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### **CANADIAN CITIZENSHIP AND IMMIGRATION INADMISSIBILITY LAW**

**Bellissimo**

**Release No. 2, June 2022**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in August 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the August 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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**Canadian Citizenship and Immigration Inadmissibility Law, 2nd Edition** is the only resource that provides focused guidance on the rapidly expanding area of inadmissibility law. A practical and tactical guide that combines, summarizes, and analyzes hundreds of decisions and key legislation, this publication speaks in practical terms to the key statutory framework, emerging trends, policy developments and relevant leading case law and offers practical tips and key memoranda and sample submissions. This publication includes: comprehensive analyses of the statutory framework for criminal, medical, and financial inadmissibility as well as Canadian employer compliance and the evolving area of misrepresentation law including citizenship revocation; comprehensive and detailed analysis of the distinct treatment and consequences of inadmissibility on various actors in Citizenship, Immigration, and Protected Person law; an overview of remedies; discussion of detention and release, appeals, equivalency defences, judicial reviews, and stays; and, case law annotations and detailed annotated precedents based on cases. The publication also examines exceptional remedies under the Act including humanitarian and compassionate grounds applications, temporary resident permits, rehabilitation, record suspensions, and collateral consequences of criminal convictions. In all, this publication like no other delves into the nuances of inadmissibility law from many legal and practical perspectives.

### **New In This Update**

This release features updates to the commentary and appendices in Chapters 3 and 4.

### **Highlights**

#### **Appendix 3A Citizenship**

- Citizens, Permanent Residents, Criminality and the Inadmissibility Process — Citizenship — Citizenship Applications and Inadmissibility — *Gucake v. Canada (Citizenship and Immigration), 2022 FC 123 (F.C.)* — Mr. Gucake sought judicial review of this decision, claiming it unreasonable and declaring that his circumstances warranted special relief from citizenship revocation. Specifically, the Court was asked if the Delegate erred where they determined that a consideration of potential foreign hardship and the best interests of Mr. Gucake’s children was premature, and thus did not include this assessment in the Decision to revoke Mr. Gucake’s citizenship. The Court decided that the Delegate had not erred in revoking Mr. Gucake’s citizenship because the Decision did not necessarily guarantee the deportation of Mr. Gucake from Canada. He had other options available to remain in Canada, so the Delegate’s decision was reasonable. The application for judicial review of the decision was dismissed.
- Citizens, Permanent Residents, Criminality, and the Inadmissibility Process — Citizenship — Citizenship Applications and Inadmissibility — *Xu v. Canada (Citizenship and Immigration), 2021 FC 1102*

(F.C.), additional reasons 2021 FC 1248 (F.C.) — Ms. Xu applied for a judicial review of this decision, challenging the decision’s reasonableness. The Court answered two questions: Was the Senior Analyst’s interpretation of section 10(3.1)(a) of the Citizenship Act as precluding consideration of the consequences of removal from Canada unreasonable? Is the Senior Analyst’s application of section 10(3.1)(a) of the Citizenship Act unreasonable? When answering the first question, the Court agreed with the Senior Analyst that foreign hardship, a consequence of removal from Canada, is a premature argument because citizenship revocation does not equate to removal from Canada. As such, the Senior Analyst’s interpretation was reasonable. To answer the second question, the Court determined that for a decision on misrepresentation to be reasonable, the decision maker must assess any mitigating factors that might impact the blameworthiness of the migrant. This will ensure that, where a decision on misrepresentation is rendered, it will be viewed as warranted in the eyes of a fair and reasonable society. In his decision, the Senior Analyst was focused more on the seriousness of the Applicant’s misrepresentation than her personal circumstances. In fact, her personal circumstances were dismissed in a perfunctory fashion, rendering his decision-making process unreasonable. In such a case, special relief is warranted despite the misrepresentation. The application for judicial review was allowed, and the matter was sent back for redetermination by another officer.

#### **Chapter 4 Medical Inadmissibility: A Comprehensive Overview and Important Updates**

- **Medical Inadmissibility: A Comprehensive Overview and Important Updates — Legislation — Assessing Excessive Demand —** It was ultimately determined that while the changes did introduce a potential total healthcare cost of \$4.2 million over five years to the provincial and territorial governments, the CBSA and the IRB both reported cost savings during the years following the introduction of the public policy. With these results in mind, a regulatory proposal was republished on 27 March 2021 in the Canada Gazette for a 30-day consultation period. Written representations were solicited from a multitude of organizations, including our office. We provided submissions that foremost recognized IRCC’s continuing laudable efforts to streamline the s. 38 decision-making process, to promote inclusiveness, consistency, and timeliness and above all individualized assessments. We provided that while some of the proposed amendments were most welcomed, there may be a limited need for significant legislative and regulatory overhaul. And we noted that if our understanding was accurate, the amendments could potentially result in a variety of unintended consequences, including introducing a number of statutory ambiguities.

#### **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable