment of special advocate

(1.2) If the permanent resident or foreign national requests that a particular person be appointed under paragraph (1)(b), the judge shall appoint that person unless the judge is satisfied that

(a) the appointment would result in the proceeding being unreasonably delayed;

(b) the appointment would place the person in a conflict of interest; or

(c) the person has knowledge of information or other evidence whose disclosure would be injurious to national security or endanger the safety of any person and, in the circumstances, there is a risk of inadvertent disclosure of that information or other evidence.

For greater certainty

(2) For greater certainty, the judge's power to appoint a person to act as a special advocate in a proceeding includes the power to terminate the appointment and to appoint another person.

2001, c. 27, s. 83; 2008, c. 3, s. 4; 2015, c. 20, s. 57.

Protection of information on appeal

84 Section 83 — other than the obligation to provide a summary — and sections 85.1 to 85.5 apply in respect of an appeal under section 79, 79.1, 82.3 or 82.31 and in respect of any further appeal, with any necessary modifications.

2001, c. 27, s. 84; 2008, c. 3, s. 4; 2015, c. 20, s. 58.

Special Advocate

List of persons who may act as special advocates

85 (1) The Minister of Justice shall establish a list of persons who may act as special advocates and shall

Précision

(1.1) Pour l'application de l'alinéa (1)h), sont exclus des éléments de preuve dignes de foi et utiles les renseignements dont il existe des motifs raisonnables de croire qu'ils ont été obtenus par suite du recours à la torture, au sens de l'article 269.1 du *Code criminel*, ou à d'autres peines ou traitements cruels, inhumains ou dégradants, au sens de la Convention contre la torture.

Choix de l'avocat spécial

(1.2) Si l'intéressé demande qu'une personne en particulier soit nommée au titre de l'alinéa (1)b), le juge nomme cette personne, à moins qu'il estime que l'une ou l'autre des situations ci-après s'applique :

a) la nomination de cette personne retarderait indûment l'instance;

b) la nomination de cette personne mettrait celle-ci en situation de conflit d'intérêts;

c) cette personne a connaissance de renseignements ou d'autres éléments de preuve dont la divulgation porterait atteinte à la sécurité nationale ou à la sécurité d'autrui et, dans les circonstances, ces renseignements ou autres éléments de preuve risquent d'être divulgués par inadvertance.

Précision

(2) Il est entendu que le pouvoir du juge de nommer une personne qui agira à titre d'avocat spécial dans le cadre d'une instance comprend celui de mettre fin à ses fonctions et de nommer quelqu'un pour la remplacer.

2001, ch. 27, art. 83; 2008, ch. 3, art. 4; 2015, ch. 20, art. 57.

Protection des renseignements à l'appel

84 L'article 83 — sauf quant à l'obligation de fournir un résumé — et les articles 85.1 à 85.5 s'appliquent, avec les adaptations nécessaires, à l'appel interjeté au titre des articles 79, 79.1, 82.3 ou 82.31 et à tout appel subséquent.

2001, ch. 27, art. 84; 2008, ch. 3, art. 4; 2015, ch. 20, art. 58.

Avocat spécial

Liste de personnes pouvant agir à titre d'avocat spécial

85 (1) Le ministre de la Justice dresse une liste de personnes pouvant agir à titre d'avocat spécial et publie la

(a) make oral and written submissions with respect to the information and other evidence that is provided by the Minister and is not disclosed to the permanent resident or foreign national and their counsel;

(b) participate in, and cross-examine witnesses who testify during, any part of the proceeding that is held in the absence of the public and of the permanent resident or foreign national and their counsel; and

(c) exercise, with the judge's authorization, any other powers that are necessary to protect the interests of the permanent resident or foreign national.

2008, c. 3, s. 4.

a) présenter au juge ses observations, oralement ou par écrit, à l'égard des renseignements et autres éléments de preuve fournis par le ministre, mais communiqués ni à l'intéressé ni à son conseil;

b) participer à toute audience tenue à huis clos et en l'absence de l'intéressé et de son conseil, et contre-interroger les témoins;

c) exercer, avec l'autorisation du juge, tout autre pouvoir nécessaire à la défense des intérêts du résident permanent ou de l'étranger.

2008, ch. 3, art. 4.

Immunity

85.3 A special advocate is not personally liable for anything they do or omit to do in good faith under this Division.

2008, c. 3, s. 4.

Immunité

85.3 L'avocat spécial est dégagé de toute responsabilité personnelle en ce qui concerne les faits — actes ou omissions — accomplis de bonne foi dans le cadre de la présente section.

2008, ch. 3, art. 4.

Obligation to provide information

85.4 (1) Subject to paragraph 83(1)(c.1), the Minister shall, within a period set by the judge,

(a) provide the special advocate with a copy of the information and other evidence that is relevant to the case made by the Minister in a proceeding under any of sections 78 and 82 to 82.2, on which the certificate or warrant is based and that has been filed with the Federal Court, but that is not disclosed to the permanent resident or foreign national and their counsel; and

(b) provide the special advocate with a copy of any other information that is in the Minister's possession and that is relevant to the case made by the Minister in a proceeding under any of sections 78 and 82 to 82.2, but on which the certificate or warrant is not based and that has not been filed with the Federal Court.

Obligation de communication

85.4 (1) Sous réserve de l'alinéa 83(1)c.1), il incombe au ministre de fournir à l'avocat spécial, dans le délai fixé par le juge :

a) copie des renseignements et autres éléments de preuve qui se rapportent à sa thèse à l'égard d'une instance visée à l'un des articles 78 et 82 à 82.2, qui justifient le certificat ou le mandat et qui ont été déposés auprès de la Cour fédérale, mais qui n'ont été communiqués ni à l'intéressé ni à son conseil;

b) copie des autres renseignements en sa possession qui se rapportent à sa thèse à l'égard d'une instance visée à l'un des articles 78 et 82 à 82.2, mais qui ne justifient pas le certificat ou le mandat et qui n'ont pas été déposés auprès de la Cour fédérale.

Restrictions on communications — special advocate

(2) After that information or other evidence is received by the special advocate, the special advocate may, during the remainder of the proceeding, communicate with another person about the proceeding only with the judge's authorization and subject to any conditions that the judge considers appropriate.

Restrictions aux communications — avocat spécial

(2) Entre le moment où il reçoit les renseignements et autres éléments de preuve et la fin de l'instance, l'avocat spécial ne peut communiquer avec qui que ce soit au sujet de l'instance si ce n'est avec l'autorisation du juge et aux conditions que celui-ci estime indiquées.

Restrictions on communications — other persons

(3) If the special advocate is authorized to communicate with a person, the judge may prohibit that person from communicating with anyone else about the proceeding

Restrictions aux communications — autres personnes

(3) Dans le cas où l'avocat spécial est autorisé à communiquer avec une personne, le juge peut interdire à cette dernière de communiquer avec qui que ce soit d'autre au

during the remainder of the proceeding or may impose conditions with respect to such a communication during that period.

2008, c. 3, s. 4; 2015, c. 20, s. 59.

sujet de l'instance, et ce jusqu'à la fin de celle-ci, ou assujettir à des conditions toute communication de cette personne à ce sujet, jusqu'à la fin de l'instance.

2008, ch. 3, art. 4; 2015, ch. 20, art. 59.

Disclosure and communication prohibited

85.5 With the exception of communications authorized by a judge, no person shall

(a) disclose information or other evidence that is disclosed to them under section 85.4 and that is treated as confidential by the judge presiding at the proceeding; or

(b) communicate with another person about the content of any part of a proceeding under any of sections 78 and 82 to 82.2 that is heard in the absence of the public and of the permanent resident or foreign national and their counsel.

2008, c. 3, s. 4.

Divulgations et communications interdites

85.5 Sauf à l'égard des communications autorisées par tout juge, il est interdit à quiconque :

a) de divulguer des renseignements et autres éléments de preuve qui lui sont communiqués au titre de l'article 85.4 et dont la confidentialité est garantie par le juge présidant l'instance;

b) de communiquer avec toute personne relativement au contenu de tout ou partie d'une audience tenue à huis clos et en l'absence de l'intéressé et de son conseil dans le cadre d'une instance visée à l'un des articles 78 et 82 à 82.2.

2008, ch. 3, art. 4.

Rules

85.6 (1) The Chief Justice of the Federal Court of Appeal and the Chief Justice of the Federal Court may each establish a committee to make rules governing the practice and procedure in relation to the participation of special advocates in proceedings before the court over which they preside. The rules are binding despite any rule of practice that would otherwise apply.

Règles

85.6 (1) Les juges en chef de la Cour d'appel fédérale et de la Cour fédérale peuvent chacun établir un comité chargé de prendre des règles régissant la pratique et la procédure relatives à la participation de l'avocat spécial aux instances devant leurs cours respectives; ces règles l'emportent sur les règles et usages qui seraient par ailleurs applicables.

Composition of committees

(2) Any committee established shall be composed of the Chief Justice of the Federal Court of Appeal or the Chief Justice of the Federal Court, as the case may be, the Attorney General of Canada or one or more representatives of the Attorney General of Canada, and one or more members of the bar of any province who have experience in a field of law relevant to those types of proceedings. The Chief Justices may also designate additional members of their respective committees.

Composition des comités

(2) Le cas échéant, chaque comité est composé du juge en chef de la cour en question, du procureur général du Canada ou un ou plusieurs de ses représentants, et d'un ou de plusieurs avocats membres du barreau d'une province ayant de l'expérience dans au moins un domaine de spécialisation du droit qui se rapporte aux instances visées. Le juge en chef peut y nommer tout autre membre de son comité.

Chief Justices shall preside

(3) The Chief Justice of the Federal Court of Appeal and the Chief Justice of the Federal Court — or a member designated by them — shall preside over their respective committees.

2008, c. 3, s. 4.

Présidence

(3) Les juges en chef de la Cour fédérale d'appel et de la Cour fédérale président leurs comités respectifs ou choisissent un membre pour le faire.

2008, ch. 3, art. 4.

Other Proceedings

Autres instances

Application for non-disclosure

86 The Minister may, during an admissibility hearing, a detention review or an appeal before the Immigration Appeal Division, apply for the non-disclosure of

Demande d'interdiction de divulgation

86 Le ministre peut, dans le cadre de l'appel devant la Section d'appel de l'immigration, du contrôle de la détention ou de l'enquête, demander l'interdiction de la

information or other evidence. Sections 83 and 85.1 to 85.5 apply to the proceeding with any necessary modifications, including that a reference to "judge" be read as a reference to the applicable Division of the Board.

2001, c. 27, s. 86; 2008, c. 3, s. 4.

divulgation de renseignements et autres éléments de preuve. Les articles 83 et 85.1 à 85.5 s'appliquent à l'instance, avec les adaptations nécessaires, la mention de juge valant mention de la section compétente de la Commission.

2001, ch. 27, art. 86; 2008, ch. 3, art. 4.

Judicial review

86.1 (1) The Minister may, at any stage of the proceeding, apply for judicial review of any decision made in a proceeding referred to in section 86 requiring the disclosure of information or other evidence if, in the Minister's opinion, the disclosure would be injurious to national security or endanger the safety of any person. The application may be made without an application for leave.

Contrôle judiciaire

86.1 (1) Le ministre peut, en tout état de cause, demander le contrôle judiciaire de toute décision rendue au cours d'une instance visée à l'article 86 et exigeant la divulgation de renseignements ou autres éléments de preuve qui porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui. Sa demande n'est pas subordonnée au dépôt d'une demande d'autorisation.

Effects of judicial review

(2) The making of the application suspends the execution of the decision and, except in the case of a detention review, the proceeding referred to in section 86, until the application has been finally determined.

2015, c. 20, s. 60.

Effet du contrôle judiciaire

(2) La demande de contrôle judiciaire suspend l'exécution de la décision et, sauf dans le cas du contrôle de la détention, de l'instance en cause, jusqu'à ce qu'il soit statué en dernier ressort sur la question.

2015, ch. 20, art. 60.

Application for non-disclosure — judicial review and appeal

87 The Minister may, during a judicial review, apply for the non-disclosure of information or other evidence. Section 83 — other than the obligations to appoint a special advocate and to provide a summary — applies in respect of the proceeding and in respect of any appeal of a decision made in the proceeding, with any necessary modifications.

2001, c. 27, s. 87; 2008, c. 3, s. 4; 2015, c. 20, s. 60.

Interdiction de divulgation — contrôle judiciaire et appel

87 Le ministre peut, dans le cadre d'un contrôle judiciaire, demander l'interdiction de la divulgation de renseignements et autres éléments de preuve. L'article 83 s'applique à l'instance et à tout appel de toute décision rendue au cours de l'instance, avec les adaptations nécessaires, sauf quant à l'obligation de nommer un avocat spécial et de fournir un résumé.

2001, ch. 27, art. 87; 2008, ch. 3, art. 4; 2015, ch. 20, art. 60.

Appeal by Minister

87.01 (1) The Minister may, without it being necessary for the judge to certify that a serious question of general importance is involved, appeal, at any stage of the proceeding, to the Federal Court of Appeal any decision made in a judicial review requiring the disclosure of information or other evidence if, in the Minister's opinion, the disclosure would be injurious to national security or endanger the safety of any person.

Appel du ministre

87.01 (1) Le ministre peut, en tout état de cause, interjeter appel en Cour d'appel fédérale de toute décision rendue au cours du contrôle judiciaire et exigeant la divulgation de renseignements ou autres éléments de preuve qui porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui, sans que le juge soit tenu de certifier que l'affaire soulève une question grave de portée générale.

Effects of appeal

(2) The appeal suspends the execution of the decision, as well as the judicial review, until the appeal has been finally determined.

2015, c. 20, s. 60.

Effet de l'appel

(2) L'appel suspend l'exécution de la décision, ainsi que le contrôle judiciaire, jusqu'à ce qu'il soit tranché en dernier ressort.

2015, ch. 20, art. 60.

Special advocate

87.1 If the judge during the judicial review, or a court on appeal from the judge's decision, is of the opinion that considerations of fairness and natural justice require that

Avocat spécial

87.1 Si le juge, dans le cadre du contrôle judiciaire, ou le tribunal qui entend l'appel de la décision du juge est d'avis que les considérations d'équité et de justice naturelle

a special advocate be appointed to protect the interests of the permanent resident or foreign national, the judge or court shall appoint a special advocate from the list referred to in subsection 85(1). Sections 85.1 to 85.5 apply to the proceeding with any necessary modifications.

2008, c. 3, s. 4.

requièrent la nomination d'un avocat spécial en vue de la défense des intérêts du résident permanent ou de l'étranger, il nomme, parmi les personnes figurant sur la liste dressée au titre du paragraphe 85(1), celle qui agira à ce titre dans le cadre de l'instance. Les articles 85.1 à 85.5 s'appliquent alors à celle-ci avec les adaptations nécessaires.

2008, ch. 3, art. 4.

Regulations

Regulations

87.2 (1) The regulations may provide for any matter relating to the application of this Division and may include provisions respecting conditions and qualifications that persons must meet to be included in the list referred to in subsection 85(1) and additional qualifications that are assets that may be taken into account for that purpose.

Requirements

(2) The regulations

(a) shall require that, to be included in the list, persons be members in good standing of the bar of a province, not be employed in the federal public administration, and not otherwise be associated with the federal public administration in such a way as to impair their ability to protect the interests of the permanent resident or foreign national; and

(b) may include provisions respecting those requirements.

2008, c. 3, s. 4.

Règlements

Règlements

87.2 (1) Les règlements régissent l'application de la présente section et portent notamment sur les exigences — conditions et qualités — auxquelles doit satisfaire toute personne pour que son nom figure sur la liste dressée au titre du paragraphe 85(1), ainsi que sur les autres qualités qui constituent des atouts et dont il peut être tenu compte à cette fin.

Exigences

(2) Les règlements :

a) prévoient que, pour que le nom d'une personne puisse figurer sur la liste, celle-ci doit être membre en règle du barreau d'une province et ne pas occuper un emploi au sein de l'administration publique fédérale ni par ailleurs être associée à celle-ci de manière que sa capacité de défendre les intérêts du résident permanent ou de l'étranger serait compromise;

b) peuvent préciser ces exigences.

2008, ch. 3, art. 4.

DIVISION 10

General Provisions

Instructions on Processing Applications and Requests

Application

87.3 (1) This section applies to applications for visas or other documents made under subsections 11(1) and (1.01), other than those made by persons referred to in subsection 99(2), to sponsorship applications made under subsection 13(1), to applications for permanent resident status under subsection 21(1) or temporary resident status under subsection 22(1) made by foreign nationals in Canada, to applications for work or study permits and to requests under subsection 25(1) made by foreign nationals outside Canada.

SECTION 10

Dispositions générales

Instructions sur le traitement des demandes

Application

87.3 (1) Le présent article s'applique aux demandes de visa et autres documents visées aux paragraphes 11(1) et (1.01) — sauf à celle faite par la personne visée au paragraphe 99(2) —, aux demandes de parrainage faites au titre du paragraphe 13(1), aux demandes de statut de résident permanent visées au paragraphe 21(1) ou de résident temporaire visées au paragraphe 22(1) faites par un étranger se trouvant au Canada, aux demandes de

Appendix B: Interview Guide

Interview Guide/Questions:

Note: In semi-structured interviewing, the researcher refers to a guide that provides an overview of key themes. In this case, we have indicated potential phrasing for questions, but we note that these questions will be re-phrased depending on the flow of the conversation.

Part I – Introductions

- Thank participant for participating
- Review particulars of consent form
- Ask if they are comfortable with being audio-recorded; ask if handwritten notes may be taken

Part II – Interview

- Participant Background
    - I understand you are a _____, but I would like to hear from you about your work.
    - (Possible follow-up items):
        - Job title, description, what are their responsibilities
        - how long
        - do they enjoy it
        - how/why did they get into their field
- Participant General Views
    - Given your experience in the immigration field, what are your thoughts on the current immigration laws and policies here in Canada?
    - (Possible follow-up items):
        - Do they think it's working – what is something they find good?
        - What are some things they find wrong or concerning
        - Is there anything that can be improved?
    - Canada espouses values of acceptance and multiculturalism, do you think that reflected within current immigration laws and policies? How so?
    - (Possible follow-up items):
        - Criteria in determining admissibility
        - How is admissibility defined within the Canadian immigration law?
        - How should admissibility be defined?
- Security Certificates
        - Briefly go over what security certificates are in case
    - What are your thoughts on security certificates?
    - (Possible follow-up items):
        - Is Canada at war with terror?

        - Certificates normalize emergency states that allow for legal exceptionality; we have in essence, a suspicion of terrorism that defines inadmissibility – is this right?
            - Does participant see it the same way? If not, then ask for them to share POV
        - How is admissibility defined in this instance? Is it the same as that espoused within Canadian values?
        - Legality of security certificate mechanism
            - Should there be an amendment/repeal?
            - Is this a gateway to harsher/stricter admissibility criteria? Maybe even criminal laws – especially since civil/administrative law in this case is harsher than criminal law?
    - How do security certificate proceedings differ from 'ordinary' immigration and removal proceedings?

- Response to Syrian refugee crisis
        - Briefly go over Canada's response in case
    - One could make the argument that the recent response to the Syrian refugee crisis appears to fast-track residency for Syrian refugees. What are your thoughts on this?
    - (Possible follow-up items):
        - Security clearance – don't all refugees go through processes of security clearance?
        - Certificate detainees, Secret Trial 5 as an example, were in majority accepted refugees – their admissibility was revoked in an instant of suspicion, whereas Syrian refugees are "awarded" their admissibility
        - How is it that these refugees are treated so differently?
            - Difference in (in)admissibility
        - How then is admissibility determined for Syrian refugees in contrast to other non-Syrian refugees (not specifically to certificate detainees)?
            - Is it different or the same?
    - What kind of impact, if any, do you think this recent response may have on immigration law and policy?
    - (Possible follow-up items):
        - Open for increased leniency in granting refugee status in general?
            - What about immigrants?
        - Direction/instruction under Liberal Govt?
            - Where does participant see immigration law heading?
    - In your opinion, what details or issues have been missing from the public conversation about Canada's response to the Syrian Refugee Crisis?

- **Admissibility Overall**
    - With the discussion that we have had so far, do you think there should be any changes that need to be made in the immediate future?

    - Earlier I posed the question of how admissibility should be defined, do you see immigration law/policy taking that path any time soon?
    - Should there be one set criteria for determining admissibility or do you think it is better to operationalize it on a spectrum, where some foreign nationals are more admissible than others?

- There is literature that exists noting the inequality of immigration laws in Canada, what are your thoughts on this?

Part III – Conclusion

- Thank participant for their time
- Ask if participants have any questions for interviewer
- If participant expressed desire to maintain confidentiality, discuss appropriate pseudonyms and ways to describe them to their comfort
- Thank participant for their time again

Appendix C: Example of Hansard transcript compilation/Hansard 44 in SRC Hansard Compilation

Hansard – 44

Speaker: Jenny Kwan (Vancouver East) Party: NDP (BC)
Date: 2016-04-21 15:03 [p.2547]

Mr. Speaker, the government seems to be having problems delivering on their promises to Syrian refugees. Some refugee families in Saskatoon waited nearly three weeks without money for food or rent. They had to rely on charity just to feed their families and avoid being evicted. They said they are frustrated, worried, embarrassed, and feel like they have to beg to survive. This is not acceptable.

How many other families are in this situation, and what action will the minister take to ensure this does not happen to anyone else?

Speaker: Hon. John McCallum (Markham—Thornhill) Party: Lib. (ON)
Date: 2016-04-21 15:03 [p.2547]

Mr. Speaker, as I have said many times, an operation of this kind is never perfect. There are always bumps along the road. There are always problems of various kinds, but overall, I am satisfied. I just heard today that 90% of the refugees now have permanent housing.

I wish those individuals to whom the member referred great success, but I am pleased to say that overall, thanks to the generosity of so many Canadians, this operation is going well.

Topics: (all Hansard 44)
Refugees
Settlement of immigrants
Social housing
Syria

Appendix D – ATIP Files Reference Table

File Number	Request Description	Referred to as:
A-2016-26704	Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present. October 24, 2016	IRCC File 1
A-2016-26697	Copies of public opinion research and analysis, including poll results, regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present, October 24, 2016.	IRCC File 2
A-2016-26684	Letters, including 'open letters', submitted by individuals, groups, and organizations regarding security certificates issued under Division 9 of the IRPA received between January 1, 2015 and present, October 24, 2016.	IRCC File 3
A-2016-26708	Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding Syrian refugee crisis. The date range for this request is January 1, 2015 - present, October 24, 2016.	IRCC File 4
A-2016-26695	Copies of public opinion research and analysis, including poll results, regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 - present, October 24, 2016.	IRCC File 5
A-2016-26691	Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present, October 24, 2016.	IRCC File 6
A-2016-00242	Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 - present.	PSC File 1
A-2016-00248	Copies of public opinion research and analysis, including poll results, regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 – present.	PSC File 2
A-2016-00243	Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present.	PSC File 3
A-2016-00246	Copies of public opinion research and analysis, including poll results, regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 – present. November 1, 2016	PSC File 4
A-2016-00241	Letters, including ‘open letters’, submitted by individuals, groups, and organizations regarding security certificates issued under Division 9 of the IRPA received between January 1, 2015 and present. November 1, 2016	PSC File 5

Appendix E-1: Example email receipt of file

Your Access to Information request: A-2016-26704 / [redacted]

[redacted] Mon, Oct 24, 2016 at 7:14 AM

To: "pinju.chen1@email.kpu.ca" <pinju.chen1@email.kpu.ca>

Dear Ms. Chen:

This is to acknowledge receipt of your request, under the Access to Information Act, which was received in our office on October 24, 2016, for the following:

"Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present. October 24, 2016"

Please consider this email as your official receipt for your $5 dollar initial deposit.

Should you have any questions, do not hesitate to contact me.

Yours sincerely,

[redacted]
Senior ATIP Administrator
Immigration, Refugees and Citizenship Canada
[redacted]

This message is intended solely for the individual or entity to whom it is addressed. It contains privileged and confidential information which is not to be disclosed without the sender's express consent. If you are not the intended recipient of this message or an authorized representative thereof, please notify the sender by email and then destroy this message as well as all other existing copies.

Appendix E-2: Email notification of extension for file A-2016-26708

Your request #A-2016-26708/[redacted]

[redacted] Mon, Jan 9, 2017 at 6:53 AM

To: "pinju.chen1@email.kpu.ca" <pinju.chen1@email.kpu.ca>

[redacted]

Ms. Chen:

This is further to your request under the Access to Information Act, which was received on December 9, 2016, for the following:

-"Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding Syrian refugee crisis. The date range for this request is January 1, 2015 - present, October 24, 2016. Using the key word search to narrow the scope of this file? If possible, I was thinking we could use again as primary key words 'Syrian refugee' with sub key words including 'security', 'screening', admissibility', and 'welcoming'."

Despite our best efforts to process your request within the 30-day statutory limit, an extension of up to 120 days pursuant to paragraph 9(1)(a) of the Access to Information Act, is required to process your request. This paragraph states that a request may be extended if "the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution."

We would like to inform you that there may be a delay in responding to your request. Any request involving the refugee program in general is affected. Please be advised that our team is working to fulfill your request as quickly as possible. We apologize for any inconvenience this delay may cause.

Please be advised that you are entitled to submit a complaint regarding the processing of your request to the Information Commissioner within sixty days of the receipt of this notice. The complaint form can be retrieved at: http://www.oic-ci.gc.ca/eng/lc-cj-logde-complaint-deposer-plainte.aspx.

Information Commissioner
30 Victoria Street
Gatineau, QC K1A 1H3

Should you have any questions, please do not hesitate to contact us.

Yours truly,

[redacted]

Senior ATIP Administrator | Administratrice principale en AIPRP
NHQ - Corporate Affairs | AC - Affaires corporatives
Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
360 Laurier Avenue West Ottawa ON K1A 1L1 | 360 avenue Laurier Ouest Ottawa ON K1A 1L1
Office | Bureau NAR B1035

[redacted]

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Appendix E-3: Email response regarding file A-2016-26697

IRCC fileA-2016-26697

[redacted] Wed, Nov 23, 2016 at 4:40 AM

To: Rachel Chen <pinju.chen1@email.kpu.ca>

Hi Ms.Chen.

Yes, I did mean to leave the date range blank. However I have a feeling that a new request would still garner a nil response as I do not think that my department was involved in any public opinion research on the topic.

You may want to look at our website where we list the research that has taken place and what is ongoing at http://www.cic.gc.ca/english/department/consultations/index.asp.

Regards,

[redacted]

Senior ATIP Administrator | Administrateur principal de l'AIPRP
NHQ - Corporate Affairs | AC - Affaires corporatives
Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
360 Laurier Avenue West Ottawa ON K1A 1L1 | 360 avenue Laurier Ouest Ottawa ON K1A 1L1

[redacted]

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Appendix E-4: Email correspondence regarding file A-2016-26684

RE: A-2016-26684 / [redacted]

[redacted] Fri, Jan 13, 2017 at 4:32 AM

To: Rachel Chen <pinju.chen1@email.kpu.ca>

Hello,

As mentioned earlier, correspondence is logged by keywords. A search was conducted with <security certificate> and <division 9> and no records were found. In the case you are referring to below, the correspondence would be stored under Harkat.

Since your request made no mention of individual names, we could not locate those possible correspondences that refer to specific persons.

You would need to put in a new request for correspondence that contain the names of the persons requested and a specific timeframe.

Regards,

[redacted]

Senior ATIP Administrator | Administrateur principal de l'AIPRP
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Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
360 Laurier Avenue West Ottawa ON K1A 1L1 | 360 avenue Laurier Ouest Ottawa ON K1A 1L1

[redacted]

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Appendix E–5: Screenshot of Completed Access to Information Requests page of search "security certificates"

Request Number: A-2016-26704

Organization: Immigration, Refugees and Citizenship Canada

Disposition: Does not exist/ Aucun document n'existe

Year: 2016

Month: December

Number of Pages: 0

Request Summary: Briefing notes, reports, and memorandums prepared for the Minister and/or Assistant Deputy Ministers regarding security certificates issued under Division 9 of the IRPA. The date range for this request is January 1, 2015 - present. October 24, 2016

Make an informal request for: A-2016-26704 (CIC)

Request Number: A-2016-26684

Organization: Immigration, Refugees and Citizenship Canada

Disposition: All disclosed/ Divulgation complete

Year: 2016

Month: November

Number of Pages: 3

Request Summary: Letters, including 'open letters', submitted by individuals, groups, and organizations regarding security certificates issued under Division 9 of the IRPA received between January 1, 2015 and present, October 24, 2016.

Make an informal request for: A-2016-26684 (CIC)

Appendix E–6: Email correspondence regarding file A-2016-26691

Your Access to Information Request Number: A-2016-26691/ [redacted]

[redacted] Thu, Nov 3, 2016 at 8:17 AM

To: "pinju.chen1@email.kpu.ca" <pinju.chen1@email.kpu.ca>

Dear Ms. Chen:

This is to acknowledge receipt of your request filed under the *Access to Information Act*, which was received on October 24, 2016, for the following records:

"Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present, October 24, 2016."

In order to process your request, we require clarification on the following points:

- In order to assist us with the search of your request, could you please provide key words enabling the department to search more efficiently, used as a search engine, through our record holdings.

- Please explain specifically what you are looking for as secondary topic(s) to any "open letters" (i.e. resettlement, security, health challenges, …). Do you mean all letters addressed to the Minister of IRCC to the following email address: Minister@cic.gc.ca ? Please confirm.

As well, note that we will put your request on hold until we receive the requested information from you. If we have not received your reply by December 5, 2016, we will consider the request abandoned and close our file accordingly.

Should you have any questions, please do not hesitate to contact me by email.

Yours sincerely,

Appendix E-7: Email correspondence regarding file A-2016-26691

Your Access to Information Request Number: A-2016-26691[redacted]

[redacted] Tue, Nov 29, 2016 at 11:31 AM

To: Rachel Chen <pinju.chen1@email.kpu.ca>

Hello Rachel,

Because of the wording being too wide of scope for us to carry-on with the process, we are proposing that I speak to you by telephone to assist how best we can process accordingly given that you may be seeking to get this information sooner than later. Given the times and the surge of files being processed on refugees in general, the wording of the request could involve a significant volume of records to search through and can paralyze the department. We may have to take a longer extension for operational requirements.

Let us know a convenient time to speak and letting us know exactly what you are wishing to receive from the institution.

Best regards,

[redacted]
Senior ATIP Administrator | Administratrice principale en AIPRP
NHQ - Corporate Affairs | AC - Affaires corporatives
Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
360 Laurier Avenue West Ottawa ON K1A 1L1 | 360 avenue Laurier Ouest Ottawa ON K1A 1L1
Office | Bureau NAR B1035
[redacted]
Government of Canada | Gouvernement du Canada

Appendix E-8: Email correspondence (2) regarding file A-2016-26691

Your Access to Information Request Number: A-2016-26691/ [redacted]

[redacted] Wed, Nov 30, 2016 at 7:07 AM

To: Rachel Chen <pinju.chen1@email.kpu.ca>

Hello Ms. Chen,

In reference to some previous requests, you may want to emphasize your search under the primary key words *Syrian Refugees* which should capture a great number of correspondence, and consider as sub-key words : security, screening, resettlement, culture / cultural considerations, and challenges.

Relatively speaking, knowing that the initiative was launched by the Prime Minister during the timeline of your ATI request, it should capture the requested information.

We don`t generate the systems as such, but we are of the view that the process could encounter touching base with you once confirmed by the program area, if they are faced with unforeseen volume from the Minister`s email address.

Secondly, I will also want to discuss your other ATI requests.

I am available to speak on Thursday meaning 2:30 EST.

Please let me know if this works for you.

Regards,

[redacted]
Senior ATIP Administrator | Administratrice principale en AIPRP
NHQ - Corporate Affairs | AC - Affaires corporatives

Appendix E-9: Email correspondence (3) regarding file A-2016-26691

Your Access to Information Request Number: A-2016-26691/[redacted]

[redacted] Thu, Dec 1, 2016 at 12:44 PM
To: Rachel Chen <pinju.chen1@email.kpu.ca>

Hello Ms. Chen,

As per our telecom, before we proceed with the process of your request, please advise that you agree to focus the search on primary key words: Syrian refugees, and sub key words: security, screening, and admissibility.

You may file another ATI request under the sub-key words: Culture, challenges, and resettlement. As agreed the department will waive the fees.

This approach allows the department to process your request in a timely matter given the volume of requests being processed at this time.

The file will remain on hold until confirmation.

Best regards,

[redacted]
Senior ATIP Administrator | Administratrice principale en AIPRP
NHQ - Corporate Affairs | AC - Affaires corporatives
Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
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Appendix E-10: Emails regarding telephone conversation for IRCC File 4 and IRCC File 5

Your Access to Information Request Number: A-2016-26708/[redacted]

[redacted] Thu, Dec 1, 2016 at 1:05 PM
To: Rachel Chen <pinju.chen1@email.kpu.ca>

Hello Ms. Chen,

Thank you for taking the time from your schedule to discuss the processing issues and timelines the institution is faced on the surge of ATI requests received to date, and given that you can obtain information readily available as early as next week.

On a second note, you may want to submit another request by narrowing the scope and timeline once you have had a chance to review the copies of those aforementioned files listed in the previous email. If this is the case, we can waive the fee only on the basis of these circumstances.

As explained, this approach allows the department to process your request in a timely matter given the volume of requests being processed at this time.

The file will remain on hold until confirmation.

Best regards,

Your Access to Information Request Number: A-2016-26695/[redacted]

[redacted] Thu, Dec 1, 2016 at 12:54 PM
To: Rachel Chen <pinju.chen1@email.kpu.ca>

Hello Ms. Chen,

First, thank you for taking the time from your schedule to discuss the issues of concern. We are striving and working diligently to get the information you wish to obtain in a very timely fashion avoiding to re-task for no reason when the information is readily available.

As per our telecom, the files processed pertain to very similar information you are looking for and will certainly help you with your thesis project.

This approach allows the department to provide a copy as early as next week.

The file will remain on hold until confirmation.

Best regards,

Appendix E-11: Email to ATIP Coordinator Audrey White

February 6, 2017

Audrey White
A/Access to Information and Privacy Coordinator
Narono Building
360 Laurier Avenue West, 10th Floor
Ottawa, Ontario K1A 1L1

Dear Audrey,

My name is Pin Ju (Rachel) Chen and I am writing to you today to inquire about my above captioned file for “Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present, October 24, 2016 on primary key works used as search engine: security, screening, and admissibility”.

I last heard from the analyst assigned to this file, Senior ATIP Administrator _____, regarding this file on Tuesday, January 3, 2017, when a receipt for revisions pertaining to this file was acknowledged (on December 9, 2016) and sent to me. I have not yet received any records pertaining to this file since then nor have I received a notification for an extension. I last contacted _____ on January 29, 2017, inquiring about the progress of the file since no notification for an extension was made to me and I had not received anything regarding this file, however she has not responded to me.

Since it has been almost 2 months now from the new date of receipt for this file, I was wondering if the file has entered deemed refusal status?

I would also like to inquire about another file of mine that was under the care of _____ as well. This file would be #A-2016-26695/HB for "Copies of public opinion research and analysis, including poll results, regarding the Syrian refugee crisis. The date range for this request is January 1, 2015 - present, October 24, 2016".

This file has been completed however the CD that was sent to me does not work. I have tried to read the CD on three separate computers, the worst result being that the window freezes and displays "(Not Responding) when I click to open the CD drive from the "My Computer" window, to being able to open the drive, but the PDF file does not open - instead the window freezes and I have to force quit.

I have sent _____ two emails, dated January 26 and February 2 of 2017, noting this issue and inquiring if another CD with the file records could be sent to me, or alternatively, if the contents could be sent to me electronically. Both my emails have gone without reply.

I would really appreciate it if you could assist me in this matter because as it is now, I still have not gained access to this file of mine.

Thank you for your time.

Sincerely,

Rachel PJ Chen

Appendix E-12: Email response from Senior ATIP Administrator 2 regarding my letter to ATIP Coordinator White

FW: A-2016-26691/HB - Deemed Refusal? -- A-2016-26695/[redacted]

[redacted] Tue, Feb 7, 2017 at 6:07 AM

To: Rachel Chen <pinju.chen1@email.kpu.ca>

[redacted]

Hello Ms. Chen,

Thank you for your latest email and interest while seeking status on ATI files A-2016-26691, and A-2016-26695 which the CD for 26691 may have been damaged through the regular mail service.

Please be advised that I was away from the office for two (2) weeks and just returning as of yesterday.

Trust that client service standard is important to us and that we are working in sending another response package by alternate process (i.e. email) under separate folder as the response package is over 600 pages altogether.

AS for A-6-26691, we are pushing the office area to respond as quickly as possible so that we can move this file smoothly and efficiently through the process of things.

Best regards,

[redacted]

Senior ATIP Administrator | Administratrice principale en AIPRP
NHQ - Corporate Affairs | AC - Affaires corporatives
Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
360 Laurier Avenue West Ottawa ON K1A 1L1 | 360 avenue Laurier Ouest Ottawa ON K1A 1L1

Appendix E-13: Email regarding file A-2016-00243

Your ATI request A-2016-00243-[redacted]

[redacted] Fri, Nov 4, 2016 at 6:07 AM

To: "pinju.chen1@email.kpu.ca" <pinju.chen1@email.kpu.ca>

Good Morning Ms. Chen

My name is [redacted] and I am the ATI analyst currently reviewing three of your new requests. In response to retrieval tasking for the above noted file, I received a question regarding the relevancy of certain documentation and whether or not it should be provided. The above noted file is for:

"Letters, including 'open letters', submitted by individuals, groups, and organizations regarding the Syrian refugee crisis received between January 1, 2015 and present."

In response to this request I have received word of a docket which contains 368 pieces of correspondence from the general public expressing their opinion regarding the Syrian refugee's arrival in Canada. This would amount to approximately 800 pages of additional information that we feel you may not be interested in. Most of the information contained in these pages would be personal information. In order to review these 800 pages and apply Section 19(1) to almost every page, I would need to take an extension of 60 days for these records alone.

Please let me know how you wish to proceed.

Regards,

[redacted]

Consultant

Appendix F-1: Excerpt from Hansard 94 in SRC Hansard Compilation

[…]

Speaker: Hon. Michelle Rempel (Calgary Nose Hill) Party: CPC (AB)
Date: 2016-10-20 14:44 [p.5920]

Mr. Speaker, does 25,000 refugees by December 31, 2015, ring a bell? This is the epitome of hypocrisy.

My question to the minister is this. We have a reasonable motion that has been accepted by all parties in here, which has tangible action for the Yazidis. Why on earth can the government not stand up and say that it will bring Yazidi sex-slave girls to Canada?

Speaker: Hon. John McCallum (Markham—Thornhill) Party: Lib. (ON)
Date: 2016-10-20 14:45 [p.5920]

Mr. Speaker, nothing makes me prouder than the fact that we brought, in 2016, three or four times more refugees than the Conservatives did. In four short months, we brought in 25,000 Syrian refugees. I, as a Canadian, am very proud of that accomplishment. In addition, we will work to bring in Yazidis and others who have been oppressed by Daesh in the years going forward.

Topics: (same with above)
Genocide
Girls
Iraq
Islamic State of Iraq and the Levant
Refugees
Sexual abuse and exploitation
Slavery
Terrorism and terrorists
Yazidis

Appendix F-2: Excerpt from Hansard 72 in SRC Hansard Compilation.

[…]

Speaker: Hon. Rona Ambrose (Sturgeon River—Parkland) Party: CPC (AB)
Date: 2016-06-14 14:22 [p.4472]

Mr. Speaker, the Prime Minister still, after three questions, does not even understand the issue. These girls are not refugees. They are not considered refugees. They are languishing in camps as displaced people.

However, we have a special program that the Prime Minister has the power to use to bring these girls to Canada, so I ask him again, when will he take action and help these girls?

Speaker: Right Hon. Justin Trudeau (Papineau) Party: Lib. (QC)
Date: 2016-06-14 14:22 [p.4472]

Again, Mr. Speaker, the previous government did a lot to diminish our capacity to welcome in people from around the world. The fact is that we are working very hard—

Some hon. members: Oh, oh!

Speaker: Right Hon. Justin Trudeau (Papineau) Party: Lib. (QC)
Date: 2016-06-14 14:23 [p.4472]

Mr. Speaker, the fact of the matter is that we are working very hard to restore Canada's place in the world as a country that welcomes in vulnerable peoples. That is what we were able to demonstrate when Canadians stepped up in an extraordinary way for 25,000 Syrian refugees. That is exactly what the Minister of Immigration, Refugees and Citizenship is working very hard on: to restore it, after all the cuts the previous government made to immigration.

[…]

Appendix F-3: Excerpt from Hansard 39 from SRC Hansard Compilation

[…]

Speaker: Karen Ludwig (New Brunswick Southwest) Party: Lib. (NB)
Date: 2016-04-14 14:12 [p.2242]

Mr. Speaker, it is an honour to rise in the House today and recognize the many volunteers across our country who give so generously of their time to make our families, our communities, and our country strong.

Just last week, three young Syrian families were warmly welcomed to the town of St. Stephen in my riding of New Brunswick Southwest. I was there when they arrived, and it is overwhelming to see how the volunteers have worked so tirelessly, preparing every detail to make their transition into the community a smooth one.

I want to give special mention to the individuals and community groups who have welcomed more than 25,000 Syrians. I want to thank these volunteers who constantly remind us of what it means to be Canadian.

The leadership of our Prime Minister is inspiring volunteers in our country and around the world to be open, generous, and welcoming.

Topics:
Refugees
Syria
Volunteering and volunteers

[…]

Appendix F-4: Excerpt from Hansard 3 in SRC Compilation

[…]

Speaker: David Tilson (Dufferin—Caledon) Party: CPC (ON)
Date: 2015-12-07 15:36 [p.59]

Mr. Speaker, I have a petition from a number of residents in my riding who are concerned about the Liberal refugee settlement plan. Canada has a long and proud tradition of being an open and welcoming society for immigrants and refugees from around the world. However, notwithstanding Canadians' openness and generosity, citizens of Canada have expressed legitimate security concerns over the resettlement of refugees emanating from the Syrian conflict.

Whereas the Liberal promise to settle an arbitrary number of refugees by an arbitrary date was made during the heightened political atmosphere of an election campaign; and whereas recognized experts in resettlement procedures have raised serious security concerns regarding the Liberal refugee settlement plan; and whereas it is incumbent upon the federal government to exercise its primary duty to protect the safety and well-being of Canadians; the petitioners are asking that all members of Parliament have a clear and open debate and vote on a binding motion with respect to the Liberal refugee settlement plan through an emergency debate in Parliament.

Topics:
Petition 421-00002
Refugees
Settlement of immigrants
Syria

[…]

Appendix F-5: Excerpt from Hansard 131 in SRC Hansard Compilation

Speaker: Hon. Michelle Rempel (Calgary Nose Hill) Party: CPC (AB)
Date: 2017-02-01 18:20 [p.8351]

Madam Speaker, this evening in the House of Commons, I would like to raise the issue of the Yazidi genocide.
The Yazidi people are a highly persecuted ethnic and religious minority primarily based in Iraq. They are some of the most persecuted people in the world. In the last two years, they have suffered extreme atrocities at the hands of extremists within the religious majority in the area. That is ISIS. The Yazidi people have suffered rape and mutilation. Their people are in mass graves in the area, and their women have been taken as sexual slaves.

In October, after many, many months and much pushing, the House unanimously adopted a motion to prioritize Yazidi victims of genocide to come to Canada as refugees.

For people who are listening, Canada has two main ways for refugees to come into the country. First, privately sponsored refugees are those who come through the generosity of Canadians who have raised funds to sponsor refugees. The second is through government-assisted refugees. That is where the United Nations refers cases to Canada and then the government pays for the sponsorship of the refugees. The sad reality is that exactly zero out of tens of thousands of refugees who have been referred to Canada by the United Nations have come from this group of people. That is shameful.

I've had United Nations officials in my office. I have asked them why there are no cases being referred to Canada. They actually told me that because of the time constraint the government placed on them last year for the refugee initiative, it was easier just to pick out of the religious majority in these camps. That is shameful, because these people cannot actually get to refugee camps in most cases. They are internally displaced and they cannot get to refugee camps, because they are persecuted the whole way there. Then when they get to the refugee camps, in order to make these United Nations lists, oftentimes there are great delays. We have heard allegations of discrimination against these people by UN processing agents. The reality is that they are not making the lists. They are not being referred to Canada. That is an issue the government needs to look at.

The reality is there are non-governmental organizations on the ground that have been working very hard and which are highly reputable. The government could use them in order to bring those refugees to Canada. That is completely within the government's jurisdiction. It should be doing that, but what have the Liberals done to date? They have not talked to any of those non-governmental organizations and they are not working to bring those people here.

We are now in February, almost four months after the motion passed. None of the non-governmental organizations have heard any word about how many Yazidi refugees are going to be processed or how they are going to come here.

This weekend the Prime Minister sent out a fairly asinine tweet saying that we are open and welcoming refugees. Where are the Yazidis? Why, when I stand in this House of Commons, can the government not tell me how many Yazidis will come to Canada in the next couple of weeks? My gut says it is because it is lip service. The Liberals do not have a plan. They are not going to meet the terms of this deadline.

My question tonight is very simple. How many Yazidis will the government bring to Canada before the motion's deadline?

[…]

Appendix F-6: Excerpt from Hansard 94 in SRC Hansard Compilation

Speaker: James Bezan (Selkirk—Interlake—Eastman) Party: CPC (MB)
Date: 2016-10-20 13:34 [p.5909]

Mr. Speaker, I will be splitting my time with my colleague from Sarnia—Lambton. It is indeed an honour to speak to this motion brought forward by my friend from Calgary Nose Hill and amended by my colleague from Calgary Shepard.

It is unfortunate that we have to have this debate today, knowing that so many Canadians understand the atrocities that have been committed against the Yazidi people. When we look at what happened two years ago in Sinjar and Iraq, ISIS targeted the Yazidi community, and carried out one of the most brutal genocides that have been witnessed in the world's recent history.

[…]

They deserve asylum. They deserve a place to call home. I know for a fact that organizations across Canada are prepared to privately sponsor them. I know that the Jewish Foundation of Manitoba wants to sponsor these poor Yazidi girls and women, and get them to a safe and secure environment that we offer here in Canada.

We are giving, through the amendment, the government 120 days to act upon the United Nations Commission of Inquiry on Syria report entitled “They Came to Destroy: ISIS Crimes Against the Yazidis”, and implementing articles in sections 210, 212, and 213 of the report.

As my colleague from Calgary Nose Hill, the immigration critic for the official opposition, has already said in a written letter to the Minister of Immigration that he could use section 25 of the Immigration and Refugee Protection Act to expedite the asylum seekers in the Yazidi community who are currently in the queue to come here.

[…]

If there was ever a time for the government to show compassion, if there was ever a time for the government to use its powers under the Immigration and Refugee Protection Act to expedite the movement of these poor girls and women away from danger and into the peace and security that we offer here in Canada, this is the time.

We are asking the government to do it within the next 120 days, to follow-through on the UN report and recommendations, and to support this motion as it stands before the House.

Topics:
Foreign countries
Genocide
International cooperation
Iraq
Islamic State of Iraq and the Levant
Military operations and events
Refugee sponsorship
Refugees
Terrorism and terrorists
They Came to Destroy: ISIS Crimes Against the Yazidis
United Nations Human Rights Council
Yazidis

Appendix F-7: Excerpt (2) from Hansard 94 in SRC Hansard Compilation

Speaker: Cheryl Hardcastle (Windsor—Tecumseh) Party: NDP (ON)
Date: 2016-10-20 16:30 [p.5936]

Mr. Speaker, at this point in the debate I will be re-asserting facts that have already been stated here, which I think are important.

Where are we at this point this afternoon in this honourable chamber after speaking about something so desperately alarming? As my hon. colleague just said, every day counts for these Yazidi women.

[…]

The NDP believes that the Canadian government, through the Minister of Immigration, Refugees and Citizenship, should exercise discretionary powers under section 25 of the Immigration and Refugee Protection Act to immediately take action and bring the Yazidi people fleeing genocide to Canada, with the goal of immediately resettling 3,000 to 4,000 direct victims of genocide; and within the year end, a target of 10,000 through a special measure utilizing credible on-the-ground organizations to identify and select victims of genocide for resettlement in Canada.

These measures are to be above and beyond any pre-existing initiatives or policies.

We also believe that the additional level of Canadian screening is leading to severe delays, and we urge the government to waive the additional level of screening and bring Yazidis to Canada following the UNHCR screening.

Governments, like individuals, are defined not by their words or intentions but by their actions, particularly in the case of genocide, and it really is a matter of put up or shut up. When an entire people are being wiped out, the global community has an obligation to do what it can to protect them. If it is true, as the Prime Minister has stated, that Canada is back and the world needs more Canada, then this is something we can act on quickly.

Topics:

- Foreign policy
- Genocide
- Girls
- International cooperation
- International development and aid
- Islamic State of Iraq and the Levant
- Military weapons
- Refugees
- Security checks
- Terrorism and terrorists
- They Came to Destroy: ISIS Crimes Against the Yazidis
- United Nations Security Council
- Women

[…]

Appendix F-8: Excerpt from Hansard 130 in SRC Hansard Compilation

Hansard – 130

Speaker: Jenny Kwan (Vancouver East) Party: NDP (BC)
2017-01-31 19:05

She said: Mr. Speaker, I will be splitting my time with the member for Outremont.

On Friday, January 27, 2017, President Donald Trump signed an executive order banning nationals of seven Muslim-majority countries from the United States for at least the next 90 days. The countries included in this ban are Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen. Also included in the executive order are an indefinite ban on Syrian refugees and a four-month ban on the admission of any refugee or refugee claimant.
These edicts have sent disbelief and shock waves throughout the international community. I, for one, can say this: in all of my life, I never thought that I would witness a ban based on race, religion, and place of birth from any democratic country, much less from Canada's closest ally and neighbour.

[…]

Over the weekend, the Prime Minister tweeted: “To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength”. When Canadians heard these words, we could not help but feel a sense of pride, for they reaffirm our Canadian values. Now it is time for us to give meaning to these words with an action plan. Exceptional situations require exceptional actions. This is one of those moments. Canadians are loud and clear that they want us to step in. The unprecedented outpouring of support, fundraising, and activism on the part of Canada's refugee sponsorship community has not faded.

As a first measure, yesterday I called on the government to immediately remove the 1,000 application cap on privately sponsored refugees. Canadians have overwhelmingly shown their generosity and compassion by stepping up to provide private sponsorship in the Syrian refugee initiative. Instead of stifling this incredible spirit of compassion and kindness, Canada should be facilitating this gesture of hope by lifting the cap on privately sponsored refugees.

Second, in addition to this measure, I am also calling on the government to show leadership with a special measure to fast-track the refugee applications that have already been successfully screened and processed for resettlement in the U.S. or those that are near completion but are now caught in this ban. These individuals are now left in a devastating limbo, and that is simply unacceptable. We all know that women, children, and families who face violence and persecution caught in this ban will be left out in the cold, and Syrian refugees will be refused indefinitely. How can that be?

To date, the government's response has been to simply say, “Stay the course”. We must remember that the current course of action proposed by the government was what was in place before the Trump ban on immigration and travel. If we do not modify our current immigration plan and policies, then we are just bystanders in the face of these intolerable, discriminatory polices.

Sadly, the Prime Minister's words will then ring hollow, rendered as meaningless rhetoric in this important moment in our history. None of us want to see that.

Third, given the severe and serious implication of the ban, Canada must now determine whether or not the American refugee system can be deemed to be providing a safe haven for those who face persecution. A number of organizations, including Amnesty International, the Canadian Civil Liberties Association, the Canadian Association of Refugee Lawyers, and the Canadian Council for Refugees, amongst many others, have called on the government to suspend the Canada-U.S. Safe Third Country Agreement.

[…]

Appendix F-9: Hansard 124 in SRC Hansard Compilation

Hansard – 124

Speaker: Hon. Michelle Rempel (Calgary Rose Hill) Party: CPC (AB)
Date: 2016-12-08 14:48 [p.7853]

Mr. Speaker, let us talk about another area where there is a lack of planning in the government's immigration policy. The funding for Liberal-sponsored Syrian refugees is about to run out, and months ago, in advance of this, I asked the minister how many of these refugees had found full-time jobs and how many they were predicting to do so.

He has already had this question in committee, and I will ask it once again. How many Syrian refugees have found full-time employment?

Speaker: Hon. John McCallum (Markham – Thornhill) Party: Lib. (ON)
Date: 2016-12-08 14:49 [p.7853]

Mr. Speaker, in terms of funding, the hon. member should know that just recently, last month, we initiated $18.5 million of additional funding, half of which is going to language training and half of which is going to settlement areas.

The member should also know that this is a long-term investment. When refugees come from a terrible civil war without language or education, it takes a while for them to become fully operating Canadians.

Speaker: Hon. Michelle Rempel (Calgary Rose Hill) Party: CPC (AB)
Date: 2016-12-08 14:49 [p.7853]

Mr. Speaker, that is code for “I don't know and I don't care”. He should care, because in order to have—
Some hon. members: Oh, oh!

Speaker: Hon. Michelle Rempel (Calgary Rose Hill) Party: CPC (AB)
Date: 2016-12-08 14:50 [p.7853]

Mr. Speaker, this is a very simple question. It is one that ensures the success of both Syrian refugees and Canadian taxpayers. They should be planning for this. He should be able to answer it.
How many of the refugees have found full-time employment?

Speaker: Hon. John McCallum (Markham – Thornhill) Party: Lib. (ON)
Date: 2016-12-08 14:50 [p.7853]

Mr. Speaker, we have been working with the provinces to plan this since day one, and the settlement agencies and many Canadians. As I have said, this is a long-term investment.

Somewhat less than half of the refugees currently have full-time employment, but 90% of the government-assisted refugees are in language training, and many of them are making terrific progress toward gainful employment.

This will be a successful long-term investment for Canada, and the children always do extremely well.

Topics: (all Hansard 124)
Labour force
Refugees
Settlement of immigrants
Syria

Appendix F-10: Excerpt from Hansard 94 in SRC Hansard Compilation

[…]

Speaker: Hon. Peter Kent (Thornhill) Party: CPC (ON)
Date: 2016-10-20 11:36 [p.5892]

Mr. Speaker, I will be sharing my time with my colleague from Sherwood Park—Fort Saskatchewan.
I stand in frustrated and impatient support of the motion by the official opposition. I am frustrated because the Liberal government has so deliberately looked the other way in responding to the Yazidi genocide. First, it refused for so long to recognize what was clear to other democracies around the world, that Daesh, so-called ISIS, has committed the crime of genocide and a variety of crimes against humanity and war crimes against the Yazidis.

[…]

We know that however generously welcoming Canada and other developed countries might be during this massive refugee crisis, most of the millions of displaced survivors of the wars in Syria and Iraq, and the genocide, can only hope that one day they will be able to return to try to rebuild their homes, communities, and their lives. That is at best a faint hope for the Muslim victims of these wars, but hope is much fainter for the persecuted minorities who survive the conflict, particularly the victims of the Daesh genocide, the Yazidis.

[…]

Appendix F-11: Excerpt from Hansard 130 in SRC Hansard Compilation

Speaker: Salma Zahid (Scarborough Centre) Party: Lib. (ON)
Date: 2017-01-31 20:34 [p.8292]

Mr. Speaker, I will be splitting my time with the member for Surrey Centre.

I appreciate having the opportunity to take part in this important debate tonight.

First, please allow me to address the tragic events of Sunday night in Quebec City. When I first learned of this cowardly and senseless act of terrorism, I felt many emotions: outrage that innocent people in a place of sanctuary and worship could be subject to violence; sadness for the victims and for their families, and for whom the feeling of safety has been shattered; and concern that this act of intolerance could spur more intolerance. When I feel these emotions, I find myself reminded of a great Canadian, Sir Wilfrid Laurier, who told us that love is better.

[…]

I have heard from many of my constituents who are concerned they could be impacted by the immigration measures introduced recently by the Government of the United States of America. I share their concerns. I am an immigrant myself. I was relieved to learn that the Prime Minister's Office was in frequent contact with senior White House officials over the weekend, and that our embassy in Washington, DC continues to engage with the administration to get the best possible information on how these policy changes will impact Canadians.

Thanks to these efforts, we have been assured that Canadian citizens and permanent residents who are dual nationals are not affected by this executive order, even if they are citizens of one of the seven specified countries. All Canadian passport holders and permanent resident card holders should be able to travel to the United States as before. Our officials remain in close contact with the U.S. officials to receive further clarity.

I was also reassured by the words of the Minister of Immigration, Refugees and Citizenship Canada both on Sunday and here tonight, when he said that any foreign nationals from the seven countries listed in the executive order who were transiting through Canada and are stranded will be provided temporary residence status until they can make arrangements to return home.

[…]

Appendix G-1: Pages 4 and 103 in SC Hansard Compilation

Hansard – 195

Speaker: Elizabeth May (Saanich—Gulf Islands) Party: GP (BC)
Date: 2012-12-10 15:22 [p.13080]

Mr. Speaker, I rise today to present three petitions.

The first is very appropriate, since this is the international day for the protection of human rights. It is from petitioners in Surrey and Langley who call for an end to the practice of using security certificates as an offence to the Charter of Rights and Freedoms.

I had participated earlier today in a press conference with Mohamed Harkat, who has been under one of these directives for 10 years. We certainly hope to see the end of them.

Topics:
Civil and human rights
Deportation, extradition and removal of foreigners
Evidence gathering
Harkat, Mohamed
Immigration and immigrants
Petition 411-2751
Refugees
Security certificates

Hansard – 164

Speaker: Elizabeth May (Saanich—Gulf Islands) Party: GP (BC)
Date: 2012-10-18 10:10 [p.11142]

Mr. Speaker, I rise today to present two petitions. The first relates to the use of security certificates.

The petitioners from the Toronto area call on the House to note that the use of these provisions really offends traditions of common law and respect for human rights going back to Magna Carta and they ask for the House to take action against security certificates.

Topics:
Immigration and immigrants
Petition 411-2146
Security certificates

Hansard – 69

Speaker: Elizabeth May (Saanich—Gulf Islands) Party: GP (BC)
Date: 2016-06-09 10:10 [p.4242]

Mr. Speaker, it is an honour to rise this morning to present two petitions.

The first one deals with an ongoing issue of human rights and civil liberties in this country, and that is the use of security certificates.

The petitioners ask the Parliament to abolish the security certificate process, and for those currently detained under security certificates, the petitioners request the certificates be removed and that they be allowed to defend themselves in open, fair, and independent trials, and that they not be deported.

Topics:
Civil and human rights
Immigration and immigrants
Petition 421-00446
Security certificates

Hansard – 67

Speaker: Elizabeth May (Saanich—Gulf Islands) Party: GP (BC)
Date: 2016-06-07 13:09 [p.4133]

Mr. Speaker, my second petition is also from residents of Saanich—Gulf Islands who are very concerned about aspects of human rights and that the use of security certificates as part of the public security regime in Canada is inherently open to abuse and violates an individual's right to a fair trial. The petitioners ask this House to remove the use of security certificates.

Topics:
Civil and human rights
Immigration and immigrants
Petition 421-00424
Security certificates

Hansard – 37

Speaker: Elizabeth May (Saanich—Gulf Islands) Party: GP (BC)
Date: 2016-04-12 10:04 [p.2039]

Mr. Speaker, the second petition deals with the very troubling ongoing issue of the violation of human rights and the Charter of Rights and Freedoms in the use of security certificates. In particular, the petitioners are very concerned that security certificates risk deportation to countries that conduct torture.

Topics:
Civil and human rights
Immigration and immigrants
Petition 421-00142
Security certificates

Appendix G-2: Excerpt of Hansard 138 in SC Hansard Compilation

Hansard – 138

Speaker: Hon. Chris Alexander (Ajax—Pickering) Party: CPC (ON)
Date: 2014-11-04 12:09 [p.9153]

Mr. Speaker, I am pleased to rise today to discuss this very important piece of legislation, legislation that is timely, that is consequential, that will help the House and this government uphold its principle duty to Canadians, which is to ensure their safety and to protect them from threats that we know to be all too real.

The protection of Canada from terrorists act gives our security agencies the vital tools they need to keep Canadians safe. So far in the debate, we are pleased to see the emerging recognition from parties opposite that these tools are needed, that they are part of our national response to the threat of terrorism and that it is time we took action to make sure that the agencies on which we rely to carry out that duty on behalf of government, on behalf of our democratic institutions, have these tools available to undertake the reasonable activity required to, once again, keep Canada and Canadians safe.

[…]

These proposed provisions will also provide the Federal Court with the authority to revoke Canadian citizenship from dual citizens for membership in an armed force or organized armed group engaged in armed conflict with Canada. Today, that would include ISIS. It is both a terrorist group and an armed group engaged in conflict with our forces now in combat in Iraq.

These provisions would bring Canada in line with peer countries, such as Australia, the United States, United Kingdom, New Zealand and the vast majority or our allies in NATO and beyond, by providing that citizenship could be revoked under very strict conditions from dual nationals convicted of terrorism, high treason, spying offences or who take up arms against Canada.

This underscores our commitment to protecting the safety and security of Canadians, but also to promoting Canadian interests and values. They also reinforce the value of Canadian citizenship.

The amendments on the revocation of citizenship are merely technical. There is no cost to pursuing these amendments as a revocation decision-making model is more efficient and less costly to the government.

While we are adding grounds to revoke citizenship upon conviction of dual nations for terrorism, treason or espionage, we have long had the power, and the House has supported it, to prevent terrorists, criminals, those who would do harm to our country and those who embrace violent ideologies from becoming citizens. Indeed, if they acquire citizenship without disclosing a terrorist affiliation and that comes to light, we have had the power to revoke that citizenship on the basis of misrepresentation

Now we are simply adding a power to revoke on the basis of a terrorist conviction, a much more serious and much higher threshold of proof of terrorist activities, all of which hangs together very coherently. All of these provisions will work together to keep Canada safer.

[…]

Appendix H: Page 30 from ATI File A-2016-00129

PROTECTED B

Prescribed conditions could improve transparency, consistency, and operational management of security cases. It is important to note that regulations prescribing conditions are not new in terms of the immigration enforcement continuum. For instance, in the 2001-2002 fiscal year, regulations were introduced to prescribe conditions that must be imposed where the Immigration Appeal Division imposes a stay of removal.[1] The regulatory approach was used in order to provide for greater transparency, accessibility and consistency related to conditions that must be imposed. At that time, in the pre-publication consultation period, no noteworthy external stakeholder comments or concerns was received in relation to these regulated conditions.

Enabling authority to create prescribed conditions related to security inadmissibility was approved by Parliament in 2013 through the *Faster Removal of Foreign Criminals Act*.

STATUS

Currently, there are approximately non-citizen security cases who are living in Canada and who are not detained. Among this population, approximately half are subject to various conditions. In comparison, there are approximately non-citizen security cases who are subject to no conditions at all, despite the risks that they may pose to public safety and national security. Accordingly, there is an inconsistent application of conditions for security cases and regulatory amendments to prescribe a baseline of conditions for all security cases could address this issue.

The CBSA has completed associated policy development and is ready to consult external stakeholders on the proposed regulations, subject to your concurrence. A summary of the proposed regulations is attached for your review in the stakeholder consultation notice and process flow documents (see attachments 1 and 2). This work was completed in consultation with the Department of Immigration, Refugees and Citizenship Canada, Public Safety Canada and the Department of Justice. Overall, the proposal has been assessed as having a low Charter risk. Furthermore, there is no incremental cost for implementation as the CBSA will marginally reduce enforcement of less serious inadmissibility cases if and as needed to implement this proposal.

It is also important to note that the proposed regulations were designed with some discretionary flexibility. In this respect, they consider views expressed by parliamentarians during debates in the House of Commons. The proposed approach balances the needs of the person concerned with public safety as it could provide for flexibility in exceptional circumstances, such as to accommodate the person concerned as appropriate where a physical impairment issue exists.

[1] Section 251 of the *Immigration and Refugee Protection Regulations*.