S.C.C. File No. 37367

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

WING WHA WONG

APPELLANT
(Appellant)

-and-

HER MAJESTY THE QUEEN

RESPONDENT
(Respondent)

FACTUM OF THE INTERVENER
Canadian Council for Refugees

Jared Will & Joshua Blum
Jared Will & Associates
226 Bathurst Street, Suite 200
Toronto, Ontario M5T 2R9
Phone: 416-657-1472
Fax: 416-657-1511
Email: joshua@jwlaw.ca

Counsel for the Intervener
Canadian Council for Refugees

Michael Bossin
Community Legal Services - Ottawa
Carleton
1 Nicholas Street, Suite 422
Ottawa, Ontario
K1N 7B7
Tel: (613) 241-7008
Ext: 224
Fax: (613) 241-8680
E-mail: bossinm@lao.on.ca

Agent for the Intervener
Canadian Council for Refugees

ORIGINAL TO:

The Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, ON KIA 0J1

COPIES TO:

Counsel for the Appellant
Wing Wha Wong

Peter H. Edelmann & Erica Olmstead
Edelmann & Co. Law Offices
905 - 207 West Hastings Street
Vancouver, British Columbia
V6B 1H7
Telephone: (604) 646-4684
FAX: (604) 648-8043
E-mail: peter@edelmann.ca

Agent for the Appellant
Wing Wha Wong

Michael J. Sobkin
331 Somerset Street West
Ottawa, Ontario
K2P 0J8
Telephone: (613) 282-1712
FAX: (613) 288-2896
E-mail: msobkin@sympatico.ca

Counsel for the Respondent
Her Majesty the Queen

Ronald C. Reimer & John N. Walker
Public Prosecution Service of Canada
700 EPCOR Tower 10423, 101st Street
Edmonton, Alberta T4H 0E7
Tel: (780) 495-4079
Fax: (780) 495-6940
E-mail: ron.reimer@ppsc-sppc.gc.ca

Agent for the Respondent
Her Majesty the Queen

François Lacasse
Director of Public Prosecutions of Canada
284 Wellington Street
2nd Floor
Ottawa, Ontario K1A 0H8
Tel: (613) 957-4770
Fax: (613) 941-7865
E-mail: flacasee@ppcs-sppc.gc.ca

Counsel for the Intervener
Attorney General of Alberta

David A. Labrenz, Q.C.
Justice and Solicitor General
3rd Floor, Bowker Building

Agent for the Intervener
Attorney General of Alberta

D. Lynne Watt
Gowling WLG (Canada) LLP
160 Elgin Street

9833 - 109 Street
Edmonton, Alberta
T5K 2E8
Telephone: (780) 422-5402
FAX: (780) 422-1106
E-mail: david.labrenz@gov.ab.ca

Suite 2600
Ottawa, Ontario
K1P 1C3
Telephone: (613) 786-8695
FAX: (613) 788-3509
E-mail: lynne.watt@gowlingwlg.com

Counsel for the Intervener
Criminal Lawyers' Association of Ontario

Erika Chozik
Chozik Law
43 Front Street East
Suite 400
Toronto, Ontario
M5E 1B3
Telephone: (416) 986-5873
FAX: (416) 364-9705
E-mail: erika@choziklaw.com

Agent for the Intervener
Criminal Lawyer's Association of Ontario

Owen Rees
Conway Baxter Wilson LLP
400-411 Roosevelt Avenue
Ottawa, Ontario
K2A 3X9
Telephone: (613) 780-2026
FAX: (613) 688-0271
E-mail: orees@conway.pro

Counsel for the Intervener
Canadian Association of Refugee Lawyers

Lorne Waldman & Lobat Sadrehashemi
Waldman & Associates
281 Eglington Avenue East
Toronto, Ontario
M4P 1L3
Tel: (416) 482-6501
Fax: (416) 489-9618
E-mail: lorne@lornewaldman.ca

Agent for the Intervener
Canadian Association of Refugee Lawyers

Jean Lash
South Ottawa Community Legal Services
406 - 1355 Bank Street
Ottawa, Ontario
K1S 0X2
Telephone: (613) 733-0140
FAX: (613) 733-0401
E-mail: lashj@lao.on.ca

Counsel for the Intervener
Directeur des poursuites criminelles et pénales du Québec

Ann Ellefsen-Tremblay
Directeur des poursuites criminelles et pénales du Québec
2050, rue Bleury bureau 6.00
Montréal, Quebec
H3A 2J5
Telephone: (514) 873-6493 Ext: 53021

Agent for the Intervener
Directeur des poursuites criminelles et pénales du Québec

Sandra Bonanno
Directeur des poursuites criminelles et pénales du Québec
17, rue Laurier
bureau 1.230
Gatineau, Quebec
J8X 4C1

FAX: (514) 873-6475
E-mail: ann.ellefsen-tremblay@dpcp.gouv.qc.ca

Telephone: (819) 776-8111 Ext: 60446
FAX: (819) 772-3986
E-mail: sandra.bonanno@dpcp.gouv.qc.ca

Counsel for the Intervener Association des avocats de la défense de Montréal

Nicholas St-Jacques, Lida Sara Nouraie &
Philipe Knerr

Desrosiers, Joncas, Nouraie, Massicotte
500 Place d'Armes, Bureau 1940
Montréal, Quebec
H2Y 2W2
Telephone: (514) 397-9284
FAX: (514) 397-9922
E-mail: nsj@legroupenouraie.com

Counsel for the Intervener Metro Toronto Chinese & Southeast Asian Legal Clinic

Avvy Yao Yao Go & Vincent Wan Shun Wong
Metro Toronto Chinese & Southeast Asian Legal Clinic
180 Dundas Street West
Suite 1701
Toronto, Ontario
M5G 1Z8
Telephone: (416) 971-9674
FAX: (416) 971-6780
E-mail: goa@lao.on.ca

Agent for the Intervener Metro Toronto Chinese & Southeast Asian Legal Clinic

Yavar Hameed
Hameed Law
43 Florence Street
Ottawa, Ontario
K2P 0W6
Telephone: (613) 627-2974
FAX: (613) 232-2680
E-mail: yhameed@hameedlaw.ca

Counsel for the Intervener South Asian Legal Clinic of Ontario

Shalini Konanur & Sukhpreet Sangha
South Asian Legal Clinic of Ontario
106A-45 Sheppard Avenue East
Toronto, Ontario
M2N 5W9
Telephone: (416) 687-6371
FAX: (416) 487-6456

Agent for the Intervener South Asian Legal Clinic of Ontario

Yavar Hameed
Hameed Law
43 Florence Street
Ottawa, Ontario
K2P 0W6
Telephone: (613) 627-2974
FAX: (613) 232-2680

E-mail: konanurs2@lao.on.ca

E-mail: yhameed@hameedlaw.ca

Counsel for the Intervener
Attorney General of Ontario

Alison Wheeler
Attorney General of Ontario
10th Floor - 720 Bay Street
Toronto, Ontario
M7A 2S9
Telephone: (416) 326-2460
FAX: (416) 326-4656
E-mail: alison.wheeler@ontario.ca

Agent for the Intervener
Attorney General of Ontario

Robert E. Houston, Q.C.
Burke-Robertson
441 MacLaren Street
Suite 200
Ottawa, Ontario
K2P 2H3
Telephone: (613) 236-9665
FAX: (613) 235-4430
E-mail: rhouston@burkerobertson.com

Counsel for the Intervener
Canadian Civil Liberties Association

Anil K. Kapoor
Kapoor Barristers
235 King Street East
2nd Floor
Toronto, Ontario
M5A 1J9
Telephone: (416) 363-2700
FAX: (416) 363-2787
E-mail: akk@kapoorbarristers.com

Agent for the Intervener
Canadian Civil Liberties Association

Matthew Estabrooks
Gowling WLG (Canada) LLP
2600 - 160 Elgin Street
P.O. Box 466, Stn. A
Ottawa, Ontario
K1P 1C3
Telephone: (613) 786-0211
FAX: (613) 788-3573
E-mail:
matthew.estabrooks@gowlingwlg.com

Counsel for the Intervener
African Canadian Legal Clinic

Faisal Mirza & Dena Smith
Faisal Mirza Professional Corporation
301-55 Village Centre Place
Mississauga, Ontario
L4Z 1V9
Telephone: (905) 897-5600
FAX: (905) 897-5657
E-mail: fm@mirzakwok.com

Agent for the Intervener
African Canadian Legal Clinic

Michael A. Crystal
Spiteri & Ursulak LLP
1010 - 141 Laurier Avenue West
Ottawa, Ontario
K1P 5J3
Telephone: (613) 563-1010
FAX: (613) 563-1011
E-mail: mac@sulaw.ca

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PART I – OVERVIEW

1. As an organization whose members work directly with individuals and families at every stage of the refugee experience, the Canadian Council for Refugees (the "CCR") is all too familiar with the way that lives can be changed forever by a criminal conviction.

2. It is the CCR's position that a guilty plea of an accused person who has not been informed of immigration consequences is inherently prejudicial, and that this prejudice is particularly serious in the case of individuals in need of refugee protection who may be prevented from accessing such protection as a consequence of their plea and sentence.

3. This prejudice arises not only from the loss of rights under Canadian criminal and immigration law, but also from the deprivation of a wide-range of human rights protections under international law.

4. In light of the fundamental rights at stake, and the vulnerability of many non-citizens in the criminal justice system, the CCR further submits that a bright line rule is necessary to ensure that immigration consequences are meaningfully appreciated and accounted for in the guilty plea process.

5. The CCR takes no position on the facts before the Court.

PART II – QUESTION IN ISSUE

6. The question at issue in this appeal concerns the test to be applied by appellate courts in determining whether to strike the guilty plea of an individual who was not informed of the collateral immigration consequences of their plea. The CCR submits that a plea entered without knowledge of the serious collateral immigration or refugee protection consequences is *per se* prejudicially uninformed for purposes of s. 606(1.1) of the *Criminal Code*.

PART III – ARGUMENT

7. The CCR's submission is twofold.

8. First, we outline the various human rights protections that are forfeited upon a finding of criminal inadmissibility under the *Immigration and Refugee Protection Act* [IRPA] and/or ineligibility to seek refugee protection under the IRPA as a consequence of the criminal inadmissibility. These impacts range from being legally barred from rights essential to integration in Canada (rights that are guaranteed under the *Refugee Convention*[1]) all the way to deportation from Canada to a known risk of persecution in contravention of the principle of non-*refoulement.* The forfeiture of these rights and protections is itself a serious prejudice, and an accused must be aware of these consequences to render the plea informed.

9. Second, it is respectfully submitted that all parties involved benefit from a bright line rule regarding immigration and refugee consequences in the guilty plea process.

i) Human Rights Impacts of Criminal Inadmissibility

10. A guilty plea for an accused refugee surrenders not only their *Charter* rights to a fair trial, but also potentially the right to even make a refugee claim, and a spectrum of other rights guaranteed under international law.

Refugee Claimants and Potential Claimants Exposed to Refoulement

11. The most severe human rights impact at issue is the prospect of a plea that forfeits protection against deportation to face persecution.

12. The principle of non-*refoulement* set out in Article 33 of the *Refugee Convention* is the "cornerstone" of international refugee protection, and provides that no one who meets the definition of a refugee can be returned to the country where they fear persecution.[2]

13. It is well established that refugee status adheres to an individual as soon as the *Convention* refugee definition is met, regardless of whether refugee status has been determined and

[1] *Convention Relating to the Status of Refugees,* Can. T.S. 1969 No. 6 [hereafter "*Refugee Convention"]*
[2] *Nemeth v. Canada (Justice),* 2010 SCC 56 at paras. 1, 105; United Nations High Commissioner for Refugees (UNHCR), Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol**,** 26 January 2007, at para. 5.

declared by the state of refuge.[3] It is also well-settled that the exceptions to the non-*refoulement* principle set out in Article 33(2) for when a refugee is a danger to national security or to the community are to be used as a "last recourse"[4] reserved for an "extreme and exceptional" danger to the community.[5]

14. However, the ineligibility and related provisions of the IRPA explicitly permit *refoulement* of a refugee with no assessment of whether they pose any future danger to the community. Where a refugee has been sentenced to a term of imprisonment of two years or more, they could be deported to face persecution regardless of whether they pose any threat to public safety, and are denied the right to even have the risk of persecution assessed before deportation.[6] The Respondent's submission on this issue obscures the fact that the risk of persecution is eliminated from the risk assessment to which an individual is entitled if she or he has received a sentence of two years or more.[7]

15. As such, in the case of a refugee, a plea of guilty that results in a two-year sentence, under the present IRPA scheme, is effectively consent to *refoulement* in contravention of the *Refugee Convention*.[8] It is therefore all the more vital that a refugee is not left to unknowingly give up one of the most fundamental human rights protections available at international law.

Convention Refugees and Indefinite Limbo

16. There are significant human rights consequences even for those refugees who are not deported or do not face the prospect of deportation as a result of their plea.

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[3] *Refugee Convention*, Article 33(1); United Nations High Commission for Refugees, *UNHCR Handbook*, HCR/IP/4/Eng/REV.1 (1979, Re-edited, Geneva, January 1992), at para. 28; *Nemeth, ibid*, at para. 73

[4] UNHCR, *Note on the Principle of Non-Refoulement*, November 1997

[5] Hathaway, James, *The Rights of Refugees under International Law*, Cambridge University Press, Cambridge, 2005, at pg. 352; *Attorney General v. Zaoui*, Dec. No. CA 20/04 (NZ CA Sept 30, 2004 at para. 133. In *Zaoui,* The New Zealand Court of Appeal held that the notion of "reasonable grounds" in the Article 33(2) exception to non-*refoulement* principle must specifically address the question of whether there is a future risk and the conclusion on the matter must be supported by evidence (affirmed by the New Zealand Supreme Court in *Attorney-General v. Zaoui and Ors (Zaoui No. 2)*, [2005] NZSC 38, New Zealand: Supreme Court, 21 June 2005).*Refoulement* is only permitted when there is a real future risk of danger to the community*: Pushpanathan v. Canada,* [1998] 1. S.C.R. 982 at para. 12

[6] Combined effects of IRPA ss. 101(1)(f) and 101(2)(a) (serious criminality and organized criminality ineligible to be referred to RPD); ss. 112(3)(b) and 114(1)(b) (refugee protection cannot be conferred); 113(d)(i) and (e)(i) (only s. 97 of the IRPA considered at the Pre-Removal Risk Assessment stage for those convicted of a term of imprisonment of two years or more and the risk of persecution captured under s. 96 is excluded from consideration); and s. 114(2) (stay can be cancelled).

[7] Respondent's factum, para 90, fn 103.

[8] UNHCR Submission on Bill C-31, May 2012, at para. 37

17. An individual already recognized in Canada as a *Convention* refugee or person in need of protection under ss. 96 and 97 of the IRPA cannot be deported based solely on criminal inadmissibility, but, if they become inadmissible for serious criminality, they are denied the right to obtain or maintain their status as permanent residents.[9]

18. In Canada, an array of rights protected under international law are forfeited upon the loss of permanent resident status. Along with the loss of rights to family reunification, discussed below, it means the forfeiture of international human rights to access procedures to become a citizen of the country where a refugee remains indefinitely.[10] It means the surrender of unqualified rights to work and to study, rights that are guaranteed under both the *Refugee Convention* and other core human rights covenants that Canada has ratified.[11] This uncertain legal status also affects everything from renting an apartment, finding a job, or getting a driver's license, while every few months being subject to discretionary decisions as to whether one can renew permits necessary to access health care, or to legally work and earn a livelihood.[12]

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[9] IRPA ss. 21(2) and 36(1). For stateless refugees, the denial of permanent resident status also bars their only path to nationality, thus leaving them stateless.

[10] *Refugee Convention* at Article 34 (Naturalization); *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810 (1948) ["UDHR"] at Article 15 (Right to a Nationality). See also for stateless persons, who in this situation cannot leave but can never gain a citizenship: *Convention Relating to the Status of Stateless Persons,* 28 September 1954, UNTS, vol. 360, p. 117 at Article 32 (Naturalization); *Convention on the Reduction of Statelessness,* 30 August 1961, UNTS, vol. 989, p. 175 Article 8 (Deprivation of Nationality). The impact of inadmissibility is also particularly pronounced on stateless and *de facto* stateless people who are necessarily forced into limbo as a result.

[11] *Refugee Convention* at Articles 17 (Right to Wage-Earning Employment) and Article 18 (Self-Employment); on mandatory character of Article 17 of the *Refugee Convention*: Hathaway, *supra*, at pg. 740; *International Covenant on Economic, Social and Cultural Rights* 993 U.N.T.S. 3 ["*ICESCR"*] at Article 6 (Right to Work), Article 13 (Right to Education) and Article 2(2) (Non-Discrimination – "without discrimination of any kind as to…other status"). As this Court held in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at para. 71, the international instruments which Canada has ratified "reflect not only international consensus, but also principles that Canada has committed itself to uphold". See also *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817 at para. 70: "[T]he values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review."

[12] Bond, Jennifer, "Unwanted but Unremovable: Canada's Treatment of Criminal Migrants Who Cannot Be Removed", Refugee Survey Quarterly (2017) 36 (1): 168-186; Canadian Council for Refugees (1999) "Refugees in Limbo – A Human Rights Issue"; Brouwer, Andrew, "Statelessness in the Canadian context: An updated discussion paper", UNHCR, March 2012, at pgs. 21-26

19. As the CCR is well-aware through its work with organizations supporting refugees, this state of powerlessness, instability, and permanent loss of belonging has serious detrimental effects on mental health.[13]

20. In light of the above, it must be well understood by all parties that a plea of guilty for a person in these circumstances can amount to accepting both the criminal sanction and a sentence to life in limbo: physically present in Canada, but legally apart.[14]

Loss of the Right to Family Unity

21. The prospect of long-term separation of parents from children, and loved ones from one another, is perhaps the most devastating impact for those found criminally inadmissible after a guilty plea.

22. For a refugee who has already experienced trauma and family separation in their flight from persecution, this impact "disrupt[s] their major remaining source of protection and care or, equally distressing, put[s] out of reach those for whose protection a refugee feels most deeply responsible."[15]

23. Protecting the integrity of the family is a fundamental principle of international law.[16] International law protects against state interference with the family unit,[17] and in particular

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[13] Bernhard, Judith et al, "Living with Precarious Legal Status in Canada: Implications for the Well-Being of Children and Families", *Refuge,* Vol 24, No.2, (2007); Magalhaes, Lilian, *et* al, Undocumented Migrants in Canada: A Scope Literature Review on Health, Access to Services, and Working Conditions, *Journal of Immigrant Health* 2010 Feb;12 (1):132-51; Herman, Judith L., "Recovery from Psychological Trauma" Psychiatry and Clinical Neurosciences (1998) 52 (Suppl.).

[14] It should be further noted that just like the Appellant in the present appeal, a protected person or refugee who has become a permanent resident in these circumstances also loses access to an appeal to the Immigration Appeal Division, and thus has no avenue to have any of these impacts on them or their family taken into account. See ss. 63-64 IRPA.

[15] Jastram, Kate and Newland, Kathleen, "Family Unity and Refugee Protection", in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003) at pg. 1.

[16] *UDHR,* Article 16(3); *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 ["*ICCPR"]* at Article 23 ("The family is the natural and fundamental group unit of society and is entitled to protection by society and the state…"); *ICESCR* at Article 10(1) ([t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unity of society…particularly while it is responsible for the care of dependent children…"); *Convention on the Rights of The Child* Can. T.S. 1992 No. 3 at Article 9(1) ("States Parties shall ensure that a child shall not be separated from his or her parents against their will…"); Article 10 and Preamble ("The child…should grow up in a family environment"); *European Convention for the Protection of Human Rights*

protects the right to reunification for a refugee whose family unit has been shattered by persecution.[18] The drafters of the *Refugee Convention* declared family unity to be "an essential right",[19] and the obligation to facilitate the reunification of refugee families has been repeatedly affirmed by respected commentators, courts and international bodies.[20]

24. In light of the near universal recognition of the fundamental character of rights to family unity and the profound nature of what is being lost, a plea of guilty to an offence that can result in a family's separation must be adequately informed. Given what is at stake, the uninformed plea should be recognized to be inherently prejudicial.

Conclusion on the Human Rights Impacts of Inadmissibility

25. In light of their severity, no plea entered without knowledge of the consequences outlined above can be meaningfully said to be informed.

26. For the same reason, the CCR submits that even if the Court were to adopt the Respondent's submissions that these issues should be addressed through the framework of ineffective assistance of counsel, the same result would follow. The failure of defence counsel to ensure that an accused is advised of consequences of this severity amounts to incompetence by omission, and a plea entered without knowledge of such consequences is itself a miscarriage of justice.

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and Fundamental Freedoms 4 November 1950, ETS 5 at Article 8 *(*Right to Respect for Private and Family Life); Section III, *International Convention on the Protection of the Rights of All Migrant Workers and their Families* 18 December 1990, A/RES/45/158*;*

[17] *ICCPR* at Article 23 and Article 17(1) ("No one shall be subjected to arbitrary or unlawful interference with his…family"). An overly rigid and punitive system can "taint even a system authorized by law as 'arbitrary'" under the *ICCPR*: *Husseini v. Denmark,* UNHRC Comm. No: 2243/2013, 24 October 2014; *Ilyasov v. Kazakhstan,* UNHRC Comm. No. 2009/2010, 23 July 2014. See also: Hathaway, *supra,* page 550.

[18] UNHCR Executive Committee Conclusion No. 88, "Protection of the Refugee's Family" (1999); UNHCR Executive Committee Conclusion No. 85, "Conclusion on International Protection" (1998) at para. (v); UNHCR Executive Committee Conclusion No. 24, "Family Reunification" (1981) at para. 1; UNHCR Handbook at paragraphs 181-188; *Convention on the Rights of the Child* at Article 22(2) ("…assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family")

[19] Recommendation "B", *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1. Hathaway, *supra,* at page 543, considers that these recommendations have taken on the character of customary international law.

[20] Hathaway, *supra*, at page 559: "At the very least authoritative interpretations of Article 23(2) [of the *ICCPR*] make it clear that an asylum state which either refuses to admit or to facilitate the reunification of a refugee's family – albeit as defined by the asylum country's own understanding of the relevant relationship – is in breach of its international legal obligations."; see: *Husseini v. Denmark, supra*; *Warsame v. Canada*, UNHRC Comm. No. 1959/2010, 1 September 2011.

ii) The Benefits of a Bright Line Rule

27. This appeal queries the test to be applied to determine the scope of the relevant consequences for purposes of an informed plea. Of the three variations currently endorsed by provincial appellate courts, one is simply to ask if the consequences are sufficiently significant that they may have altered the decision of the accused to plead guilty without requiring any further showing of prejudice;[21] another asks whether the uninformed plea resulted in a miscarriage of justice with the burden on the appellant to prove that she would have entered a different plea;[22] and a third would require the appellant to establish an articulable route to an acquittal.[23]

28. The CCR's submission is that the first of these three options is not only correct, as argued above, but also has the advantage of creating the clearest and most-easily applicable rule. In light of the potentially life-changing consequences of a guilty plea for refugees under the IRPA scheme, the vulnerability of many refugees in the criminal justice system, and the potential for significant appellate litigation where these dire consequences of a plea are appreciated only after the fact, the CCR's position is that a bright line rule will benefit all parties.

29. The need for a rule that highlights immigration consequences in the plea process is illustrated by considering two particularly vulnerable subsets of persons whose rights are frequently determined in this manner.

30. The first is refugees and refugee claimants with mental health issues. The persecution that has made someone a refugee frequently leaves long-lasting trauma and suffering from mental health issues.[24] If criminally charged, these mental health impacts impede an individual's ability to protect their own interests, while their legal status in Canada is such that they stand to lose much more than their liberty for the duration of the sentence.[25] The result is a vicious cycle: the harm that has made someone a refugee often results in mental health issues, a

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[21] *R v. Quick,* 2016 ONCA 95 at para. 38, citing *R v. Rulli,* 2011 ONCA 18, at para. 2; *R. v. Sangs*, 2017 ONCA 683
[22] Concurring Reasons of Justice Fitch, in *R v. Wong,* 2016 BCCA 416 at paras. 52-79.
[23] Written Reasons of Justice Saunders in *R v. Wong, ibid.,* at paras. 1-51; see also: *Nersysyan c. R*., 2005 QCCA 606
[24] Beiser, Morton and Hou, Feng, "Predictors of Positive Mental Health Among Refugees: Results from Canada's General Social Survey", *Transcultural Psychiatry,* 31 August 2017.
[25] "Double Jeopardy: Deportation of the Criminalized Mentally Ill", Schizophrenia Society of Ontario, March 2010; "Unlocking Change: Decriminalizing Mental Health Issues in Ontario", John Howard Society of Ontario, August 2015

reduced ability to appreciate the nature of proceedings in the criminal justice system, and at the end of the process, the most to lose from a conviction.

31. Second, and a long-standing area of concern for the CCR, is victims of human trafficking who may face pressure both to commit crimes and to plead guilty under the same mechanism of control under which they were trafficked. [26] Strengthening the assistance and protection of victims of trafficking is an explicit strategic objective identified by the Government of Canada both in its National Action Plan to Combat Trafficking and through related publications of the RCMP.[27] Yet, without adequate protection and attention in the guilty plea process, the same cycle here can lead this already victimized population to risk surrendering fundamental rights in an uninformed manner.

32. Because these individuals are less able to advocate for their own interests and are more likely to accept pleas without the benefit of full information as to the consequences, it is the CCR's position that bright line rules will incentivize all the actors in the criminal justice system to ensure that the plea is made with a proper appreciation of the immigration and refugee consequences.

33. We submit that such a bright line rule serves to encourage all actors in the plea proceedings— defence counsel, Crown counsel and the court receiving the plea — to assume their responsibilities in ensuring that the plea is indeed properly informed.

34. A rule that renders a plea made without knowledge of serious immigration and refugee protection consequences *prima facie* voidable will protect refugees and other vulnerable non-citizens. It will incentivize defence counsel to ensure that their clients' pleas are fully informed lest they be found to have provided ineffective assistance. It will also encourage Crown counsel to ensure that the accused's plea is fully informed lest it be set aside on appeal. Further, trial courts will be similarly motivated in order to ensure the effective and efficient

[26] "Trafficking in Persons for Forced Labour: Backgrounder", Canadian Council for Refugees, September 2014, at pages 2ff. Relevant Conventions that Canada has ratified are the *Protocol of 2014 to the Forced Labour Convention, 1930* (Entry into force: 09 Nov 2016) Adoption: Geneva, 103rd ILC session (11 Jun 2014*)* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,* 15 November 2000.

[27] "National Action Plan to Combat Human Trafficking", Her Majesty the Queen in Right of Canada, 2012. "RCMP National Strategy to Combat Human Trafficking", Royal Canadian Mounted Police, 2012.

administration of the criminal justice system. As the Respondent notes, "each time a guilty plea is vacated, substantial benefits are lost and there will be serious negative impacts that strain the quality of justice",[28] and it is therefore in the interests of justice that the applicable rule serve to prevent unnecessary appeals and litigation.[29]

35. For the same reasons, the CCR also submits that it would benefit all parties for this Court to provide guidance on the role of the trial judge in accepting a guilty plea that could engage immigration consequences, as the Court of Appeal for Ontario has done in the license suspension context.[30] Trial judges should be given clear guidelines to meaningfully ensure that a non-citizen accused is aware of the nature of the consequences of their plea and potential sentence in their plea inquiries under s. 606(1.1)(b)(ii) of the *Criminal Code*.

36. In order for the safeguard against an uninformed surrender of rights to be meaningful, this inquiry must go beyond a *pro forma* questioning on immigration consequences, but rather include questions directed to the accused and both defense and Crown counsel to ensure that the immigration consequences of the plea and potential sentences have been considered. Contrary to what the Respondent has pleaded,[31] the exercise need not be complex or unduly time-consuming and a simple script could provide sufficient guidance:

    - Is the accused a Canadian citizen? If not:
        - Has the accused been made aware of whether the conviction resulting from a guilty plea to this offence could result in the loss of permanent resident status and/or the issuance of a deportation order?
    - [Where the plea could lead to a sentence of 6-months or more]: Has the accused been made aware that s/he will have no right to appeal the deportation order if a sentence of imprisonment of six months or more is imposed? Has the accused been made aware of what this entails?

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[28] Respondent's Factum, para 50.

[29] Contrary to the Respondent's submission, this is not an overly difficult task for defence counsel as there are many resources that are easily accessible to assist in identifying the immigration consequences of a sentence. Resources that are readily available online include: "Immigration consequences of criminal disposition and sentencing", Legal Aid Ontario, April 2016; "Immigration Consequences of Criminal Convictions", Legal Services Society of British Columbia, May 2015. Further, for more complex cases, a rule that incentivizes consultation with immigration counsel on these potentially life-changing impacts would represent a positive trend.

[30] *R v. Quick,* 2016 ONCA 95, at para. 40: "…I simply observe, that before an accused pleads guilty to a driving offence, a trial judge would be well advised to ensure that the accused understands the nature and length of any licence suspensions."

[31] Respondent's Factum, paras 81-82.

- [Where the plea could lead to a sentence of 2-years or more]: Has the accused been made aware that s/he will lose her/his right to seek protection against deportation to persecution if a sentence of imprisonment of two years or more is imposed?

37. While the questions above do not cover every imaginable immigration consequence, they cover the most severe consequences and further incentivize counsel on both sides to ensure that these issues have been adequately canvassed prior to the plea inquiry.

38. It is the CCR's submission that such an inquiry is not unduly burdensome and in fact serves to prevent time and resource-intensive appeals to vacate uninformed pleas—not to mention the resources involved in adjudicating the resulting inadmissibility and consequences thereof under the provisions of the IRPA.

39. These protections and incentives are necessary in order to ensure that refugees, refugee claimants, and other vulnerable non-citizens, who face barriers to fully understanding the criminal process and may even lack the requisite awareness and means to pursue an appeal, do not fall through the cracks and unjustifiably suffer the profound consequences of an uninformed plea. They also, in the CCR's submission, promote the efficient administration of the criminal justice system.

PART IV, V– COSTS AND ORDER REQUESTED

40. The CCR seeks no costs and respectfully request that none be awarded against them.

THE WHOLE RESPECTFULLY SUBMITTED, in Toronto on this 25th day of September, 2017

Per **JARED WILL**

JOSHUA BLUM

Counsel for the Intervener,
Canadian Council for Refugees

PART VI – TABLE OF AUTHORITIES

LEGISLATION	CITED AT PARAGRAPH(S)
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Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175	18
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PART VII – STATUTES

Immigration and Refugee Protection Act (S.C. 2001, c.27)	**Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch.27)**
Part 2 Immigration to Canada Division 3 Entering and Remaining in Canada	Partie 2 Immigration au Canada Section 3 Entrée et Séjour au Canada
24. (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	24.(1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.
(2) A foreign national referred to in subsection (1) to whom an officer issues a temporary resident permit outside Canada does not become a temporary resident until they have been examined upon arrival in Canada.	2) L'étranger visé au paragraphe (1) à qui l'agent délivre hors du Canada un permis de séjour temporaire ne devient résident temporaire qu'après s'être soumis au contrôle à son arrive au Canada.
(3) In applying subsection (1), the officer shall act in accordance with any instructions that the Minister may make.	(3) L'agent est tenu de se conformer aux instructions que le ministre peut donner pour l'application du paragraphe (1).
(4) A foreign national whose claim for refugee protection has been rejected or determined to be withdrawn or abandoned by the Refugee Protection Division or the Refugee Appeal Division may not request a temporary resident permit if less than 12 months have passed since their claim was last rejected or determined to be withdrawn or abandoned.	(4) L'étranger dont la Section de la protection des réfugiés ou la Section d'appel des réfugiés a rejeté la demande d'asile ou dont elle a prononcé le désistement ou le retrait de la demande ne peut demander de permis de séjour temporaire que si douze mois se sont écoulés depuis le dernier rejet de la demande d'asile ou le dernier prononcé du désistement ou du retrait de celle-ci.
(5) A designated foreign national may not request a temporary resident permit	(5) L'étranger désigné ne peut demander de permis de séjour temporaire que si cinq années se sont écoulées depuis l'un ou l'autre des jours suivants :
(*a*) if they have made a claim for refugee	*a*) s'il a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur la demande d'asile;
	b) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande;

protection but have not made an application for protection, until five years after the day on which a final determination in respect of the claim is made; (*b*) if they have made an application for protection, until five years after the day on which a final determination in respect of the application is made; or (*c*) in any other case, until five years after the day on which the foreign national becomes a designated foreign national. (6) The processing of a request for a temporary resident permit of a foreign national who, after the request is made, becomes a designated foreign national is suspended (*a*) if the foreign national has made a claim for refugee protection but has not made an application for protection, until five years after the day on which a final determination in respect of the claim is made; (*b*) if the foreign national has made an application for protection, until five years after the day on which a final determination in respect of the application is made; or (*c*) in any other case, until five years after the day on which the foreign national becomes a designated foreign national. (7) The officer may refuse to consider a request for a temporary resident permit if (*a*) the designated foreign national fails, without reasonable excuse, to comply with any condition imposed on them under subsection 58(4) or section 58.1 or any requirement imposed on them under section 98.1; and (*b*) less than 12 months have passed since	*c*) dans les autres cas, le jour où il deviant un étranger désigné. (6) La procédure d'examen de la demande de permis de séjour temporaire de l'étranger qui devient, à la suite de cette demande, un étranger désigné est suspendue jusqu'à ce que cinq années se soient écoulées depuis l'un ou l'autre des jours suivants : *a*) si l'étranger a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur la demande d'asile; *b*) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande; *c*) dans les autres cas, le jour où il deviant un étranger désigné. (7) L'agent peut refuser d'examiner la demande de permis de séjour temporaire présentée par l'étranger désigné si : *a*) d'une part, celui-ci a omis de se conformer, sans excuse valable, à toute condition qui lui a été imposée en vertu du paragraphe 58(4) ou de l'article 58.1 ou à toute obligation qui lui a été imposée en vertu de l'article 98.1; *b*) d'autre part, moins d'une année s'est écoulée depuis la fin de la période applicable visée aux paragraphes (5) ou (6). 2001, ch. 27, art. 24; 2010, ch. 8, art. 3; 2012, ch. 17, art. 12.

the end of the applicable period referred to in subsection (5) or (6). 2001, c. 27, s. 24; 2010, c. 8, s. 3; 2012, c. 17, s. 12.	
Division 4 Inadmissibility **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. (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 punish-	Section 4 Interdictions de Territoire **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. (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;

able 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. (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,	*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. (3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2): *a*) l'infraction punissable par mise en accusation ou par procéd re sommaire est assimilée à l'infraction punisable 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 revocation 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 '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

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 designated as a contravention under the *Contraventions Act* or an offence 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 the *Youth Criminal Justice Act*. 2001, c. 27, s. 36; 2008, c. 3, s. 3; 2012, c. 1, s. 149.	prépondérance des probabilités; *e*) l'interdiction de territoire ne peut être fondée sur une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ni sur une infraction dont le resident permanent ou l'étranger est déclaré coupable sous le régime de la *Loi sur les jeunes contrevenants*, chapitre Y-1 des Lois revises du Canada (1985), ou de la *Loi sur le système de justice pénale pour les adolescents*. 2001, ch. 27, art. 36; 2008, ch. 3, art. 3; 2012, ch. 1, art. 149.
Division 7 Right of Appeal **63.** (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa. (2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them. (3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an	Section 7 Droit D'appel **63.** (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de resident permanent. (2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête. (3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.

examination or admissibility hearing to make a removal order against them. (4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28. (5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing. **64.** (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality. (2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years. (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.	(4) Le résident permanent peut interjeter appel de la décision rendue hors du Canada sur l'obligation de résidence. (5) Le ministre peut interjeter appel de la decision de la Section de l'immigration rendue dans le cadre de l'enquête. **64.** (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant. (2) L'interdiction de territoire pour grande criminalité vise l'infraction punie au Canada par un emprisonnement d'au moins deux ans. (3) N'est pas susceptible d'appel au titre du paragraphe 63(1) le refus fondé sur l'interdiction de territoire pour fausses déclarations, sauf si l'étranger en cause est l'époux ou le conjoint de fait du répondant ou son enfant.
Part 2 Refugee Protection Division 1 Refugee Protection, Convention Refugees and Persons in Need of Protection **96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	Partie 2 Protection des Réfugiés Section 1 Notions d'asile, de réfugiés et de personne à protéger **96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions

	politiques:
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa residence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationals — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. (2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.
100. (1) An officer shall, within three working days after receipt of a claim referred to in subsection 99(3), determine whether the claim is eligible to be referred to the Refugee Protection Division and, if it is eligible, shall refer the claim in accordance with the rules of the Board. (2) The officer shall suspend consideration of the eligibility of the person's claim if (*a*) a report has been referred for a determination, at an admissibility hearing, of whether the person is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or (*b*) the officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years. (3) The Refugee Protection Division may not consider a claim until it is referred by the officer. If the claim is not referred within the three-day period referred to in subsection (1), it is deemed to be referred, unless there is a suspension or it is determined to be ineligible. (4) The burden of proving that a claim is eligible to be referred to the Refugee Protection Division rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.	**100.** (1) Dans les trois jours ouvrables suivant la réception de la demande, l'agent statue sur sa recevabilité et défère, conformément aux règles de la Commission, celle jugée receivable à la Section de la protection des réfugiés. (2) L'agent sursoit à l'étude de la recevabilité dans les cas suivants : *a*) le cas a déjà été déféré à la Section de l'immigration pour constat 'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée; *b*) il l'estime nécessaire, afin qu'il soit statue sur une accusation pour infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans. (3) La saisine de la section survient sur déféré de la demande; sauf sursis ou constat d'irrecevabilité, elle est réputée survenue à l'expiration des trois jours. (4) La preuve de la recevabilité incombe au demandeur, qui doit répondre véridiquement aux questions qui lui sont posées et fournir à la section, si le cas lui est déféré, les renseignements et documents prévus par les règles de la Commission. (5) Le délai prévu aux paragraphes (1) et (3) ne

(5) If a traveller is detained or isolated under the *Quarantine Act*, the period referred to in subsections (1) and (3) does not begin to run until the day on which the detention or isolation ends. 2001, c. 27, s. 100; 2005, c. 20, s. 81.	court pas durant une période d'isolement ou de détention ordonnée en application de la *Loi sur la mise en quarantaine*. 2001, ch. 27, art. 100; 2005, ch. 20, art. 81.
101. (1) A claim is ineligible to be referred to the Refugee Protection Division if (*a*) refugee protection has been conferred on the claimant under this Act; (*b*) a claim for refugee protection by the claimant has been rejected by the Board; (*c*) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned; (*d*) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country; (*e*) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or (*f*) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(*c*). (2) A claim is not ineligible by reason of serious criminality under paragraph (1)(*f*) unless	**101.** (1) La demande est irrecevable dans les cas suivants: *a*) l'asile a été conféré au demandeur au titre de la présente loi; *b*) rejet antérieur de la demande d'asile par la Commission; *c*) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure; *d*) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé; *e*) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle; *f*) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)*c*) — , grande criminalité ou criminalité organisée. (2) L'interdiction de territoire pour grande criminalité visée à l'alinéa (1)*f*) n'emporte irrecevabilité de la demande que si elle a pour objet : *a*) une déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un

(*a*) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed; or (*b*) in the case of inadmissibility by reason of a conviction outside Canada, the Minister is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.	emprisonnement maximal d'au moins dix ans et pour laquelle un emprisonnement d'au moins deux ans a été infligé; *b*) une déclaration de culpabilité à l'extérieur du Canada, pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un imprisonnement maximal d'au moins dix ans, le ministre estimant que le demandeur constitue un danger pour le public au Canada.
113. Consideration of an application for protection shall be as follows: (*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection; (*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required; (*c*) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98; (*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and (i) in the case of an applicant for protection	**113.** Il est disposé de la demande comme il suit : *a*) le demandeur d'asile débouté ne peut presenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet; *b*) une audience peut être tenue si le minister l'estime requis compte tenu des facteurs réglementaires; *c*) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98; *d*) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part : (i) soit du fait que le demandeur interdit

who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or (ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	de territoire pour grande criminalité constitue un danger pour le public au Canada, (ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.
Criminal Code **(R.S.C., 1985, c. C-46)**	***Code criminel*** **(L.R.C. (1985), ch. C-46)**
Pleas permitted **606 (1)** An accused who is called on to plead may plead guilty or not guilty, or the special pleas authorized by this Part and no others. **Conditions for accepting guilty plea** **(1.1)** A court may accept a plea of guilty only if it is satis- fied that the accused **(a)** is making the plea voluntarily; and **(b)** understands **(i)** that the plea is an admission of the essential ele- ments of the offence, **(ii)** the nature and consequences of the plea, and **(iii)** that the court is not bound by any agreement made between the accused and the prosecutor.	**Plaidoyers** **606 (1)** L'accusé appelé à plaider peut s'avouer cou- pable ou nier sa culpabilité ou présenter les seuls moyens de défense spéciaux qu'autorise la présente partie. **Acceptation du plaidoyer de culpabilité** **(1.1)** Le tribunal ne peut accepter un plaidoyer de culpa- bilité que s'il est convaincu que les conditions suivantes sont remplies : **a)** le prévenu fait volontairement le plaidoyer; **b)** le prévenu : **(i)** comprend que, en le faisant, il admet les élé- ments essentiels de l'infraction en cause, **(ii)** comprend la nature et les conséquences de sa décision, **(iii)** sait que le tribunal n'est lié par aucun accord conclu entre lui et le poursuivant.