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IRPA: The Continuing Evolution

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The New Study Permit Scheme
- Pointers for the Practitioner -

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I. FIRST CONSIDERATIONS

A Study Permit is the official document issued by Citizenship and Immigration Canada that allows a Temporary Resident to study in Canada. The Study Permit is a coloured document approximately half a page in size. It is typically affixed to the holder's passport. The Study Permit usually sets out specifically the educational institution and the course that the holder may attend in Canada. It may also contain additional conditions. The most common conditions that we see are restrictions pertaining to the location of the studies, the time and duration of the study, the duration of stay in Canada and as well as a prohibition against engaging in employment while studying in Canada.

A Study Permit is not an entry visa. Prospective students who are nationals of countries requiring Temporary Resident Visas (TRVs) to enter Canada should seek a TRV from the Canadian Visa Office that is processing the Study Permit application in order that they may enter Canada to study. We recommend that the legal practitioner apply for a Multiple Entry version of the TRV, as this document will enable a foreign student to enter and re-enter Canada should they travel abroad during their studies.

A. The General Rule

The general rule is that a prospective foreign student needs a Study Permit to study in Canada [IRPA s. 11 and IRPA Regulation 9]. Unlike its predecessor *Act, the Immigration Refugee Protection Act (IRPA)* does not describe specific courses for which a Study Permit is needed. The definition of 'studies' contained in Regulation 1 of the *IRPA* provides the initial basis for determining whether a Study Permit is in fact required. Generally, a Study Permit is required for studies undertaken at a university or college and for courses of academic, professional or vocational training. There are however, a number of notable exceptions to this rule. We have identified the most common exceptions below.

B. The Short-term Course

As per *IRPA* Regulation 188(10)(c) (a), a Study Permit is not required for a student taking a course or program in Canada of a duration of six months or less. This regulatory provision is not course specific. English as a Second Language (ESL) courses, summer academic programs and occupational upgrading courses are among the many course that can fit within the less than six month exemption. These courses are more or less lumped under the tourist umbrella. Remember however, that the course must be completed within the authorised period of the individual's stay in Canada. For example, the first six-month semester of a Canadian medical school would not qualify for this exemption.

C. Minor Children of Foreign Workers, Refugee Claimants etc.

Minor children, other than those of non-working and non-studying visitors are generally exempted from the Study Permit requirement under a very awkwardly worded section 30(2) of the *IRPA*. Thus, the children of foreign workers, refugee claimants, study permit holders, "approved in principle" spousal applicants and other non-visitors simply need to show their primary or secondary school's admissions officer a copy of the parent's Canadian status document (e.g. work permit) in order to study in Canada. Unfortunately, a number of school administrators are not yet aware of this exemption under *IRPA* and will still ask for the Study Permit as required under the former *Immigration Act*. As such, we often provide our clients with a copy of the relevant section of the *Act* to have in hand at the admissions office.

A Study Permit is not required for pre-school, kindergarten, or courses of 'general interest or self-improvement'. We interpret the latter as subject to the six month limitation although neither the OP Manual nor the legislation is clear on this point.

II. STEPS FOR PREPARING THE STUDY PERMIT SUBMISSION PACKAGE

All applicants for Study Permits must satisfy the reviewing Visa Office of the following basic requirements:

- They will leave Canada at the conclusion of their studies;
- They have been accepted by a Canadian educational institution;
- They have funds sufficient during their stay in Canada to pay for tuition fees, living expenses, and return transportation, and
- They are not criminally or medically inadmissible to Canada.

In preparing the Study Permit application package the above requirements should be the practitioner's focus. Note however, that depending on the country of residence, it may also be necessary that the applicant undergo a medical examination in order to satisfy the reviewing officer that he or she is not medically inadmissible to Canada. Of course, each Study Permit applicant must also satisfy the Visa Office that he or she satisfies all of the requirements of the *IRPA*.

Below is an outline of the basic steps involved in preparing a Study Permit Application. In compiling these step by step guide Study Permits, we hope that even the Study Permit novice will be able to identify and ensure the key elements of the application's success early in the process.

Step 1: Determine whether your client requires a Study Permit in order to engage in the proposed course of study in Canada.

Note however, that there may be benefits to your client of having a Study Permit, even if he or she does not require one. For instance, with a Study Permit, the holder can work part-time on campus at the college or university at which he or she is registered as a full-time student. As well, he or she will be able to apply to renew the Study Permit from within Canada, if he or she decides to continue studying in Canada.

Step 2: Determine the Visa Office where you will file the submission.

Check to see whether the particular Visa Office routinely requests additional documentation in support of the Study Permit Application. If your client is not a citizen of the country in which you plan to submit the application, if available, you should provide proof of the applicant's immigration status in the country of application.

Step 4: Ascertain who, if anyone, will accompany the Foreign Student to Canada.

Immediate family members (husband, wife, same or opposite sex common law partner, and dependent children) may accompany the Study Permit holder, or join them in Canada. Some Visa Offices may take the view that where a dependent child will be enrolled in school, it is necessary to submit an additional separate Study Permit application. Note that while OP 12 provides such direction it appears to be inconsistent, at least in part, with the A 30(1) of the *IRPA* that precludes minor children of study permit holders.

Step 3: Determine whether your client will also require a Temporary Resident Visa (TRV) to enter Canada.

If this is the case, plan to make this application in conjunction with the Study Permit application. Note, however, that citizens of countries that require Visas do not require a new visa if they are returning to Canada following a trip to the United States or St. Pierre and Miquelon and the return is prior to expiry of the period initially authorized for entry or an extension. That being said, as this is a little known part of the *IRPA*, we advise client

from TRV requiring countries to obtain the visa prior to travelling to Canada and advise them to avail themselves of this provision only when necessary. Of course, possession of a Visa never guarantees re-entry as all foreign nationals must satisfy an Immigration officer that they meet the requirements of IRPA prior to entering Canada.

Step 4: Assemble the Supporting Documentation

Application for Study Permit (IMM 1294) – the requisite CIC form.

Proof of Acceptance at a University, College or Technical institution in Canada – the educational institution's letter should state the following: the name of the institution, confirmation of acceptance and/or registration; the course of study; the duration of the academic program; and the latest date that the applicant may register. Most Visa Office's require an original of the acceptance letter. The regulatory provision is IRPA R. 219(1).

Note that the 5.5 of the OP 12 directs Visa Officers to accept conditional acceptance letters as meeting the requirements of Regulation 219 of the IRPA except where there is serious doubt that the registration will actually take place. OP 12 further stipulates that it is the educational institution's onus to clearly specify a condition that is a prerequisite to enrolment and, in turn, it is the student's onus to provide proof of compliance with such a condition.

Note further that if the applicant will attend a primary or secondary school in Canada, he or she will require a letter from the school board that has jurisdiction for the school. If the applicant will attend a private school, the school itself must issue the letter. The letter from the school board or school must set out the name of the school; the level of the course of study, and the duration of the course.

A Valid Passport or Travel Document – the document serves as a guarantee of re-entry to the country that issued it.

Note that Citizens and Permanent Residents of the United States, St. Pierre and Miquelon, and Greenland do not need a passport, but MUST proof of status and citizenship, such as

a national identity card or an Alien Registration Card. As well, if the government that issued the applicant's passport or travel document requires a re-entry permit this must be obtained.

Two recent passport-size photos for the applicant and each accompanying family member - the name and date of birth of the person should be written on the back of each photo.

Proof of Financial Support - Evidence that the applicant can support him or herself and any accompanying family members while studying in Canada is required as per IRPA R. 220. Such evidence may include:

- A letter or Bank Statement from a Canadian bank account in the applicant's name (where monies have been transferred to Canada);
- Recent Bank Statements;
- A bank draft in convertible currency;
- Proof of payment of tuition and residence fees;
- Proof of funding paid from within Canada (where the applicant is the recipient of scholarship or are in a Canadian-funded educational program).

The following table, taken for the CIC website, sets-out the minimum amount required.

| | All Provinces Except Quebec | Quebec |
|---------------------------------|---|--|
| Single Student | \$10,000 for twelve-month period, plus cost of tuition, prorated at \$833 per month | \$9,600 for twelve-month period, plus the cost of tuition, prorated at \$800 per month |
| + one family member | \$4,000 for twelve-month period prorated at \$333 per month | 60% of student base or \$5,740 for twelve-month period, prorated at \$478 per month |
| + each additional family member | \$3,000 for twelve-month period per dependant child of any age, prorated at \$255 per month | 40% of student base or \$3,840 for twelve-month period, prorated at \$320 per month |

Fee Payment - The processing fee is CAD\$125.00. As procedure may differ from visa Office to Visa Office, we recommend that you check specifically to see what form of payment is acceptable at the Visa Office that you will be filing at.

Authority to Release Information form (IMM 5476) – signed by the applicant and authorizing CIC to communicate with you and your office with respect to the Study Permit application.

Where family members are accompanying the applicant to Canada, the following additional documentation should also be included:

Marriage Certificate – for spouse;

Birth Certificates - for Dependent children;

Statutory Declaration of Common Law Union (IMM 5409) - for common law-spouses;

Certificate d'acceptation du Quebec (CAQ) - Where the applicant plans to study in Quebec, it is also necessary to obtain a Certificatè d'acceptation du Quebec (CAQ). This document is issued by the Ministère des Relations avec Citoyens et de l'Immigration (MRCI).

As per the above, note that although the documents listed below are normally needed to support the Study Permit application, local Visa Offices requirements may also apply. Visit the Web site of the visa office responsible for your region to double-check that you have all documents you need before submitting your application.

Step 5: Submitting the Study Permit Application Package.

Applications are typically submitted to the Visa Office in the applicant's country of citizenship or residence. However, to the best of our knowledge, IRPA R 11(2) is not in effect and as such, in theory one can apply to a Visa Office not connected to the applicant's country of nationality or residence. That having been said, it would still be at the Visa Office's discretion to decline processing of the application.

Step 6: Awaiting a Determination

When the application is adjudicated, the Visa Officer may determine that an interview of the applicant is required. If so, the Visa Office will advise of the interview time and place. If additional information is required, the visa Office may request same.

Step 7: A Determination

Where the application is approved, your reporting letter to the client should indicate that the Letter of Approval is not the actual Study Permit and should outline the process for obtaining the actual document. Where the application is refused, your first action should be to communicate same to the client. Your next response is to consider contacting the Visa Office Program Manager with information refuting or counterbalancing the basis for the refusal. In some instances, the practitioner might consider obtaining a letter on support (of the educational program and its efforts to recruit foreign students) from a local Member of Parliament.

III. MORE ADVANCED STUDY PERMIT ISSUES - DIFFICULT CLIENT SITUATIONS

Legitimate Work as a Business Visitor to Canada

The legal practitioner should be aware of the expanded definition of a Business Visitor and its impact on certain foreign nationals studying in Canada. The *IRPA* has expanded the definition of a business visitor to encompass activities that might previously have been defined as "Work" under the former Act. This alleviates the need for some foreign nationals to obtain a Work Permit but also removes their children's right to access schools without study permits – and without paying foreign student fees - not to mention removing the family's OHIP eligibility.

Applying for a Study Permit Although Not Required

As per R 188(1) (c) of the *IRPA*, those enrolling in a course of study more than six months in duration must first obtain a Study Permit. Conversely, those enrolling in a course of less than 6 months do not require a Study Permit. However, it is possible to apply for a Study Permit for a course of study less than six months in duration. There are a number of reasons why doing so might work to your client's advantage. For example, a prospective student in Canada may anticipate enrolment in subsequent programs in Canada. In order to do so, he or she would normally be required to leave Canada in order to obtain a Study Permit for the subsequent course. Rather than interrupt his or her studies; it may make better sense to apply for the Study Permit prior to the initial study in Canada. To do so, the practitioner should include in his or her submission an explanation as to why the applicant is applying for a Study Permit.

Working While Studying

The general rule is that for a Temporary Resident to work in Canada he or she must hold a Work Permit; Study Permit holders cannot automatically work while in Canada. However, there are exceptions to the rule. For instance, many Study Permits allow for employment on campus. Under *IRPA* the student is no longer required to be enrolled in a degree or diploma granting program to qualify for on-campus employment. To be eligible to work on campus however, the student should be in possession of a valid Study Permit.

Minor Child Not Accompanied by Parents(s)

If a minor child is coming to study in Canada, they will require a custodian in Canada. In such instances, the practitioner should also arrange to provide notarized declarations, signed by the parents or legal guardians in the country of origin, as well as signed by the custodian in Canada, stating that arrangements have been made for the custodian to act in place of a parent. Custodianship is required until the child reaches the legal age of the province of destination. Children under the age of 18 require custodianship in the provinces of Alberta, Manitoba, Ontario, Prince Edward Island, Quebec and Saskatchewan. Children under the age of 19 require custodianship in the provinces of British Columbia, New Brunswick, Newfoundland and Nova Scotia.

If the child is the subject of a custody order, we generally recommend that the child travel with proof of custody, and the non-custodial parent's permission for the child to study in Canada.

The Visa Officer must additionally be satisfied that adequate arrangements are in place for the care and support of the minor child. The prospect of a child coming to Canada to study at a young age often raises the issue of intent. In our experience, it is not uncommon for the reviewing Visa Officer to be concerned that the child is not truly a Temporary Resident as the likelihood of return to his or her country of origin is questionable.

The Study Permit and Permanent Resident Status

Clients considering attending a Canadian post secondary program will often ask if these studies will benefit any future application for permanent resident status. The answer is that, indirectly, they may.

A post secondary degree or diploma, wherever obtained, will result in "points" under the "education" category for a skilled-worker permanent resident applicant. However, completion of a 2 year post

secondary course of studies in Canada is also worth additional points under the "adaptability" category.

International students graduating from Canadian post secondary programmes may apply for 1 year "post graduation" work permits which may provide them with points under the "experience" category. Students in Canada, already meeting the selection criteria, may send their Permanent Resident applications to a visa office for processing while they continue to study in Canada and maintain their temporary status. If they are qualified, fortunate and have planned out the process accurately, they may enjoy a relatively painless conversion from foreign student to permanent resident status without returning to their home countries.