



Ronalee Carey Law

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Study Permits: The Coles Notes

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Education is the passport to the future, for tomorrow belongs to those who prepare for it today.

Malcolm X

International student mobility is on the rise and data shows that everyone benefits.

Rather than depriving developing countries of their best talent through 'brain drain,' mobile students are offering 'brain gain' by creating a global pool of highly-skilled human capital.

Silvia Montoya, Director of the UNESCO Institute for Statistics (UIS)

<http://uis.unesco.org/en/blog/brain-drain-gain-benefits-arising-international-knowledge-networks>

The economic effects of foreign students nearly doubled between 2010 and 2016, when they reached a total of \$15.5 billion in Canada for everything from tuition fees to rent and groceries, according to a federal analysis.

To put that in perspective, the document says the sector supported nearly 170,000 jobs in 2016 and had greater economic impacts than Canada's exports of auto parts, aircraft and lumber.

Canada to boost presence overseas to attract more international students, The Canadian Press, April 14, 2019
<https://nationalpost.com/pmnl/news-pmnl/canada-news-pmnl/canada-to-boost-presence-overseas-to-attract-more-international-students>

Agenda

Statistics – number of applications, destination provinces, denial rates

Recent Federal Court decisions

Application issues – when a study permit is required, where to apply, what to include in an application

Program Delivery Updates

Rules concerning working during studies

New policy regarding leave from studies

Length of post-graduation work permits

The Numbers

Number of study permits issued in 2018: 357,585

*16% increase from 2017. 2017 saw a 20% increase over 2016

<https://t.co/WOc61tWqCx>

Number of international students studying in Canada as of December 31, 2018: 572,415

http://www.cic.gc.ca/opendata-donneesouvertes/data/IRCC_M_TRStudy_0009_E.xls

Top 5 source countries in 2018 by number of study permits issued

📌 India (107,650)

📌 China (85,735)

📌 Korea (16,960)

📌 France (13,555)

📌 Vietnam (12,470)

<https://t.co/WOc61tWqCx>

Provinces of Destination in 2017

Alberta: 5.5% (34,260)

British Columbia: 24.8% (152,390)

Manitoba: 3.2% (19,955)

New Brunswick: 1% (6,650)

Newfoundland: <1% (4,617)

Northwest Territories: <1% (45)

Nova Scotia: 2.8% (17,185)

Nunavut: <1% (5)

Ontario: 47.9% (294,350)

Prince Edward Island: <1% (4,617)

Quebec: 13.1% (80,610)

Saskatchewan: 1.7% (10,150)

Yukon: <1% (250)

Not Stated: <1% (1,645)

<https://t.co/855SdsHwlt>

As application numbers increase, so do denial rates...

OVERALL REFUSAL RATE 2018 – 34%

<https://studentimmigration.ca/canada-study-permit-refusals/>

By Country

Japan – 1%

Korea – 2%

United States of America – 8%

France – 11%

UK and Colonies – 13%

China – 17%

India – 29%

Iran – 39%

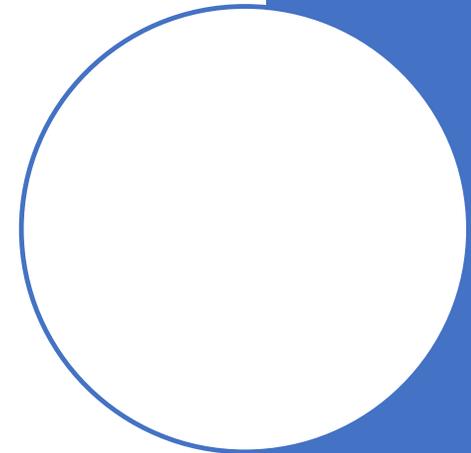
Turkey – 40%

Pakistan – 80%

Nigeria – 81%

Ghana – 89%

<https://studentimmigration.ca/who-gets-a-study-permit-for-canada/>



Recent Federal Court decisions regarding study permit application denials

Mahida 2019 FC 423 – Include documents that support the Applicant's explanation for wanting to study in Canada

- A decision will be unreasonable where an Officer ignored a coherent explanation for wanting to study in Canada, supported by documentary evidence.
- There is nothing inherently illogical in having the desire to eventually live in Canada and to intend to work in the country of nationality if the goal of Canadian residency is not achieved.

Adom 2019 FC 26 – Lack of travel history is a neutral factor and the Officer cannot play 'career counsellor'

- The Officer erred by using a lack of travel history as a negative factor. Ahmed J applied the decision in *Dhanoa* 2009 FC 729 which establishes that a lack of travel history is a neutral factor.
- The Officer also determined that the proposed studies would not enhance the Applicant's future work. Ahmed J cautions the Officer against acting as a career counsellor and said that 'Such extraneous considerations make it obvious that the Visa Officer engaged in an unreasonable review of the evidence.'

Recent Federal Court decisions regarding study permit application denials

Emesiobi 2018 FC 90 – Mid-life career change justifies a study permit

- The 41 year-old Applicant with a degree in law wished to move into human resources from her position as a contract analyst in the oil and gas industry. She would be employed with the same company upon her return, and her husband and four children would remain in Nigeria during her eight-month course.
- Shore J: ‘The Officer must reach a reasonable decision and a reasonable decision must not be speculative.’

Raymundo 2018 FC 759 – Leaving a spouse and children in home country demonstrates ties to that country

- The Officer was not satisfied that the Applicant would leave Canada at the end of his stay and didn’t consider the Applicant's family ties in the Philippines.
- LeBlanc J found the lack of consideration to family in Philippines was “egregious”.

Recent Federal Court decisions regarding study permit application denials

Demyati 2018 FC 701 – A study permit will not be denied just because the Applicant is a national of a war torn country

- 18-year old Syrian national was refused a study permit. He had grown up in the U.A.E. The Officer was not satisfied that the Applicant would leave Canada given the situation in Syria, despite his having a scholarship and his Canadian uncle pledging funds.
- Roy J queries, ‘What is to be expected from an 18-year old student?’ and notes a decision cannot be made based on intuition or a hunch.

Cervjakova 2018 FC 1052 – Being in Canada at the time of application is insufficient for a denial

- The Applicant and her family came to Canada as visitors from Latvia. Soon after, the Applicant applied for a four year program and was accepted. She applied for a study permit to the visa office in Los Angeles, CA.
- The Officer was not satisfied that the Applicant would leave Canada at the end of her stay, in part because the application was made when she was within Canada.
- Norris J explained that “life often takes unexpected turns” and found that nothing in the case supported the conclusion of the Officer.

When is a study permit required?

Who does NOT need a study permit:

- Students of non-designated learning institutions *no post-graduation work permit is available
- Students of programs that are less than six-months duration, where the program will be completed within the period for their stay (IRPR s. 188(1)(c))
- All minor children in Canada studying at the pre-school, primary or secondary school level, other than a child of a temporary resident not authorized to work or study (IRPA s. 30(2)) * 'minor' is defined by the province
- Preschool and kindergarten children
- Minor children who are refugee claimants or refugees, or whose parents are refugee claimants or refugees
- Anyone studying through distance learning *in-Canada portions of a course, including writing of exams, require a study permit even if the period of time is less than six months, where the overall course is longer than six months
- Those associated with diplomats or visiting armed forces personnel, Registered Indians (see text of IRPR s. 188(1))

Who DOES need a study permit:

- Anyone accepted to study at a designated learning institution for a program which will last for longer than six months
- Minor elementary and secondary school students unless otherwise exempt, even if studies will commence with less than six months left in the academic year

Where to apply?

- Port of Entry – US citizens and permanent residents, residents of Greenland or St. Pierre and Miquelon (IRPR s. 214)
- Everyone else must apply ‘before entering Canada’ (IRPR s. 213)

Initial study permits can only be printed at a port-of-entry except in the following circumstances (IRPR s. 215, also refer to s. 207):

- Renewals and restorations
- Work permit holders
- Those subject to an unenforceable removal order and their family members
- TRP holders where the duration is 6 months + and their family members
- Temporary residents already studying at a secondary, primary or preschool level, or who is a visiting or exchange student
- When a prerequisite course has been completed *even where that course did not require a study permit
- Members of the spouse or common-law partner class and their family members
- Protected persons and their family members
- Individuals with approved H&C applications and their family members
- Family members of individuals holding work permits, study permits, clergy (full list in s. 215(2))

A scenario...

A mother of three children is applying for a study permit in Canada from a visa-requiring country. Her children are ages 5, 15, and 20. What type of applications do you submit for the children?

- The 5 year old needs a temporary resident visa – no study permit is required for kindergarten students. Once grade 1 commences, they will not need a study permit because they are in Canada as the child of a study permit holder (IRPA s. 30(2)).
- The 20 year old is not a minor in any province and as such, needs a study permit even if studying at the secondary school level.
- Does s. 30(2) apply to the 15 year old? Their mother has not yet received a study permit and the family is not yet in Canada. Section 30(2) refers to 'Every minor child in Canada'. Arguably the child needs to apply for a study permit. However, some visa offices issue TRVs, and the Visitor Record printed at the port-of-entry notes that the child is authorized to study. However, obtaining a study permit now will allow the child to study at the post-secondary level once graduated from secondary school, without having to apply for a permit at that time.

A few more scenarios...

Are study permits required for the following programs?

- A two-year diploma program in Photographic Arts and Production at the School of the Photographic Arts: Ottawa
- A 15 week certificate in Bartending at Algonquin College
- The Law Practice Program

And a few more...

Can the following individuals apply for a study permit from within Canada?

- A person with a valid passport who is subject to a removal order to Spain
- A person who has submitted an H&C application
- A person who has completed a prerequisite course that did not require a study permit

What should be included in an application?

Letter of acceptance from a designated learning institution

Proof of funds for tuition and living expenses

- Students are required to demonstrate financial sufficiency for only the first year of studies, regardless of the duration of the course or program of studies in which they are enrolled...Officers should be satisfied however that the probability of funding for future years does exist (i.e., parents are employed); scholarship is for more than one year.
- Officers may take into consideration such sources of funds derived through scholarships, fellowships, assistantships and the like, as well as financial support or support in kind that may be available from relatives in Canada.
- The base amount for students includes all requirements related to transportation and maintenance, including the cost of books, equipment, and supplies.
- Student base: \$10,000 for twelve-month period, prorated at \$833 per month, plus cost of tuition.
- Spouse/common-law partner/first family member base-\$4,000 for twelve-month period prorated at \$333 per month.
- Dependent child/subsequent family member base-\$3,000 for twelve-month period per dependent child of any age, prorated at \$255 per month.

Proof 'will leave Canada by the end of the period authorized for their stay...' IRPR s. 216(1)

Program Delivery Updates

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|--------------------------|---|--|
| March 12, 2018 | Study permits: Off-campus work | May work during the final semester even if only part-time because have sufficient credits to graduate Ability to work between programs (for example, between a bachelor's and master's program) |
| February 14, 2019 | Processing Instructions for the Post-Graduation Work Permit Program | Have 6 months to apply, rather than 90 days No need to hold a valid study permit at the time of application |
| April 5, 2019 | Post-graduation work permit length for 2 combined programs | Previously if 'more than two years' received a 3-year PGWP, now is two years or longer |
| April 11, 2019 | Study permits: Making an application | No longer need a new study permit when transitioning from secondary school to post-secondary studies, so long as current study permit is still valid Those eligible to apply for a study permit within Canada may start studying as soon as they apply – no need to wait for the permit to arrive |
| April 16, 2019 | Validity periods and acceptance letters for study permits | Students in a prerequisite course can work on campus |
| May 1, 2019 | New Student Direct Stream (SDS) instructions | This program is available to citizens of China, India, Philippines and Vietnam who meet certain criteria. Applications are processed within 20 calendar days. |

Rules concerning working during studies

*The study permit must note that work is authorized. Those taking ESL/FSL programs cannot work. Must be a full-time student.

| | |
|--|---|
| Before school starts | Work is not permitted |
| During the school year | 20 hours off-campus, unlimited number of hours on-campus, even when combined with off-campus work |
| Regularly scheduled academic breaks *as set out by the educational institution *Reading weeks, December/January holiday, summer break | Unlimited hours |
| During a co-op placement (in addition to the work being done as part of the co-op) | Part-time (as during the school year) |
| If studying part-time during the final semester | Part-time (as during the school year) |
| When studies are completed, until written confirmation that program requirements are met is received | Part-time (as during the school year) |
| If studying part or full time during a regularly scheduled academic break | Unlimited hours |
| After having received written confirmation that program requirements are met but before apply for a PGWP | Work is not permitted |
| After applying for a PGWP | Unlimited hours |
| After having completed a program of study, and will commence another program of study within 150 days | Unlimited hours |
| While taking a prerequisite course or program of study | May work on-campus |
| While on a leave from study | Not permitted to work |



New policy regarding leave from studies

A student on leave who begins or resumes their studies **within 150 days from the date the leave commenced** (that is, the date the leave was granted by the institution) is considered to be actively pursuing studies during their leave.

In cases where a student has taken multiple periods of leave in Canada during their program of study, the officer should consider the student's reasons for the various periods of leave. If the multiple periods of leave do not appear to support the expectation that the student is making reasonable progress toward the completion of their course or program of study in the time allotted by the course or program of study, the officer may determine that the study permit holder has not fulfilled the condition to actively pursue their course or program of study.

Examples of reasons for leave include but are not limited to the following:

- medical illness or injury
- pregnancy
- family emergency
- death or serious illness of a family member
- change in program of study within the same institution, outside a regularly scheduled break
- dismissals or suspensions (dependent on degree of severity)
- postponed program start date

How long will the post-graduation work permit be issued for?

Length of the program or programs of study

The program of study is at least 8 months and less than 2 years.

The program of study is 2 years or longer.

The student completed more than one program from an eligible DLI within 2 years.

Note: Each program of study must meet all PGWPP eligibility requirements and be at least 8 months in length.

Length of the post-graduation work permit that can be issued

The length of the work permit should coincide with the length of the program (as confirmed in writing by DLI). Regularly scheduled breaks should not be subtracted from the length of the post-graduation work permit.

If the length of the program is confirmed by the eligible DLI in the written confirmation of program completion, the length of the work permit should be 3 years.

The length of the work permit should combine the length of each program.
If the combined length of the programs is 2 years or longer, the work permit may be valid for up to 3 years.

With thanks...

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