Inadmissibility under IRPA:
A Quick Reference Guide to Dealing with Possible Inadmissibility Due to Health Grounds (S. 38)

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Immigration

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The Immigration and Refugee Protection Act\textsuperscript{1} and the Immigration and Refugee Protection Regulations\textsuperscript{2} set out the regulatory framework governing how people who are foreign nationals or permanent residents may enter and remain in Canada.

The inadmissibility provisions in IRPA\textsuperscript{3} and related regulations set out the circumstances that can make a person inadmissible to Canada. It is important to understand the potential causes of inadmissibility and strategies to deal with them, as a foreign national or permanent resident who is found to be inadmissible may be refused entry or required to leave Canada, even if they meet the eligibility requirements of their immigration category.

There are eleven grounds of inadmissibility under IRPA:

- Section 34 – Security
- Section 35 – Violating Human or International Rights
- Section 36(1) – Serious Criminality
- Section 36(2) – Criminality
- Section 37 – Organized Criminality
- Section 38 – Health
- Section 39 – Financial Reasons
- Section 40 – Misrepresentation
- Section 40.1 – Cessation of Refugee protection
- Section 41 – Non-compliance with Act
- Section 42 – Inadmissible Family Member

In this paper, I will present a quick reference guide to inadmissibility on the grounds of health. I will discuss: Who does the inadmissibility apply to? What are the elements of the inadmissibility? When can the issue of inadmissibility arise? What are the legal options to enter or remain – temporarily or

\textsuperscript{1} S.C. 2001, c. 27
\textsuperscript{2} SOR/2002-227
\textsuperscript{3} IRPA, Division 4, s. 33 - 43
permanently – if your client appears to be inadmissible? How can the client be formally found to be inadmissible and what are the consequences? I will refer to the policy guidelines of Citizenship and Immigration Canada so you will understand the decision-making processes of the officers who are dealing with your clients. I hope this will help you develop a strategy for your client when dealing with potential inadmissibility.

Please note that this paper does not address any special requirements for the Province of Quebec.

SECTION 38: INADMISSIBILITY ON THE GROUNDS OF HEALTH

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.

WHO DOES THE INADMISSIBILITY ON HEALTH GROUNDS APPLY TO?

Inadmissibility on the grounds of health only applies to foreign nationals, not permanent residents.

All foreign nationals are subject to the inadmissibility grounds of likely being a danger to public health (s. 38(1)(a)) or public safety (s. 38((1)(b)).

There are important exceptions to the Section 38(1)(c) inadmissibility based on excessive demand. It does not apply to the spouse, common law partner or child of a sponsor in a family class application (s. 38(2)(a)). Nor does it apply to Convention refugees (38(2)(b)) or a protected person who is applying for permanent residence (38(2)(c)). However, it does apply to a foreign national who is a refugee claimant (s. 229(2)(f)). These exemptions also apply to the spouse, common law partner, child or other family members as prescribed by the regulations.