

Immigrant's and Refugee's Access to Social Benefits and Programs in Quebec

Guide for Community Workers



Produced and published by
Community Legal Services of
Point St. Charles and Little Burgundy

This guide provides general information and does not in any way constitute legal advice or statement of opinion. The Canadian and Quebec immigration systems being particularly complex, they sometimes create quite intricate situations. Therefore, it is necessary to consult specialists to validate the application of various notions to any specific case. The information in this guide was verified in June 2009. It is strongly suggested that its users further verify this information in future years, as changes are likely to occur.

Produced by Community Legal Services of Point St. Charles and Little Burgundy (Services juridiques communautaires de Pointe-Saint-Charles et Petite-Bourgogne).

Legal Deposit: 2010
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This guide is available for free in French and English, as a PDF file, on the website of Community Legal Services: www.servicesjuridiques.org.

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LIST OF ACRONYMS USED IN THIS GUIDE

Acronym	Equivalent
CAQ	Quebec Acceptance Certificate
CBSA	Canada Border Services Agency
C.C.Q.	Civil Code of Quebec
CCTB	Canada Child Tax Benefit
CDB	Child Disability Benefit
CIC	Citizenship and Immigration Canada
CLP	Commission des Lésions Professionnelles
CLSC	Centre Local de Services Communautaires
CRA	Canada Revenue Agency
CSDAGDP	Centre Spécialisé des Demandeurs d'Asile, des Garants Défaillants et des Parrainés
CSQ	Quebec Selection Certificate
CSSS	Centre de Santé et de Services Sociaux
CSST	Commission de la Santé et de la Sécurité du Travail
EI	Employment Insurance
IAD	Immigration Appeal Division
ID	Immigration Division
IFHP	Interim Federal Health Program
IRB	Immigration and Refugee Board
IRPA	Immigration and Refugee Protection Act
IVAC	Indemnisation des Victimes d'Actes Criminels
NCBS	National Child Benefit Supplement
OMH	Office Municipal d'Habitation
OMHM	Office Municipal d'Habitation de Montréal
PIF	Personal Information Form
PRRA	Pre-removal Risk Assessment
QPIP	Quebec Parental Insurance Plan
QPP	Quebec Pension Plan
RAMQ	Régie de l'Assurance Maladie du Québec
RPD	Refugee Protection Division
RRQ	Régie des Rentes du Québec
SAAQ	Société de l'Assurance Automobile du Québec
SIN	Social Insurance Number
TAQ	Tribunal Administratif du Québec
TRP	Temporary Resident Permit
UCCB	Universal Child Care Benefit

INTRODUCTION

Immigration Status and the Access to Social Benefits and Programs

In Canada, and in Quebec, a person's immigration status often determines their rights and the services they can access. Some laws and regulations create fairly clear categories of immigration status and rights or entitlement to services, while others are hopelessly vague or even completely silent. Numerous government departments and employees are unclear on how to interpret and apply their own ambiguous laws and regulations surrounding immigration status or how to categorise the complex immigration status of some people.

Formal entitlement and rights are not the only barrier many people face in accessing services. Those with precarious or no legal immigration status often hesitate in accessing services such as health care, education, or other community services because they fear being reported to immigration authorities; access to some services requires identification proving immigration status. Workers without legal status would rarely risk making a complaint against an employer for the same reason. Hence, those with precarious or no legal immigration status are often the most marginalized and exploited, because they have few rights and they face many barriers to improve their situation. People can lack legal immigration status for multiple reasons, including being a failed refugee claimant, being a live-in caregiver who quits working for an exploitative employer, and others whose work or study permits or visitor visas have expired.

In Quebec, the right to benefit from social programs is far from universal. Access to social programs varies greatly depending on immigration status and eligibility criteria are often difficult to identify and understand. As these difficulties are becoming more and more of a challenge in our community, we came to the conclusion that this Guide would be useful and practical.

The Community Legal Services is a community organization that also has the status of Legal Aid Center and for 40 years has intervened in the Point-St-Charles and Little Burgundy neighbourhoods located in Montreal. On a daily basis we try to achieve one of our main goals: to render justice more accessible for people. For us, it is clear everyone's social rights should be protected, particularly those who are most vulnerable.

As we work closely with other community organizations, we became aware of the difficulties constantly faced by community workers in searching for answers and solutions in order to support and help individuals seeking their assistance. What are the rights of immigrants and refugees? Where could they find the right answer? How to interpret or understand answers given by government departments and employees? In hopes of answering these questions and surpassing these barriers which constitute denials of justice, we tried to find answers.

The goal of this guide is to share with you the results of our research. We hope that this guide will become a working tool. For us this guide is one of the means we have at our disposal to render justice more accessible.

How To Use This Guide

This guide is divided into two sections. The first section aims to present a comprehensive picture of the complex ins and outs of the Canadian immigration system. First, the different categories of immigration status are described (Section I.1). Next, the recourses available to people who wish to reside or remain in Canada legally are examined (Section I.2), as well as the different methods of obtaining permanent residency when a person is already in Canada (Section I.3)¹. Three elements that have an impact on a person's access to certain programs or to employment are then explained: the notion of "residence", the possibility of working and the need to obtain a work permit, and the Social Insurance Number (Section I.4).

The second section looks one by one at the social programs in Quebec and the laws supporting them. The different types of benefits, services, support programs or compensation to which immigrants and refugees in Quebec have access are explored. The laws and social programs are organised as follows by theme: legal aid, welfare, other compensation laws, education, family, housing, retirement, health and employment. In each subsection, the general program is described first. The eligibility requirements for each program are then explained, with particular attention on immigration status. In some cases, a specific scenario or profile is described, such as "the situation of a sponsored immigrant who receives welfare".

Finally, at the end of each subsection, applicable laws and additional resources are indicated to help the reader find avenues for further research.

¹ As this guide aims to inform immigrants of their rights and recourses (primarily with respect to laws and social programs), the procedures that may be undertaken outside of Canadian borders towards gaining permanent residency are not discussed, even though this is the most common way of obtaining permanent residency. Once on Quebec soil, a permanent resident, irrespective of the procedure used to obtain their status, may refer to this guide to better understand their rights and recourses.

Consulting Laws

The complete text of the laws invoked is not usually reproduced in the guide, as they are available for free online. To see these texts, consult the following websites:

Institut canadien d'information juridique

<http://www.canlii.org> (Quebec and Canadian laws)

Through this site, major Tribunal decisions can also be consulted.

Publications Québec

<http://www.publicationsduquebec.gouv.qc.ca> (Quebec laws)

Department of Justice Canada

<http://laws.justice.gc.ca/en/home> (canadian laws)

Finding a lawyer

Consult the **Barreau du Québec** website (Quebec Bar Association)

<http://www.barreau.qc.ca/>

Montreal area

514 866-2490

reference@barreaudemontreal.qc.ca

<http://www.barreau.qc.ca/montreal>



Quebec city Area

418 529-0301

http://www.barreau.qc.ca/quebec/4/3/4_3_1.asp

Elsewhere in Quebec

referenceaap@barreau.qc.ca

514 954-3528

1-866-954-3528

Legal aid:

Commission des services juridiques (CSJ)

<http://www.csj.qc.ca>

Telephone: 514 873-3562

SECTION I

STATUS AND RECOURSES: IMMIGRATION IN QUEBEC

The purpose of this section is to provide an overview of the different categories of immigration status a person may have in Canada, as well as some of the common options and procedures available for obtaining status. For information regarding a specific situation, it is best to consult a lawyer or someone knowledgeable in immigration matters.

1 Immigration Status

The *Immigration and Refugee Protection Act (IRPA)*² is the law regulating Canada's immigration system. This law creates a number of different categories of immigration status that are defined in this section. It is difficult to give a complete overview of all the various types of status or the different ways people can end up in Canada without legal status, as Canada's immigration laws and policies can create confusing and multiple forms of precarious immigration status.

Immigration services and claim processing are the responsibility of Citizenship and Immigration Canada (CIC). The Immigration and Refugee Board (IRB) is the administrative tribunal that makes decisions regarding claims and challenges arising under the IRPA. It includes the Refugee Protection Division (RPD), the Immigration Division (ID) and the Immigration Appeal Division (IAD). Although the Act provides for the creation of a Refugee Appeal Division, it has not yet been implemented by the government. Also, *Immigration-Québec* is the body in charge of selecting permanent and temporary immigrants specifically for Quebec (for more information on the shared jurisdiction between provincial and federal governments regarding immigration matters, see Section I.3).

1.1 Canadian Citizen

People may be **Canadian citizens** by virtue of being born on Canadian soil (this includes children born in Canada whose parents do not have legal status), being born in another country to a Canadian parent, or by making an application for citizenship.

Unless citizenship is obtained by birth, a person must become a **permanent resident** before applying for citizenship in Canada. In the four years preceding their application for citizenship, they must have accumulated at least three years of residence in Canada. For each day the person spends in Canada prior to obtaining permanent resident status, they are credited with one half-day of residence to a maximum of one year. For every day spent in Canada after obtaining permanent resident status, the person is credited with one day. In some cases, a person's connection to Canada may be considered if the

2 S.C. 2001, c. 27. A list of acronyms used in this guide is found on page IV. Acronyms are sometimes used to lighten the text.

residency requirement is not met. Time spent outside the country to attend school or on business may in certain circumstances be considered towards the residency requirement. Children do not have to have lived in Canada for three years before a parent can apply for their citizenship, but they must still have obtained permanent residency first.

A Canadian citizen has the right to live in Canada permanently and to return to Canada regardless of whether they leave the country for long periods of time. Citizenship also provides a person with the right to hold a Canadian passport and to vote in Canadian elections, which permanent residence does not. A citizen cannot be removed from Canada for having been convicted of a crime.

1.2 Permanent Resident

A **permanent resident** is someone who has been granted permission by CIC to settle in Canada permanently. They are later able to become a Canadian citizen.

There are different procedures to follow to acquire permanent resident status depending on whether the applicant is inside or outside Canada at the time of application (see Section 1.3).

A permanent resident has the right to reside, study and work in Canada, as well as to access most of the same social services and benefits as citizens. However, unlike citizens, permanent residents can lose their status for a variety of reasons. First, permanent residents can lose their status if they are outside Canada for too long. A permanent resident must reside in Canada for at least two years within a five-year period.

A permanent resident can also lose their status for reasons of serious criminality, on security grounds (e.g. terrorism), for human and international rights violations, and organized criminality (e.g. people smuggling, gangs). People who lose their permanent residency for these reasons can subsequently be deported from Canada.

One common reason permanent residents lose this status is due to serious criminality, which is based on either the maximum sentence that could be given for a crime or the sentence that is actually given when the person is convicted. A crime is deemed to be serious if the maximum sentence possible for the crime is 10 or more years in prison, even if a shorter sentence, or no time at all in prison, is received. A crime is also deemed to be serious if the imposed sentence is more than six months in prison.

Permanent residents have Permanent Resident Cards as official proof of their status in Canada. Since June 2002, all new permanent residents automatically receive a Permanent Resident Card. Those having obtained permanent resident status prior to this date should have a paper Record of Landing (IMM-1000), and can apply for the Permanent Resident Card.

1.3 Accepted Refugee

There are two categories of people who can be accepted as refugees in Canada by the Refugee Protection Division of the Immigration and Refugee Board (IRB) — a Convention refugee or a person in need of protection. To be recognized as a **Convention refugee**³, a person must demonstrate that they have a well-founded fear of persecution in their country of origin on the grounds of race, religion, nationality, political opinion, or membership in a particular social group. A **person in need of protection** is someone who would personally be at risk of torture, risk to their life, or risk of cruel and unusual treatment or punishment if returned to their country of origin. These risks cannot be ones faced generally by other individuals in or from that country. Furthermore, the risk cannot be due to lawful sanctions, unless they were imposed in violation of international standards, nor can it be due to the unavailability of health or medical services in the country. For both of these classifications, the person must demonstrate that they are unable or unwilling, out of well-founded fear, to seek the protection of their state or country. In addition, the person must face persecution or risks in every part of the country (e.g. they cannot move elsewhere within the country and be safe).

Once a positive decision is received from the IRB granting a person Convention refugee status or status as a person in need of protection, that person can stay in Canada and apply for permanent resident status. This application for permanent resident status must be made within 180 days of the IRB decision. They will also have to apply for a Quebec Selection Certificate (CSQ – Certificat de Sélection du Québec) to *Immigration-Québec*, and this should be done as soon as possible as possession of a CSQ can give a person greater access to services⁴.

1.4 Refugee Claimant (or Asylum Seeker)

Once a person arrives in Canada and has made a claim for refugee protection, either at a port of entry, an airport, or at a Citizenship and Immigration Canada office, the person has the status of a **refugee claimant**. The person will remain a refugee claimant, with the rights and access to services this status entails, until they receive a decision from the IRB or they withdraw their claim for refugee status.

³ A Convention Refugee refers to the Convention relating to the Status of Refugees, July 28 1951, 189 U.N.T.S. 137 (entry into force: 22 April 1954, ratified by Canada on June 4th 1969), online: UNHCHR <<http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>>.

⁴ To know how to file a permanent resident application as a refugee recognized in Canada, including the procedure to obtain a CSQ, consult Immigration-Québec <<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/refugees-other/refugee-recognized/index.html>>.

1.5 Refused Refugee (or Failed Refugee Claimant)

For the purposes of this guide, the category of **refused refugee** or **failed refugee claimant** describes a person who has received a negative decision from the IRB, rejecting their claim for refugee protection in Canada. There is no way to appeal this decision, as the Refugee Appeal Division does not yet exist!

The only legal recourse against a negative refugee claim decision is to apply for what is called a “judicial review” at the Federal Court of Canada within 15 days of receiving the decision from the IRB (see Section I.2). If this is not done, the person will be called for an interview with a Canada Border Services Agency (CBSA) officer. CBSA is the enforcement wing of Citizenship and Immigration Canada. In most cases, the person will be offered the opportunity to apply for a Pre-Removal Risk Assessment (PRRA) (see Section II.2), which is then studied before the person can be removed from Canada.

When a person initially makes their claim for refugee protection in Canada, a “conditional departure order” is issued against them. If a person receives a positive decision from the IRB granting them either Convention refugee status or status as a protected person, this conditional departure order is dismissed. In the event of a negative decision from the IRB, however, this conditional departure order comes into effect after 30 days. If the person does not apply for judicial review and does not leave Canada within 30 days of the negative decision on their refugee claim (or within 30 days of a negative decision on their application for judicial review), the departure order automatically becomes a deportation order and the person will be prevented from returning to Canada in the future unless they receive special permission from CIC.

For a person who does not leave Canada “voluntarily”, it can take months or even years for the CBSA to enforce a person’s deportation order and make arrangements for the person to be removed from Canada.

1.6 Temporary Residents

This category includes people who are authorized to be in Canada for a limited time to visit, work or study.

Visitor visa: Most **visitors** have to apply for a visa to travel to Canada, unless they are from a visa-exempt country⁵. A visa is a travel document permitting a person to enter or remain in the country. Normally, visitors are authorized to stay in Canada for up to six months.

Work permit: **Foreign workers** need work permits to work legally in Canada. With some exceptions, a person must apply for a work permit before coming to Canada and have a job offer from an employer. Most work permits are valid for one year.

⁵ To obtain a list of these countries: Citizenship and Immigration Canada
<<http://www.cic.gc.ca/EnGLISH/visit/visas.asp>>.

Live-in caregivers: **Live-in caregivers** are granted a work permit to work for and live with a specific employer (in a private home) in order to provide care for children, elderly persons or persons with disabilities. A live-in caregiver is initially granted a work permit that is valid for one year, and can then renew this permit, which should be done before the current permit expires.

Study permit: **Foreign students** need a study permit for any studies or program longer than six months. To be eligible, the person must have been accepted by a school, college, university, or other educational institution.

Students and **workers** applying to come to Quebec temporarily must first apply through *Immigration-Québec* to obtain a Quebec Acceptance Certificate (CAQ – Certificat d'acceptation du Québec)⁶.

Staying longer

People who are in Canada on a visitor visa, work permit (whether they work as live-in caregivers or otherwise) or study permit can extend their stay by applying to renew their permit or visa. This application should be made before the permit or visa expires.

Temporary Resident Permit: A **Temporary Resident Permit** (TRP) is a document that authorizes a person to stay in Canada on a temporary basis even if they are not permitted to be in Canada or do not meet the requirements of the immigration laws and regulations either as a temporary resident or as a permanent resident. A TRP may be granted for reasons of public policy, national interest, or humanitarian and compassionate considerations. For example, in 2007, CIC created a special policy for granting such permits to people who were victims of human trafficking. A TRP may be valid from one day to three years. It may be extended or cancelled by an immigration officer. A TRP may carry privileges greater than those accorded to visitors, students and workers with temporary resident status. These permits are only issued in exceptional circumstances at the discretion of an immigration officer. Citizenship and Immigration Canada only grants these permits when there are so-called “compelling reasons”⁷.

1.7 Non-Status

This category consists of people in Canada **without any legal immigration status**. People can find themselves without any legal immigration status, whether permanent or temporary, for a variety of reasons. For example, some people have overstayed visitor visas, or study or work permits, while others did not leave Canada when ordered by CIC

⁶ To find out how to obtain a CAQ, consult Immigration-Québec <<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/students/obtaining-authorizations/index.html>> (student) or <<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/obtaining-authorizations/index.html>> (worker)

⁷ IPRA, Subsection 24(1), “if an officer is of the opinion that it is justified in the circumstances”, “may be cancelled at any time”. See also (“compelling reasons”): Citizenship and Immigration Canada, Annual Report to Parliament on Immigration, 2008, Section 3, <<http://www.cic.gc.ca/english/resources/publications/annual-report2008/section3.asp>>.

following the refusal of their refugee claim. Those who had deportation orders issued against them but did not show up on the date scheduled for their removal will usually have arrest warrants issued against them.

People from Moratorium Countries

Canada currently has a moratorium (temporary suspension) on removals to five countries based on a situation of generalized insecurity prevailing in these countries. This means that Canada will not deport people to these countries. The current countries under moratorium are Afghanistan, the Democratic Republic of Congo, Haiti, Iraq, and Zimbabwe. This moratorium does not confer any right of permanent residence to the citizens of these countries; it simply prevents their removal from Canada. Canada reviews the situation in these moratorium countries on a fairly regular basis in order to determine whether to maintain or lift the moratorium. The moratorium may also be lifted against an individual for reasons of criminality.

Reasons for being Inadmissible to Canada

The *Immigration and Refugee Protection Act* explains that a person may be inadmissible for reasons of security, human or international rights violations, serious criminality, criminality, and organized criminality. A person can also be inadmissible to Canada if they have a health condition that is likely to be a danger to public health, public safety, or may place an excessive demand on health services, though this “excessive demand” provision does not apply to a person who has applied for refugee status or a protected person, nor does it apply to a spouse or a child who has been sponsored by a family member. A person, other than an accepted refugee and their immediate family, may be inadmissible for financial reasons if an immigration officer determines that they will be unable or unwilling to support themselves financially in Canada. A person may also be inadmissible for misrepresentation regarding any false information given to an immigration officer. Lastly, a person may be inadmissible for past violations of immigration laws such as having been deported from the country.

2 Recourses to remain in Canada

The recourses and applications listed are generally the only ways a person can stay in Canada if they lose their refugee claim or permanent resident status, stay beyond the validity of their work permit, visitor visa, or study permit, or otherwise find themselves in Canada without status⁸.

First, the recourses that are open to people looking to regularise their status are described. They are found in the IRPA⁹. Different ways of applying to remain in Canada and of acquiring permanent resident status are discussed in the following section.

2.1 Judicial Review

As mentioned previously, there is no appeal process for decisions rendered by the Refugee Protection Division of the IRB, nor can one appeal a decision rendered by an immigration officer or a CBSA officer, for example regarding an application for permanent residence in Canada on humanitarian and compassionate grounds or a PRRA application. Appeals in immigration matters are discussed below in section II.4. One can, however, apply to the Federal Court of Canada for judicial review of these decisions. Judicial review is much more limited than an appeal, and in general only reviews the action or decision to determine whether all procedural requirements were fulfilled and does not actually examine the merits of the decision. Judicial review is a complicated process that normally requires the assistance of a lawyer, as people can only represent themselves or be represented by a lawyer before the Federal Court, as opposed to another type of intermediary such as an immigration consultant, friend, or community organization.

Before a person is granted a hearing on their application for judicial review, they must first be granted “leave” (e.g. permission) for judicial review, meaning a judge must authorize the application to go forward to a hearing. Approximately 90% of applications for judicial review are rejected at this preliminary stage.

2.2 Pre-Removal Risk Assessment

In most cases, if a person is ordered to leave Canada, they are given the option of applying for a Pre-Removal Risk Assessment (PRRA) prior to being deported. A person’s removal from Canada will be suspended until a decision is made on this assessment. In a PRRA, a person must demonstrate that, if deported, they will face a personalized risk of persecution, risk to their life, risk that they may be subjected to cruel and unusual treatment, or risk of torture in the country in which they are being returned. If the

⁸ For more information about the IRB, including useful diagrams describing the processes of granting asylum, hearings, admissibility hearings, judicial reviews of grounds for detention, or appeals, consult “Immigration and Refugee Board of Canada: An Overview” online <<http://www.irb-cisr.gc.ca/eng/brdcom/publications/oveape/Pages/index.aspx>>.

⁹ One should be aware, however, that the Refugee Appeal Division was never implemented, although it is specifically mentioned and included in the IRPA.

person is a refused refugee claimant, the PRRA application must be based on new evidence (e.g. evidence that was not available at the time that their refugee claim was heard by the IRB).

If the PRRA is accepted, the person will be granted **protected person** status and have the right to apply for permanent residence in Canada (see Section 1.3). In reality, however, very few of these requests are accepted.

2.3 Stay of Deportation

This is a motion that can be made to the Federal Court asking to suspend a deportation that has been scheduled to take place at a specific date and time. Normally, when a person is facing deportation from Canada, CBSA calls the person in for an interview and informs them in writing of the date and time that their deportation will take place, as well as provides them with their removal itinerary.

A person who applies to the Federal Court for a stay of deportation must also file an application for judicial review of the decision rendered by a tribunal, court or an officer. Usually, when a motion for a stay of deportation is made, a hearing is held. In a stay of deportation a person is essentially asking the Federal Court to temporarily suspend their removal from Canada on an urgent basis until the Court has a chance to judicially review a decision.

2.4 Admissibility Hearings and Appeal to the Immigration Appeal Division

If a **permanent resident** is convicted of a serious crime, CBSA can prepare a report and refer the case to the Immigration Division of the IRB for an admissibility hearing. The Immigration Division will then hold a hearing to determine whether the person should lose their status as a permanent resident and be deported on the basis of whether the crime meets the definition of “serious”.

In many cases, if the person loses their permanent resident status and is facing deportation following this hearing, they can appeal to the Immigration Appeal Division (IAD). During this appeal, they can present other factors that might influence their case, such as remorse for the crime and whether they sought counselling, as well as humanitarian and compassionate factors, such as the length of time they have been in Canada, if they have family and children in Canada, and the risks they may face in the country to which they would be deported.

However, a person cannot appeal to the IAD if they were ordered to be deported following an admissibility hearing because they were convicted of a serious crime for which they received a prison sentence of two years or more.

If an appeal is successful, the removal order could be cancelled or a stay of deportation could be issued for a certain length of time, during which the person has numerous

conditions to obey. If the person breaks a condition, especially if they commit another crime, the stay of deportation will be cancelled and the person can be removed from Canada. If the person obeys all of the conditions for the period of time specified their deportation order could be cancelled or they may have to go back to the IAD for a review of their case.

3 Applying for permanent residence from within Canada

Aside from the avenues towards permanent residence mentioned previously, such as those made by Convention refugees or protected persons (see Section I.1), there are a variety of other categories of people who can apply for permanent residence from within Canada. In this section, different ways of applying for permanent residence from within Canada are presented. It should, however, be noted that Citizenship and Immigration Canada's general rule is that a person must apply for permanent residence (i.e. apply to immigrate) from their country of origin before coming to Canada.

Shared Jurisdiction on Immigration Matters between Canada and Quebec¹⁰

Immigration falls under the shared jurisdiction of the Government of Quebec and the Government of Canada. A person planning to immigrate to Quebec from outside of Canada has to apply to *Immigration-Québec* first to see if they meet the specific selection criteria of Quebec. The application will then go to CIC at the federal level to ensure that the person meets the admission requirements, such as medical and security checks. To immigrate to Quebec, a person and their family members must meet both the selection criteria (provincial) and the admission requirements (federal). The official immigration document issued by the Quebec government is the Quebec Selection Certificate (CSQ).

While refugees, family sponsorships (including spouses and common-law partners) and people applying for permanent residence on humanitarian grounds fall under federal jurisdiction, they will still need to apply for a CSQ at some point in the process.

3.1 Canada Experience Class – Quebec Selection Certificate

The Canada Experience Class allows **temporary foreign workers** (here on a valid work permit) and **recent graduates** with Canadian educational credentials who are already in Canada, but in a province other than Quebec, to apply for permanent residence from within Canada¹¹. Applicants must have worked or studied in fields that meet minimum requirements set by the government and have knowledge of English or French, as well as either work experience as a temporary foreign worker or work experience following graduation from a Canadian post-secondary institution.

Applicants living in Quebec must make a similar application to Immigration-Québec¹². Under an agreement with the federal government, Quebec chooses its own immigrants, including those applying in this category.

¹⁰ The shared jurisdiction is established by the Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens, 1991.

¹¹ To know how to apply for permanent residence under the Canadian Experience Class, consult CIC <<http://www.cic.gc.ca/english/immigrate/cec/apply-how.asp>>.

¹² To know how to file this type of application for permanent residence, including how to apply for a CSQ, consult Immigration-Québec <<http://www.Immigration-Québec.gouv.qc.ca/en/immigrate-settle/students/extending->

Foreign students can apply for a Quebec Selection Certificate (CSQ) up to 12 months before graduating with a diploma if they meet the following criteria:

- Have a valid study permit and, where applicable, a Certificate of Acceptance to Quebec (CAQ) for studies;
- Comply with the conditions of their study permit and their CAQ for studies;
- Demonstrate, with supporting documents, that studying has been their principal activity.

Temporary workers in Quebec who have a CAQ that is valid for 12 months or more can apply for a CSQ at any time, though the sooner the better. The person must meet the normal requirements to immigrate to Quebec, which is essentially a points system based on education, work experience, and language abilities, amongst other criteria.

Refugee claimants in Canada and workers without valid work visas are not eligible to apply under this category.

3.2 Humanitarian and Compassionate Cases

Under this class a person must demonstrate that they would face “unusual and undeserved or disproportionate hardship” if they were required to leave Canada in order to apply for permanent residence¹³. This hardship can range from the instability in a person’s country of origin to a person’s personal situation in Canada (e.g. they have Canadian-born children and would be separated from them if they had to leave the country). While a person must demonstrate this excessive hardship, they must usually also show that they are significantly established in Canada. This is usually demonstrated by showing that one has been employed, has attended language courses, has volunteered in the community, and so on.

These applications normally take years to be processed and do not, in the meantime, stop a person’s deportation. The Humanitarian and Compassionate (H&C) class is one of the only ways for a person living in Canada without any legal status to obtain permanent residence status without having to leave the country. However, a person may be refused under this class if they have a criminal record (and do not ask for an exemption) or if they are receiving social assistance (welfare), amongst other reasons, when the application is submitted or when it is processed.

stay/stay-quebec/index.html> (student) or <<http://www. Immigration-Québec.gouv.qc.ca/en/immigrate-settle/temporary-workers/permanent-resident/index.html>> (worker).

13 To know how to file an application for permanent residence for humanitarian and compassionate considerations (from within Canada), consult CIC <<http://www.cic.gc.ca/english/information/applications/handc.asp>>.

3.3 Spouse or Common-Law Partner in Canada Class

This category allows either a **permanent resident** or **Canadian citizen** to sponsor their spouse or common-law partner who is living with them in Canada¹⁴. A common-law partner is defined for immigration purposes as a couple who has been living together in a conjugal relationship for at least one year in a continuous, uninterrupted 12-month period, with the exception of short absences for business travel or family reasons.

The person being sponsored may have either temporary status in Canada or no legal immigration status at all. However, it is important to note that this class does not apply equally to all people living in Canada without status. In some cases, once the application has been submitted to Citizenship and Immigration Canada, the sponsored spouse or common-law partner who does not have status is allowed to remain in Canada while the application is being processed, without fear of being deported. However, spouses or common-law partners being sponsored will not be protected by this stay of deportation during the processing of the application if one of the following situations applies:

- The person sponsored is inadmissible for security, human or international rights violations, serious criminality, or organized criminality;
- The person sponsored is excluded by the Refugee Protection Division under Article F of the Geneva Convention, such as for having committed war crimes, or a serious non-political crime;
- The person sponsored has charges pending **or** in those cases where charges have been laid but dropped by the Crown;
- The person sponsored has an outstanding warrant for their removal from the country;
- The person sponsored has previously hindered or delayed removal;
- The person sponsored has previously been deported from Canada and did not obtain permission to return.

The main criteria for this application is whether the relationship between the applicant and the sponsor is genuine. Proof of this includes a marriage certificate (if applicable), birth certificates of children (if applicable), photographs, joint accounts and joint leases.

The sponsor commits to being responsible for the basic needs of the applicant for a period of three years from the date the person sponsored receives their permanent resident status. Once a sponsorship has been approved by CIC and the sponsored person obtains permanent residence in Canada, the sponsor cannot cancel the sponsorship regardless of whether the relationship breaks down or the sponsor becomes unemployed.

It should be noted that:

“All family members, including all dependent children, whether they are in Canada or not, must be both declared on [the] application, and examined. If family members are not examined, it is generally not possible to sponsor them at a later date. In

¹⁴ To know how to file an application for permanent residence from within Canada for a spouse or common-law partner of a Canadian citizen or permanent resident, consult CIC
<<http://www.cic.gc.ca/english/information/applications/spouse.asp>>.

addition, failure to declare family members on [an] application and have them examined goes against [one's] duty to provide truthful and accurate information, and may cause [the applicant] to be found inadmissible to Canada"¹⁵.

3.4 Live-in Caregiver

People living in Canada under the **live-in caregiver** program can apply for permanent residence if they have been working in Canada for at least two of the three years preceding their application¹⁶. They must also hold a valid work permit to work in a home providing live-in care for children, seniors or the disabled. They also need to prove to CIC that they are able to support themselves and any family members they may be including in their application without recourse to social assistance.

3.5 Temporary Resident Permit Holder (TRP)

TRP holders are eligible to become permanent residents of Canada if they have not become inadmissible on any grounds other than those for which the original permit was issued and have resided continuously in Canada for three to five years, depending on the nature of their original inadmissibility¹⁷.

¹⁵ Citizenship and Immigration Canada:
<<http://www.cic.gc.ca/english/information/applications/guides/5289E11.asp>>.

¹⁶ To know how to file an application for permanent residence from within Canada as a live-in caregiver, consult CIC <<http://www.cic.gc.ca/english/information/applications/live-in.asp>>.

¹⁷ To know how to file an application for permanent residence from within Canada as a temporary resident permit holder, consult CIC <<http://www.cic.gc.ca/english/information/applications/permit.asp>>.

Permanent resident applications made outside Canada

People can come to Canada as permanent residents in numerous ways, having applied for this status outside of the country at a Canadian visa office or embassy. For the purposes of this guide, these applications are not covered in detail. However, let's simply mention that people can apply for permanent residence from outside Canada as skilled workers, business investors, business entrepreneurs, and self-employed persons. In addition, permanent residents or citizens can sponsor family members outside of the country to come to Canada (Family Class). People can also be selected as refugees abroad by Citizenship and Immigration Canada or be sponsored to come to Canada as refugees by groups of two to five people or community organizations. All the people in these categories, whose applications were accepted, would be granted permanent residence as of the date they arrive in Canada.

4 Three Overarching Elements

Before each social program and law is described in detail, it is important to discuss three overarching elements that may influence one's access to benefits and employment. These three important elements are the notion of "residence", the possibility of working legally and the Social Insurance Number.

4.1 Notion of "Residence"

The notion of "residence" is crucial because it is often mentioned in legislation. It is different from the notion of "permanent residence", which refers to a specific immigration status. The notion of residence is an eligibility criteria used to determine whether a person is entitled to certain benefits or services. However, the definition of the "residence" varies according to the context or legislation in question, thus rendering the situations of immigrants even more complex.

In some cases, one must refer to the notion of "residence" as defined in the Civil Code of Quebec (C.C.Q.). Hence, "the residence of a person is the place where he ordinarily resides" (s. 77 C.C.Q.)¹⁸.

In other cases, the notion of "residence" is defined in a section of a specific law or regulation. This definition then applies solely in the context covered by that law and may differ greatly depending on the laws in question. For example, primary and secondary-level instruction is generally free, but the payment of additional student fees may be required for students who are not residents of Quebec (discussed further in Section II.4.1). In the context of the Education Act, the notion of "residence" in Quebec is defined in Section I of the Regulation and includes about ten specific situations.

Some laws or regulations also refer to the notion of "residence" without ever defining the term, which creates numerous difficulties in determining the rights of non-status people in Quebec.

It is therefore crucial to pay special attention to the criteria associated with the notion of "residence" in any given context. When in doubt, always consult with a specialist.

4.2 Possibility of Work and Necessity of a Work Permit

To work legally in Canada a person who is not a **Canadian citizen** or **permanent resident** must have a valid work permit (and a Social Insurance Number).

¹⁸ C.C.Q. Regarding the notions of domicile and residence:
 s. 75. The domicile of a person, for the exercise of his civil rights, is at the place of his principal establishment.
 s. 76. Change of domicile is effected by actual residence in another place coupled with the intention of the person to make it the seat of his principal establishment.
 The proof of such intention results from the declarations of the person and from the circumstances of the case.
 s. 77. The residence of a person is the place where he ordinarily resides; if a person has more than one residence, his principal residence is considered in establishing his domicile.

People who want to apply for a work permit from outside of Canada to work in Quebec must first apply for a Quebec Acceptance Certificate (CAQ) prior to coming to Canada through *Immigration-Québec*¹⁹.

People are not normally able to apply for a work permit once they are in Canada. However **accepted refugees** and **protected persons**, some **refugee claimants** and some **failed refugee claimants** can apply directly to Citizenship and Immigration Canada for a work permit²⁰. In certain cases, the **non-status** spouses or common-law partners of a Canadian citizen or permanent resident being sponsored can apply for a work permit while their sponsorship application is being processed.

Accepted refugees can apply for a work permit while waiting for their permanent residence application to be processed. Even if an accepted refugee does not apply for permanent residence within 180 days of receiving refugee status, as required, as a recognized refugee or protected person they cannot be removed from Canada (except in very limited circumstances) and are eligible for a work permit.

Refugee claimants who have made a claim for refugee status and are waiting for a hearing before the Refugee Protection Division (RPD) of the IRB can also apply for a work permit once they have submitted their Personal Information Form (PIF) outlining their reasons for claiming refugee protection and have undergone a medical exam. The PIF is due within 28 days of the initial interview with an immigration agent who determines whether their claim is eligible to be referred to the RPD.

Failed refugee claimants who are still allowed to remain in Canada because arrangements have not yet been made for their removal from Canada (no deportation date has yet been set) can apply for a work permit. As long as the date for a person's removal from Canada has not come and gone without the person presenting themselves, they will usually be able to obtain a work permit while they exercise their legal recourses. The list of documents required for a work permit application varies depending on the immigration status of the person applying and is available on CIC's website.

If a person does not have an official document from CIC proving their status, depending on the situation the following documents could be used as proof of status in order to obtain a work permit (and subsequently as proof of status in order to apply for Employment Insurance): a Temporary Resident Permit, proof that a PRRA application was submitted to CIC, Federal Court applications or decisions, a decision from the RPD of the IRB that the person is a protected person or Convention refugee, or documentation of unenforceable removal order issued by CIC (particularly for people from countries where there is a moratorium on removals).

Foreign workers who wish to come to Canada to work obviously need a work permit. The procedures for obtaining such a permit vary depending on the type of job they seek. Some people need to apply to *Immigration-Québec* for a CAQ first, and then for a work permit from CIC. Sometimes a person need only apply to CIC for a work permit, without first going through *Immigration-Québec*. There are also special procedures within

¹⁹ To know how to apply for a CAQ and for a work permit, consult *Immigration-Québec* <<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/obtaining-authorizations/index.html>>.

²⁰ To know how to apply for a work permit, consult CIC <<http://www.cic.gc.ca/english/work/apply-how.asp>>.

Immigration-Québec and CIC depending on the type of job a person wants to do in Quebec. It is best to review the specific information for each case on CIC and *Immigration-Québec* websites.

Foreign students may be employed on the campus of their educational institution if they have a study permit and are engaged in full-time studies. No work permit is required for on-campus work.

To qualify for a work permit to work off campus, a student must:

- Have completed, in the 12 months prior to their application, at least six months of full-time study at an institution participating in the Off-Campus Work Permit program;
- Still be studying full time; **and**
- Have obtained satisfactory academic results.

Their work permit authorizes them to work a maximum of 20 hours a week during regular school terms and full-time during vacations provided in the school calendar (such as winter and summer vacations and school breaks).

Graduates from a recognized program of study at a university, public college or a publicly funded private college who wish to work for a maximum of three years in employment related to their course of study can apply to *Immigration-Québec* for a CAQ, and then to CIC for a work permit. The maximum length will depend on the length and location of their studies, and the location of their employer. Graduates must submit an application for a work permit within 90 days of the issuance of their final marks. Their study permit must be valid upon submission of their application for a work permit.

Temporary Resident Permit (TRP) holders whose permits are valid for a minimum of 6 months are eligible for a work permit. So are their family members.

In-Canada permanent resident applicants and their family members can apply for a work permit, including members of the following classes who are determined eligible for permanent resident status: live-in caregiver, spouse or common-law partner, and humanitarian and compassionate refugees.

Most **visitors** are not eligible to apply for a work permit once in Canada unless they have received an acceptance letter regarding an "In-Canada permanent resident application", or are a Mexican or U.S. citizen (though only in certain circumstances), who may apply for a work permit in Canada under certain North American Free Trade Agreement (NAFTA) categories.

Certain people may also work temporarily in Canada **without a work permit**, such as business visitors, news reporters, public speakers, performing artists and foreign representatives, amongst others²¹.

21 For a complete list of people who do not require a work permit, visit <<http://www.cic.gc.ca/EnGLISH/work/apply-who-nopermit.asp>>.

4.3 Social Insurance Number

The Social Insurance Number (SIN) is a nine-digit number that is required in order to work in Canada or to have access to government programs and benefits.

People who are not Canadian citizens or permanent residents are identifiable by their SIN because the first number will be a 9. These temporary SINs normally have expiry dates that coincide with the expiry date indicated on a person's immigration documents or, if there is no expiry date, two years after the date the immigration document was issued. A person with this type of SIN can exchange it for a new number if they obtain permanent resident status.

To obtain a Social Insurance Number, temporary residents are required to show:

- Their work permit; **or**
- Their study permit and a contract of employment from the learning institution or employer on campus where the authorization to study was obtained (this contract must show the start and end date of employment and these dates must fall within the study permit dates); **or**
- Their visitor record indicating one is authorized to work in Canada.

A number of social programs, such as EI, require that people provide their SIN. Consequently, a person's eligibility for such programs generally depends on their ability to obtain a work permit, which in turn depends on their immigration status in Canada.

For more information about SIN applications:

Services Canada

Toll-free: 1 800 808-6352 (for SIN)

<http://www.servicecanada.gc.ca/eng/sin/apply/how.shtml>

SECTION II

SOCIAL SAFETY NET IN QUEBEC

Access to social benefits and services is often dependent on one's immigration status. In Section II, the rights and recourses of Quebec residents with respect to social laws and programs are discussed. For each topic, the general programs and eligibility conditions are first outlined. Then, the way in which immigration status affects accessibility is presented. Applicable laws and other useful resources are also provided. For information regarding a specific situation, it is best to consult a lawyer or others who are knowledgeable in immigration matters or regarding social services and social law.

1 Legal Aid²²

In Quebec, people who are admissible to the Legal Aid program can have access to the services of a lawyer or notary to obtain legal advice, and be represented before a variety of courts and tribunals either for free or by making a financial contribution.

Admissibility to Legal Aid depends on two main factors: 1) a person's or a family's financial situation and their family composition; **and** 2) the legal problem for which they are seeking counsel.

Financial eligibility

Financial eligibility is based on one's annual gross income. Legal Aid eligibility scales are very low and people who are working full-time for minimum wage are often not eligible for free Legal Aid. The annual income of a person's spouse or common-law partner is also taken into account in determining their eligibility. Income is not just restricted to employment income; it can include employment insurance benefits, CSST benefits, student bursaries, and even child support, to name only a few examples. Family allowances (see Section II.5) are not considered income. People receiving social assistance benefits (welfare) are automatically financially admissible to free Legal Aid.

Legal Aid with contribution means that people who are not eligible for free Legal Aid may receive services if they contribute between \$100 and \$800 towards the total cost of the legal services and/or proceedings. The amount of the contribution required depends on a person's income and family composition. The higher their income, the higher their contribution. These contribution amounts represent the maximum amount a person would have to pay for the legal services or proceedings on a given issue, regardless of whether the real cost is much higher. If the cost of the procedures or services is less than the maximum contribution a person has to pay, they are only responsible for that lesser amount.

To be financially eligible for free Legal Aid or for Legal Aid with contribution, a person's gross annual income must be within the income ranges below (as of January 1st, 2009).

²² The Legal Aid Program is created by the *Legal Aid Act*, R.S.Q. c. A-14.

Financial Eligibility to Legal Aid based on Gross Annual Income²³

Family composition	Maximum gross annual income for FREE Legal Aid	Gross annual income for Legal Aid WITH CONTRIBUTION (of \$100 to \$800)
Single person	\$12,149	Between \$12,150 and \$17,313
Single adult with one child	\$15,212	Between \$15,213 and \$21,677
Single adult with two or more children	\$16,591	Between \$16,592 and \$23,641
Couple with no children	\$16,941	Between \$16,942 and \$24,141
Couple with one child	\$19,170	Between \$19,171 and \$27,318
Couple with two or more children	\$20,548	Between \$20,549 and \$29,283

It is important to note that people may still be admissible if they have income over these amounts because deductions are allowed for certain expenses, such as day-care expenses. By the same token, certain assets (such as property) can render a person inadmissible even if their annual income meets the above scales. It is best for a person to make an appointment at their local Legal Aid office to determine whether they are eligible for Legal Aid²⁴.

Legal Aid offices exist all over Quebec and handle most areas of law covered by Legal Aid. In Montreal, there are special Legal Aid offices that handle criminal and immigration law, and youth division.

²³ For a detailed gross annual income schedule: Community Legal Services of Point St. Charles and Little Burgundy <<http://www.servicesjuridiques.org/html/depliants.html>>

²⁴ To get the contact information of the Legal Aid office of a particular area: Commission des services juridiques at 514 873-3562 or <http://www.csj.qc.ca/SiteComm/W2007English/Main_En_v3.asp>.

Mixed Model and Free Choice

The Quebec Legal Aid system is structured under a mixed model, which means that one can receive legal services from either the permanent lawyers of the Legal Aid network who work at local Legal Aid offices, or from lawyers or notaries who are in private practice and accept Legal Aid mandates. The choice belongs to the person requesting legal services²⁵.

A lawyer in private practice can choose not to take Legal Aid mandates. However, if that lawyer accepts to represent a person regarding a specific issue for which they obtained a Legal Aid mandate they are not permitted to additionally charge their client for those services.

Services Covered

The following areas of law and legal problems are usually covered by Legal Aid: social assistance (welfare), employment insurance, housing and proceedings before the Rental board, family law, criminal issues, and contesting administrative decisions by government departments and bodies regarding benefits or compensation programs, such as social assistance, the *Société de l'assurance automobile du Québec* (SAAQ) or the Quebec Pension Plan, etc. To determine whether a specific issue or legal problem is covered by Legal Aid it is best to make an appointment at one of the Legal Aid offices to have the situation evaluated.

For immigration matters, services related to a refugee claim, detention hearings before the Immigration Division, applications for judicial review to the Federal Court, appeals to the Immigration Appeal Division, appeals to the Federal Court of Appeal, and applications for permanent residence on humanitarian and compassionate grounds may be covered by Legal Aid. Certain other applications or services may be covered on a discretionary basis by Legal Aid.

Application for Review

A person who is refused Legal Aid can apply for a review of that decision within 30 days. A review committee will subsequently render a new decision, which is final and without appeal. The request for review must be made in writing, with the reasons for the request for review, and sent (by registered mail) to:

Président de la Commission des services juridiques

Comité de révision

C.P. 123, Succ. Desjardins

Montréal (Quebec) H5B 1B3

²⁵ *Legal Aid Act*, s. 52 (Mixed model); *Regulation respecting the application of the Legal Aid Act*, s. 56.1 (Free choice).

Legal Aid and Immigration Status

Legal Aid legislation is silent with regards to immigration status and requires only that a person reside in Quebec in order to be eligible. For this reason, only people in Quebec on a temporary basis may not be eligible for Legal Aid due to their immigration status. People in all the other categories of immigration status mentioned in this guide would be eligible for Legal Aid, including those without any legal immigration status.

A decision made in 2005 by the review board of the *Commission des services juridiques* states explicitly that a person is eligible for Legal Aid as soon as they reside in Quebec, regardless of their immigration status²⁶:

“Le Comité informe le contestant-demandeur qu’une personne a droit à l’aide juridique dès qu’elle réside sur le territoire du Québec, peu importe son statut juridique en vertu des lois d’immigration” (paragraph 7 of the decision).

This decision followed a case in which the person was in Canada without any legal immigration status but was found eligible for Legal Aid based on the financial information they had provided.

Legal Aid legislation also provides for the exceptional case that people who would not otherwise be eligible for Legal Aid, such as visitors, would be eligible if they are detained by immigration or other authorities. Indeed, the *Legal Aid Act* provides that a person may be eligible in “any other case if the freedom of the person to whom Legal Aid would be granted is or is likely to be seriously restricted, due to the possibility of committal to custody or detention”²⁷.

²⁶ Comité de révision de la Commission des services juridiques (22 June 2005), CR-05-0170.

²⁷ *Legal Aid Act*, Subsection 4.7(8).

Applicable laws:

Legal Aid Act, R.S.Q. c. A-14; *Regulation respecting Legal Aid*, O.C. 1073-96, 1996 G.O. 2, 3949; *Regulation respecting the application of the Legal Aid Act*, R.Q. c. A-14, r.1.

For more information:

Commission des services juridiques (CSJ)

<http://www.csj.qc.ca>

Telephone: 514 873-3562

Centre communautaire juridique de Montréal (CCJM)

<http://www.ccjm.qc.ca>

Telephone: 514 864-2111

Community Legal Services of Pointe St. Charles and Little Burgundy

<http://www.servicesjuridiques.org>

Telephone: 514 933-8432

2 Individual And Family Assistance (Welfare)²⁸

The *Ministère de l'Emploi et de Solidarité sociale du Québec* (MESS) administers two last-resort financial assistance programs: the **Social Assistance Program** and the **Social Solidarity Program**.

Applications for financial assistance are usually made at the applicant's closest Local Employment Centre (Centre Local d'Emploi – CLE). However, in Montreal, applications made by refugee claimants or sponsored immigrants are made at the *Centre spécialisé des demandeurs d'asile, des garants défaillants et des parrainés* (CSDAGDP)²⁹.

Social Assistance Program

The purpose of the **Social Assistance Program** is to grant last-resort financial assistance to people with no severe limitations for employment and to people with temporary limitations for employment. Temporary limitations include being at least 20 weeks pregnant, being 55 years old or more, or being in charge of an infant younger than 5 years old. Basic benefit amounts are shown on next Table.

Eligibility for the Social Assistance Program is based on a number of criteria, as well as on a person's immigration status. Notably, one must:

- Show that their financial resources as well as the value of their assets (especially property or vehicles) are equal to or less than the amount prescribed by regulation. If this requirement is not met, the monthly payment may be reduced or the application may be refused;
- Reside in Quebec (that is, to normally live in Quebec);
- Be an adult 18 or older (a person younger than 18 may be eligible for social assistance if they are or have been married, if they are the parent of a dependent child, or legally emancipated).

Eligibility for welfare and the benefits received are determined based on the income of the applicant. This income may be the result of employment, child support payments, a retirement pension under the Quebec Pension Plan, workers compensation from the *Commission de la Santé et Sécurité de Travail* (CSST), or revenue from the *Société de l'assurance automobile du Québec* or the Quebec Parental Insurance Plan.

Welfare recipients can usually obtain free prescription medication by presenting their claim slip ("*carnet de réclamation*") at the pharmacy. This access to free medication falls under the Basic Prescription Drug Insurance Plan, which is administered by the *Régie de l'assurance maladie du Québec* (RAMQ). One must, therefore, be eligible for the RAMQ plan to then have access to the Basic Prescription Drug Insurance Plan. There are many people, for example refugee claimants, who are not eligible for the RAMQ plan (see Section II.8 for more information).

²⁸ Last-resort financial assistance was introduced under the *Individual and Family Assistance Act*, L.R.Q. c. A-13.1.1. Although the names of different financial assistance programs change with time, they are generally known as "welfare" or "social assistance"

²⁹ The CSDAGDP brings together representatives from the Ministère de l'Emploi et de la Solidarité Sociale (MESS) and the Ministère de l'Immigration et des Communautés culturelles du Québec (MICC).

The Program will also reimburse certain costs that arise from a special need (e.g. buying glasses) or a specific situation (e.g. damage following a fire).

Social Solidarity Program

The purpose of the **Social Solidarity Program** is to grant last-resort financial assistance to people with severe limitations to employment. In a two-adult family, only one adult must qualify for the program in order for both adults (spouses or common-law partners) to be in the program.

To obtain a Social Solidarity allowance, a medical report must be produced attesting to the fact that your physical or psychological condition is significantly impaired, either permanently or for an indeterminate time (but for at least 12 months) and, therefore, in combination with your socio-occupational profile (little schooling, no work experience), you or your spouse have severe limitations to employment.

Social Assistance Program and Social Solidarity Program Benefit Amounts³⁰

Social Assistance Program					
Category	Base benefit	Temporary limitations allowance	QST Amount	Total Amount	Excluded work income
1 adult					
No limitations	\$564	\$0	\$24.92	\$588.92	\$200
Temporary limitations	\$564	\$120	\$24.92	\$708.92	\$200
1 spouse of student					
No limitations	\$156	\$0	\$14.83	\$170.83	\$200
Temporary limitations	\$156	\$120	\$14.83	\$290.83	\$200
1 independent adult admitted to a shelter or required to live in an establishment for social reintegration purposes or 1 minor adult sheltered with his or her dependent child	\$183	\$0	\$0	\$183	\$200

30 Ministère de l'Emploi et de la Solidarité sociale, "Adult employment-assistance benefit amounts, depending on your situation as of January 1, 2009": <http://www.mess.gouv.qc.ca/solidarite-sociale/programmes-mesures/assistance-emploi/prestation-de-base_en.asp>. Certain factors can affect the amount of benefits received. For example, special benefits or adjustments may be added for dependent children. Participation in an employment program can qualify the recipient for a "Return to Work" supplement. Benefits are reduced if the recipient is living with their parents. QST amounts can also vary if the recipient shares an apartment.

Social Assistance Program (continuation)					
2 adults					
No limitations	\$874	\$0	\$29.67	\$903.67	\$300
Temporary limitations	\$874	\$206	\$29.67	\$1,109.67	\$300
2 adults in different situations					
1 adult with no limitations and 1 adult with temporary limitations	\$874	\$120	\$29.67	\$1,023.67	\$300
2 adults with temporary limitations, of which 1 adult is not entitled to the temporarily limited capacity allowance	\$874	\$120	\$29.67	\$1,023.67	\$300

Social Solidarity Program

Category	Social Solidarity Allowance	QST Amount	Total Amount	Excluded work income
1 adult	\$858	\$24.92	\$882.92	\$100
1 spouse of a student	\$434	\$14.83	\$448.83	\$100
1 independent adult admitted to a shelter or required to live in an establishment for social reintegration purposes or 1 minor adult sheltered with his or her dependent child	\$183	\$0	\$183	\$100
2 adults	\$1,283	\$29.67	\$1,312.67	\$100

Eligibility for Financial Assistance based on Immigration Status

Canadian citizens and **permanent residents** are eligible for both the Social Assistance Program and the Social Solidarity Program. However, a person accepted from outside of Canada as a permanent resident such as a skilled worker is not usually eligible for last-resort financial assistance in the 90 days following their arrival.

In their application for permanent residence, these individuals were required to demonstrate their ability to support themselves upon their arrival to Canada. Thus, they are assumed to have a certain amount of liquid assets (this amount is determined by law) with which to live in Canada for a 90-day period. The person is assumed to have these assets even if they are no longer in actual possession of them (due to spending, theft, loss, etc.)³¹. The individuals who fall under this category are therefore ineligible for financial assistance because they are assumed to have an income that exceeds the maximum allowed income for welfare during the first 90 days in Canada.

Convention refugees or **protected persons** are not assumed to have these liquid assets, even if they are selected from outside of Canada. Also, certain rules apply to **sponsored immigrants** – these will be explained shortly.

Liquid Assets of the Primary Welfare Applicant

In the case of a couple (spouse or common-law) who arrive in Canada and then apply for financial assistance, the primary welfare applicant is assumed to possess the total amount of liquid assets discussed. In the case of separation or divorce after the family's arrival to Canada, the spouse and/or dependent children who were included in the application can submit an independent welfare claim, without these liquid assets being attributed to them.

Like Canadian citizens and permanent residents, **accepted refugees** in Canada and **protected persons** are eligible for the Social Assistance Program and the Social Solidarity Program once they have obtained their Quebec Selection Certificate (CSQ). The application for a CSQ can be made as soon as the decision from the IRB or CIC detailing one's Convention refugee or protected person status has been received. In a two-adult family, only one adult must qualify as a Convention refugee or protected person in order for both adults (spouses or common-law partners) to be eligible for welfare, so long as all other eligibility criteria (income, etc.) are met.

Refugee claimants waiting for a decision from the IRB may have access to social assistance, but are only eligible for certain benefits and allowances. For example, **refugee claimants** are not eligible for the additional allowance given to claimants with temporary limitations to employment. Also, because refugee claimants are not eligible for family allowance benefits (both the Quebec Child Assistance and the Canada Child Tax Benefit – see Section II.5), they are allocated welfare benefits on a separate scale.

³¹ For more information regarding the assumed liquid assets of a newly arrived resident, consult Immigration-Québec <<http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/permanent-workers/official-immigration-application/requirements-programs/glossary.html>> (Financial self-sufficiency). See also for example the detailed schedule based on the number of family members, on CIC's website <<http://www.cic.gc.ca/english/immigrate/skilled/funds.asp>>.

Benefits for refugee claimants are determined according to their family composition. Benefits are adjusted according to the number of dependent children, with a supplement for single-parent families. Refugee claimants must meet the same eligibility requirements as other financial assistance applicants. When the application for welfare is submitted, the applicant must supply their refugee protection claimant document issued by CIC. If this document is more than a year old, they must also supply a work permit or a valid certificate of eligibility for the Interim Federal Health Program.

If a claimant has been **refused refugee status**, they may still receive the same welfare benefits as a refugee claimant while they await either their departure to another country or their Pre-Removal Risk Assessment (PRRA), as long as they are not considered to be in an irregular situation with CIC. A person is considered to be in an irregular situation if they:

- Didn't attend their immigration hearing;
- Didn't attend their interview to arrange the details of their departure;
- Didn't show up to their scheduled date of departure.

Individuals in these circumstances are considered clandestine or **non-status**.

Temporary residents with a **study permit**, **visitors** (with or without a visa) and **work permit** holders are not usually eligible for welfare. Similarly, **live-in caregivers** are not eligible for welfare unless they obtain permanent resident status.

Application for Review or Appeal

If a person disagrees with the *Centre local d'emploi's* decision regarding their welfare claim, whether concerning a welfare refusal or cancellation, or concerning an objection to the chosen benefit scale, etc., they have 90 days following the decision in which to request a review. If the review is not successful, it is possible to file an appeal through the *Tribunal administratif du Quebec* (TAQ).

A Specific Case: Sponsored Immigrants

People who immigrate to Canada through the **Family Class program** are sponsored by a family member in their application for permanent residence in Canada³².

In a sponsorship application, the sponsor signs an agreement with the *Ministère d'Immigration et Communautés culturelles du Québec* in which they commit to provide, if necessary, financial support for the essential needs of the person sponsored³³. The length of this obligation varies according to the family relationship:

- Three years for a spouse or common-law partner;
- Ten years for a dependent child under 16 years old, or until they turn 18, whichever comes first;
- Three years for a dependent child over 16, or until they turn 25, whichever comes first;
- Ten years for a mother, father, grandmother, grandfather or other family member.

Sponsorship agreements come into effect when the person sponsored obtains their permanent resident status. The agreement is not annulled in case of divorce or separation.

A sponsored immigrant is only eligible for the Social Assistance Program or the Social Solidarity Program if the sponsorship agreement has not been respected. The sponsor can be held accountable and be obliged to reimburse the MESS for all benefits incurred during the period of the sponsorship agreement, including costs of medication paid for by social assistance, if applicable.

If the person sponsored continues to live with their sponsor, they are not considered to be deprived of their means of subsistence; welfare will therefore be refused (unless the sponsor is a welfare recipient or is bankrupt).

When a sponsored immigrant applies for welfare benefits, the *Centre spécialisé des demandeurs d'asile, des garants défaillants et des parrainés* (CSDAGDP) double-checks the following sponsorship details:

- Whether the sponsorship contract is still in effect;
- The guarantor's reasons for not respecting their sponsorship contract;
- Whether the sponsor can take responsibility for the person sponsored and whether the government can recover the debt directly from the sponsor.

32 To be eligible for Family Class immigration, the applicant must be, with respect to the guarantor (who must be either a Canadian citizen or permanent resident): their spouse or common-law partner; their dependent child; their mother or father; their grandmother or grandfather; their adopted child, whether adopted in a foreign country or to be adopted in Canada; their brother, sister, nephew, niece, grandchild, if these individuals are unmarried orphans less than 18 years old; a family member of any age who doesn't have a spouse or a conjugal partner, son, daughter, mother, father, sister, brother, nephew, niece, grandfather, grandmother, uncle or aunt who is a Canadian citizen, a status Indian or a permanent resident who would be considered eligible to sponsor the applicant.

Most family sponsorship claims are made with the person sponsored being outside of the country (this sort of claim is not detailed here; see Note 1). Since 2005, however, the spouse of a Canadian citizen or permanent resident who wishes to obtain permanent residence status may submit a sponsorship claim when both the sponsor and the person sponsored are inside the country.

33 If the sponsor lives outside of Quebec, this agreement is signed with the CIC.

The welfare agent does not finalise their decision on a welfare claim until receiving this information from the CSDAGDP. They have 20 workdays in which to make a decision on a claim.

An Exception: Violence between Sponsors and Persons Sponsored

In the case of physical or psychological violence by the sponsor towards the person sponsored or their children, and when the couple has separated, the Minister (MESS) can decide upon a complete or partial remission of the sponsor's debt. The goal of this measure is to avoid exacerbating violent or potentially violent situations that could be generated by the victim's payments.

The Discretionary Power of the Minister in Cases of Ineligibility

A person who is ineligible for the Social Aid Program or the Social Solidarity Program because of their immigration status can still receive benefits by virtue of a decision rendered under the discretionary power of the Minister. This discretionary power is bestowed upon regional program directors and is exercised in cases judged to be exceptional. The person or family applying to welfare under this category must prove that they are in a situation in which their health or security is at risk of being compromised or that they would be totally destitute without social assistance. The discretionary decision made by the Minister is not subject to revision or appeal.

Financial assistance received through this discretionary power can sometimes be subject to a reimbursement agreement.

Foreign and Canadian-born students are not permitted to take advantage of this discretionary power and must, instead, use the recourses made possible by their educational institution and the Minister of Education.

Applicable laws:

Individual and Family Assistance Act, R.S.Q. c. A-13.1.1; *Individual and Family Assistance Regulation*, O.C. 1073-2006, 2006 G.O. 2, 3877.

For more information:

Ministère de l'Emploi et de la Solidarité sociale

http://www.mess.gouv.qc.ca/thematiques/aide-financiere/Index_en.asp

Collectif pour un Québec sans pauvreté

<http://www.pauvrete.qc.ca>

Telephone: 418 525-0040

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups, under the section "Le Collectif", then "Membres".

Front commun des personnes assistées sociales du Québec (FCPASQ)

<http://www.fcpasq.qc.ca>

Telephone: 514 987-1989

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups.

Organisation populaire des droits sociaux de la région de Montréal (OPDS-RM)

<http://opdsrm.com>

Telephone: 514 524-6996

ODAS (Organisation d'aide aux sans-emploi)

<http://www.cam.org/~odas/>

Telephone: 514 932-3926

3 Other Compensation Laws

3.1 Victims of Criminal Acts (IVAC)³⁴

Victims of criminal acts may be eligible to receive compensation or benefits if they are injured or certain of their family members may receive compensation if they are killed as a result of one of the crimes listed in the schedule appended to the Act³⁵.

A victim, who is injured, killed or incurs property damage in one of the following scenarios may also receive compensation or benefits (in the case of property damage the maximum amount of compensation is \$1,000):

- Helping a peace officer who is making an arrest or attempting to prevent an offence;
- Arresting or attempting to arrest the offender;
- Preventing or attempting to prevent an offence.

The application for benefits must be submitted during the year in which the victim's physical injury, mental impairment or death occurs.

The application of the Crime Victims Compensation Act falls under the *Commission de la santé et de la sécurité du travail* (CSST). The processing of applications for benefits is the responsibility of the Direction de l'indemnisation des victimes d'actes criminels (IVAC).

Benefits and compensation

The amount of benefits, particularly those to replace lost revenue as a result of a person's inability to work, may vary depending on a person's annual income and whether they were working full-time, working part-time, unemployed or studying.

One may receive compensation for temporary total disability, have certain medical assistance expenses reimbursed, receive permanent disability benefits and have access to rehabilitation services. Dependents of a victim who dies may receive death benefits³⁶.

Exclusions

Certain cases are excluded from the plan, such as cases in which the victim:

- Has contributed through their fault (provocation, gross negligence, participation in illegal activities, etc.) to their injuries or death;
- Is injured or killed as a result of a crime committed under circumstances giving recourse to the *Act respecting Industrial Accidents and Occupational Diseases* or any other compensation plan;

³⁴ This compensation program is under the *Crime Victims Compensation Act*, R.S.Q. c. I-6.

³⁵ The schedule is not reproduced here. Refer to the *Crime Victims Compensation Act* for a complete list of offences (at the very end of the Act).

³⁶ For more information about IVAC benefits and services and their eligibility criteria, consult IVAC <http://www.ivac.qc.ca/IND_intro.asp> (page in French only).

- Is injured or killed as a result of a crime committed involving the use of a motor vehicle under circumstances giving recourse to the Automobile Insurance Act, unless the offender acted intentionally (assault).

Anyone who has taken part in a crime that caused a victim's death may not apply for benefits under the plan.

Crime Victims Compensation and Immigration Status

Eligibility for compensation and benefits under the *Crime Victims Compensation Act* is not related to immigration status with the exception of people in Canada without any legal immigration status. People **without status** are not automatically excluded from benefits, but IVAC claims never to have received a request for compensation or benefits from someone in this situation. This is likely due to the request to provide a Social Insurance Number and a police report of the incident (though this is not always necessary). People with precarious immigration status are not likely to put themselves at risk of deportation by making a police report and are generally hesitant to provide personal information to any government agency.

People in all other categories of immigration status can be eligible for compensation and benefits, whether they are refugee claimants, visitors, or temporary workers, amongst others. There is no Quebec residency requirement in order to be eligible. The main eligibility requirement is that the crime took place in Quebec. While the IVAC forms request that a Social Insurance Number be provided, people unable to provide this information (for example visitors) can explain their situation and the reasons why they have not provided this information.

Applicable laws:

Crime Victims Compensation Act, R.S.Q. c. I-6.

For more information:

Direction de l'indemnisation des victimes d'actes criminels (IVAC)

<http://www.ivac.qc.ca>

Telephone: Toll-free, in Canada only: 1 800 561-4822

Montreal area: 514 906-3019

Centre d'aide aux victimes d'actes criminels (CAVAC)

<http://www.cavac.qc.ca/>

Telephone: 1-866-532-2822

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups, under the section "Le réseau des cavac".

Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel (RQCALACS)

<http://www.rqcalacs.qc.ca/public/news>

Telephone: 514 529-5252

Outside of Montreal: 1 877 717-5252

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups, under the section "Vie associative".

3.2 Traffic Accidents (SAAQ)³⁷

Under Quebec's public automobile insurance plan, people who sustain an injury in an automobile accident, and the surviving family of victims who die as a result of injury sustained in an accident, may be compensated regardless of who is at fault for the accident. This plan is administered by the *Société de l'Assurance Automobile du Québec* (SAAQ).

This compensation is offered regardless of whether the person injured or killed was:

- A driver;
- A passenger;
- A pedestrian;
- A bicycle rider;
- A motorcycle rider;
- Or any other road user.

In order to receive compensation, a person needs to:

- Report the accident to police;
- Consult a doctor as soon possible to have all signs of injury noted in a medical report;
- Contact the SAAQ claimant information service as soon as possible (1 888 810-2525).

The automobile insurance plan can compensate someone for:

- The loss of their employment income or employment insurance benefits;
- Their inability to take care of an invalid or a child under the age of 16;
- The loss of an academic term or a school year;
- Expenses incurred because of the accident (e.g.: ambulance transportation, personal assistance, clothing, glasses, etc.);
- Diminished quality of life (mental suffering and pain) caused by the accident;
- Expenses incurred as a result of rehabilitation;
- The death of a spouse or a dependant.

A claim must be made three years from the date of the accident, the death, or the appearance of the injury. Compensation depends on the relationship between the accident and injury, on the consequences of the injury and on the person's fitness to resume employment or regular activities. The pension a person may receive as replacement revenue depends on their gross annual income and whether they were employed, studying, or unemployed at the time of the accident, amongst other factors.

37 This public automobile insurance plan falls under the *Act respecting the Société de l'assurance automobile du Québec*, L.R.Q. c. S-11.011. Drivers' insurance contributions and the indemnity amounts to which accident victims have the right are determined by the *Automobile Insurance Act*, L.R.Q. c. A-25.

Automobile Insurance Compensation and Immigration Status

The *Automobile Insurance Act* requires that people be Quebec residents in order to be covered for accidents that occur outside of Quebec. The Act defines a Quebec resident as “a person who lives in Quebec, is ordinarily in Quebec and has the status of Canadian citizen, permanent resident or person having lawful permission to come into Quebec as a visitor”³⁸. There are no clear requirements as to how this residency must be proven. However, no category of immigration status (except for those **without any legal status**) is excluded; an agent will study the claim, and the documents submitted, to determine whether the person is a Quebec resident or not.

For accidents that take place in Quebec, non-residents who are either drivers or passengers in a motor vehicle registered in Quebec are entitled to the same compensation as residents. If the motor vehicle is not registered in Quebec, non-residents can still qualify for compensation but in inverse proportion to their share of responsibility for the accident.

Special Cases Regarding Automobile Accidents ³⁹

On-the-job Automobile Accidents: Any claim for compensation in connection with automobile accidents that occur on the job must be submitted to the *Commission de la santé et de la sécurité du travail* (CSST). A claimant who has been turned down by the CSST may then file a claim for compensation with the SAAQ, enclosing the letter of refusal.

Victims of Assault: The victim of an assault in which an automobile was used to cause injury or as a weapon to threaten violence, either directly or indirectly, has the option of being compensated under the *Crime Victims Compensation Act* or the *Automobile Insurance Act*.

Persons Injured while Assisting Someone in Distress: A person injured by an automobile while assisting someone in distress may elect to receive compensation under the *Act to Promote Good Citizenship* or the *Automobile Insurance Act*.

³⁸ *Automobile Insurance Act*, s. 7; *Regulation respecting the application of the Automobile Insurance Act*, s. 2.

³⁹ A person who chooses to be compensated under the *Crime Victims Compensation Act* or the *Act to Promote Good Citizenship* must contact a CSST regional office, not the SAAQ.

Applicable laws:

An Act respecting the Société de l'assurance automobile du Québec, R.S.Q. c. S-11.011; Automobile Insurance Act, R.S.Q. c. A-25; Regulation respecting the application of the Automobile Insurance Act, R.Q. c. A-25, r.0.01.

For more information:

Société de l'assurance automobile du Québec (SAAQ)

<http://www.saaq.qc.ca>

General information:

Toll-free: 1 800 361-7620 (Quebec, Canada, US)

Montreal: 514 873-7620

Quebec: 418 643-7620

To make a claim:

Toll-free: 1 888 810-2525 (in Quebec) or 1 800 463-6898 (outside Quebec)

4 Education⁴⁰

In Quebec, the right to education and the associated costs vary depending on whether the student is attending elementary, secondary, or post-secondary education. Costs and admissibility requirements also vary depending on whether the school is publicly or privately funded.

4.1 Elementary and Secondary Education

In most cases children under 18 years old do not need a study permit to attend school in Quebec. In this province, elementary and secondary school attendance is obligatory by law for children between the ages of 6 and 16.

In order for a child to attend public kindergarten, primary school or secondary school, they must apply for admission at the school board serving their neighbourhood. For private and independent schools, the schools themselves usually control admission.

Furthermore, under the *Quebec Charter of the French Language* all students must attend French-language public or private primary or secondary schools, except for⁴¹ :

- Children who have done most of their elementary or secondary studies in English elsewhere in Canada;
- Children whose father or mother did most of their elementary studies in English anywhere in Canada;
- Children of Canadian citizens whose brother or sister did or is doing their elementary or secondary studies in English anywhere in Canada;
- Temporary residents of Quebec;
- First Nation children.

Both public and private schools can charge international student fees. As many private schools receive subsidies from the Quebec government, the law regulating private schools states that in addition to the usual fees charged by a private school, an “additional financial contribution” may be charged to students who are not residents of Quebec⁴².

Elementary and Secondary Education and Immigration Status

Despite the fact that the *Quebec Education Act* states that every person has the right to attend primary and secondary school, there are restrictions on the right to education based on immigration status.

It is the status of the child that matters for determining eligibility to free education. Hence, a child born in Canada automatically has the right to free education by virtue of

⁴⁰ The main laws regulating education in Quebec are the *Education Act*, R.S.Q. c. I-13.3 and An *Act respecting Private education*, R.S.Q. c. E-9.1.

⁴¹ *Charter of the French Language*, R.S.Q. c. C-11, ss 73, 85 and 86.1.

⁴² The definition of a “resident of Quebec” is found in section I of the *Regulation respecting the definition of resident in Québec*.

being a Canadian citizen by birth, regardless of the immigration status, even if illegal, of the child's parents. In other cases, the status of the child will be the same as that of the parent. For example, children accompanying their parents to Canada are automatically joined to their parent's refugee claims and are considered refugee claimants themselves.

If they are residing in Quebec, **Canadian citizens** and **permanent residents** are eligible for free public education. Children who are **accepted refugees, protected persons, refugee claimants**, and **refused refugees** are also eligible for free public education. Indeed, according to the IPRA, "every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level"⁴³.

In certain circumstances, the process for admission to free public education for a child of a parent or guardian who holds a valid working permit is straightforward. The children of **temporary workers** whose work permits state the name of the employer as well as the child's name are eligible for free education and do not require any permits to attend school. Holders of work permits without this information may need to obtain a Quebec Acceptance Certificate (CAQ) for a child already in Quebec wanting to attend school, or a CAQ and a study permit from the federal government if the child is outside Canada⁴⁴. In most cases, there are no school fees for children of individuals legally residing in Quebec as temporary workers. However, it may depend on the particular school board as to whether fees are required and what documents are required.

Children of **international students** with valid CAQs and study permits from CIC can, in most cases, receive free public education in Quebec. However, certain Canadian visa offices or embassies abroad will require that the child obtain a CAQ or study permit prior to coming to Canada.

If a parent, and therefore also the child, are in Canada solely as **visitors**, the child may require a CAQ and a study permit from the federal government to attend school. International student fees will also apply.

Children **without any legal immigration status**, regardless of their age, are not permitted to access free education. There are cases where individual school boards or principals have allowed a non-status child to attend a school without extra fees, however, this access is dependent on the will and discretion of these boards and principals. In most cases, for a non-status child to attend school, the required fees of private schools must be paid. Even if fees can be paid for the child's education, the child may have difficulties in attending school if documents regarding immigration status in Canada are required. An application for a CAQ normally requires proof of immigration status in Canada.

⁴³ IPRA, s. 30(2).

⁴⁴ To apply online for a Certificate of Acceptance to Quebec (CAQ) for studies, consult Immigration-Québec <<http://www.Immigration-Québec.gouv.qc.ca/en/electronic-services/caq-electronic/index.html>>.

Applicable laws:

Education Act, R.S.Q. c. I-13.3; *An Act respecting Private education*, R.S.Q. c. E-9.1; *Regulation respecting the definition of resident in Québec*, R.Q. c. E-9.1, r.2, (Private education); *Regulation respecting the definition of “resident in Québec”*, R.Q. c. I-13.3, r.0.01.2, (Education Act); *Charter of the French Language*, R.S.Q. c. C-11.

For more information:

Immigration-Québec

<http://www.Immigration-Québec.gouv.qc.ca/en/immigrate-settle/students/index.html>

Telephone: 514 864-9191

Ministère de l'Éducation, du Loisir et du Sport

<http://www.mels.gouv.qc.ca/>

Commission scolaire de Montreal

<http://www.csdm.qc.ca/>

Telephone: 514 596-6000

Quebec association of independent schools

<http://www.qais.qc.ca/>

Telephone: 514 483-6111

English Montreal School Board

<http://www.emsb.qc.ca/>

Telephone: 514 483-7200

4.2 Post-Secondary Education

The Quebec government subsidizes post-secondary education and controls tuition fees. There are three levels of tuition: Quebec resident (lowest level), Out-of-province Canadian resident (tuition set to average Canadian tuition) and International tuition (highest). The Quebec resident tuition is only available to people who meet the definition of a “Quebec resident”⁴⁵, residents of jurisdictions that have bilateral agreements with the Quebec government, and to students enrolled in French literature or Quebec programs of study.

The main post-secondary institutions in Quebec are universities and CEGEPs (*Collège d'enseignement général et professionnel*) where students can take pre-university or vocational courses. There are public and private CEGEPs.

Post-Secondary Education and Immigration Status

Anyone who is not a **Canadian citizen** or **permanent resident** and who wants to enrol in a post-secondary program that is longer than six months requires a CAQ for these studies. A CAQ is issued for the length of the studies to a maximum of 37 months and can be renewed. To obtain a CAQ a final letter of admission to a university or college is normally required. After obtaining a CAQ for studies, an application is usually made for a study permit at a Canadian Visa Office abroad. In most cases, these students will have to pay international student fees. Under cooperation agreements between Quebec and certain foreign governments, foreign students may be exempt and pay the same tuition fees as Quebec students (e.g. France).

Applying for a CAQ when an adult is already in Canada can be quite difficult. **Accepted refugees** are still subject to international student fees until they obtain permanent resident status. However, accepted refugees who have CSQs pay Quebec resident fees, as do individuals accepted in principle after filing an application for permanent residence on **humanitarian and compassionate grounds** and who have a CSQ.

A **refugee claimant** or **refused refugee**, as well as people in Canada on **visitor visas** or **temporary work permits** would require a CAQ for studies and a study permit from CIC, but will have to pay international student fees and prove that they have the money to do so in order to obtain a CAQ.

Those with **no legal immigration status** in Canada would not be able to obtain a CAQ, as proof of immigration status in Canada is required to apply, and an application for a study permit would not be granted to someone with no legal immigration status in Canada.

⁴⁵ The definition of “resident in Quebec” is the same as the one relating to elementary and secondary education and can be found at s. 1 of the *Regulation respecting the definition of resident in Quebec*.

Applicable laws:

Education Act, R.S.Q. c. I-13.3; *An Act respecting Private education*, R.S.Q. c. E-9.1; *Regulation respecting the definition of resident in Quebec*, R.Q. c. C-29, r.1, (General and Vocational Colleges Act).

For more information:

Immigration-Québec

<http://www.Immigration-Quebec.gouv.qc.ca/en/immigrate-settle/students/index.html>

Telephone: 514 864-9191

People should contact the college, university or CEGEP of their choice to obtain more information about admissibility requirements.

Association pour une Solidarité Syndicale Étudiante (ASSÉ)

<http://www.asse-solidarite.qc.ca>

Telephone: 514 390-0110

Fédération étudiante universitaire du Québec (FEUQ)

<http://www.feuq.qc.ca>

Telephone: 514 396-3380

Fédération étudiante collégiale du Québec (FECQ)

<http://www.fecq.org>

Telephone: 514 396-3320

4.3 French language courses through Immigration-Québec

Courses in French as a second language are offered for free in Quebec. Financial aid is also available under certain circumstances.

Admissibility to these courses, and whether the courses may be taken on a full-time or part-time basis, depends on immigration status. An application for admission and financial aid must be submitted to *Immigration-Québec*.

Eligibility for French courses through *Immigration-Québec*, full-time or part-time

Status	Eligible for full-time study	Eligible for part-time study
Permanent resident	✓	✓
Accepted refugee	✓	✓
Person authorized to apply for permanent residence on-site in Canada	✓	✓
Holder of a Temporary Resident Permit	✓	✓
Naturalized Canadian citizen	✓	✓
Refugee claimant	No	✓
Temporary worker holding a CSQ	No	✓
Foreign student holding CSQ	No	✓

Applicable law:

An Act respecting immigration to Quebec L.R.Q c.I-0.2;

For more information:

Immigration-Québec

<http://www.immigration-quebec.gouv.qc.ca/en/french-language/learning-quebec/index.html>

Telephone: 514 864-9191

5 Family

5.1 Canada Child Tax Benefit⁴⁶

The **Canada Child Tax Benefit** (CCTB) is a monthly, **non-taxable** payment that varies according to household income, number of children and civil status. The CCTB is made up of a basic benefit and the **National Child Benefit Supplement** (NCBS). A **Child Disability Benefit** (CDB) may also be added to one's total monthly CCTB cheque.

CCTB Payment Amounts as of July 2009⁴⁷

Category	Annual Amount
Basic Benefit:	
For each child under 18 years old	\$1,340
Supplement for third and following child(ren)	\$93
NCBS Amount:	
One child	\$2,076
Two children	\$1,837
Three or more children	\$1,747
CDB Amount:	\$2,455

However if the family's net annual income exceeds \$40,726, the basic CCTB and CDB benefits will be gradually reduced and may even reach \$0. The terms of these reductions are outlined in the *Income Tax Act*. NCBS benefits may also be gradually reduced if the family's net annual income exceeds \$23,710.

The **Universal Child Care Benefit** (UCCB) is structured in the same way as the CCTB. The UCCB program issues a taxable \$100 monthly payment to families for each child under the age of six to help cover the cost of child care.

As well as one's immigration status, there are a number of additional criteria that determine one's eligibility for the CCTB. The child must be under 18 and must be living with the person who receives the benefits. The CCTB recipient must be the child's primary caregiver (this includes being responsible for the child's health and education). If the child lives with both their mother and father, CCTB payments are usually made to the mother. However, the child's father, grandparents or tutor can also apply for CCTB, indicating that they are the child's primary caregiver.

In cases where caregiving is shared, both parents may be admissible for CCTB. Benefits would be paid to each parent for a six-month period.

⁴⁶ Federal benefits are covered by the *Income Tax Act*, L.R.C. 1985, c. 1 (5e suppl.).

⁴⁷ Reference: CRA <http://www.cra-arc.gc.ca/bnfts/cctb/cctb_pymnts-eng.html>.

The CCTB is administrated by the Canada Revenue Agency (CRA). It is therefore necessary to submit one's income tax return in order to receive benefits. The benefits are calculated on an annual basis, in July, based on the family's net annual income in the preceding year. Benefits are paid on the 20th day of each month.

Eligibility for Canadian Child Tax Benefits Based on Immigration Status

First and foremost, eligibility for benefits mentioned here (CCTB, NCBS, CDB, UCCB) are based on the status of the parents, not the status of the child.

To be eligible to receive benefits, one parent, or their spouse or common-law partner, must reside in Canada and be a **Canadian citizen**, a **permanent resident**, a **protected person**, or a **Convention refugee**. Some **Temporary residents** may also be eligible.

The Notion of Common-Law Partners

In determining one's entitlement to family benefits, common-law partners must live together in a conjugal relationship and meet at least one of the following conditions:

- The partners are in a conjugal relationship and have lived together for at least 12 months without an interruption that exceeds 90 days;
- The partners are the parents of a child by birth or adoption;
- One of the partners is the sole and primary caregiver of a child of the other spouse who is under the age of 18, if the applicant is not the biological parent.

It suffices for one parent or partner to be eligible in order to receive benefits. Therefore if one person has the required immigration status, the couple may apply for benefits.

Benefit recipients and their spouse or common-law partner who have become **Canadian citizens** within the 12 months preceding their application or who have an immigration status that is not that of Canadian citizen must complete the CRA form "Status in Canada / Statement of Income" ⁴⁸.

The definition of **temporary resident** used to determine eligibility for federal family benefits is complicated. Temporary residents must have lived in Canada during the 18 months preceding their application for the CCTB. They must also have a visitor record, a study permit, a work permit or a Temporary Resident's Permit or an extension to a Temporary Resident's Permit other than permits that state "does not confer status" or "does not confer temporary resident status". The application for benefits must be submitted in the claimant's 19th month of residence in Canada. It is not necessary for the temporary resident to have had a valid visa or permit for the 18 months preceding their application, but they must have a valid visa or permit on the date that the application is submitted and during the period the parent receives benefits.

48 This form is available online on the Canada Revenue Agency Website: <<http://www.cra-arc.gc.ca/formspubs/tpcs/bnfts-eng.html>>.

Refugee claimants and **refused refugees** are not eligible for family benefits. They may, however, receive welfare (see Section II.2). Through welfare, they will ultimately receive, if applicable, a monthly rate based on the number of dependent children in the family. This amount is, however, less than family benefits and is about equivalent to the NCBS.

Similarly, people **without legal status** are not eligible to receive family benefits. However, the spouse or common-law partner of a person without status who meets eligibility requirements can apply for family benefits.

A person who receives family benefits by virtue of the status of their spouse or common-law partner will no longer be eligible if the couple separates. If they continue to accept benefits following a separation, they may become indebted to the federal government.

Debt Claims

If a person receives benefits when they were not entitled, they may be ordered to repay these benefits. If a person receives a notice that they have a debt to repay, they can file a “notice of objection” to contest it.

Residence in Canada

As well as the eligibility criteria mentioned above, the recipient must be a Canadian resident. The residential ties a person has or establishes in Canada are a major factor in determining residence. Residential ties to Canada include: proof of residence such as a lease, public utility bills or bank statements, as well as the length, regularity of and reason for trips in and outside of Canada. To determine whether a person who leaves Canada continues to be a resident, CRA evaluates the continued maintenance of residential ties in Canada. Housing can be considered an important residential tie, for example if a person leaves Canada but keeps an apartment that is available for them to live in upon their return. Residential ties also exist if a spouse or common-law partner and dependents remain in Canada. Other factors include personal property in Canada, and social and economic ties.

Applicable laws:

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.); *Income Tax Regulations*, C.R.C., c. 945.

For more information:

Canadian Revenue Agency: <http://www.cra-arc.gc.ca>

CCTB: <http://www.cra-arc.gc.ca/bnfts/cctb/menu-eng.html>

Telephone: 1 800 387-1193

5.2 Quebec Child Assistance⁴⁹

Quebec Child Assistance is a **non-taxable** benefit administered by the *Régie des rentes du Québec* (RRQ) on a monthly or tri-monthly basis, according to the preference of the recipient. The child support payment can include a **supplement for a handicapped child**. The benefit amount is calculated based on the number of children under 18 who reside with the applicant, as well as the applicant's conjugal situation.

Eligibility criteria are identical to CCTB, including the need for the applicant or their spouse to be responsible for the education and health of the child for whom they are receiving benefits.

To receive child support payments, the applicant and their spouse (if applicable) must complete their Quebec Income Tax return. Benefit amounts are adjusted in July of each year, based on the recipient's income in the previous year.

Since December 31st 2006, the *Directeur de l'état civil* automatically alerts the RRQ to all births in Quebec. For children born outside the province, one must submit an application to the RRQ.

If custody is shared, support payments are granted to both parents during the entire year, in contrast with federal benefits. Each parent receives half of the total amount.

⁴⁹ Tax credits for child support fall under the *Taxation Act*, L.R.Q. c. I-3, Section II.11.2.

Main Guidelines for Quebec Child Assistance in 2009⁵⁰

Category	Amount
Maximum benefit	
1st child	\$2,166
2nd child	\$1,083
3rd child	\$1,083
4th child and each additional child	\$1,623
Single-parent family	+ \$758
Reduction threshold	
Couple	\$44,599
Single-parent family	\$32,696
Reduction rate	4%
Maximum benefit	
1st child	\$608
2nd child and each additional child	\$561
Single-parent family	+ \$304
Monthly amount for a handicapped child	\$171

Eligibility for Quebec Child Assistance Based on Immigration Status

Eligibility criteria concerning immigration status are identical to the criteria for Child Care Tax Benefit (CCTB) (see Section II.5.1).

If neither the applicant nor the applicant's spouse or common-law partner is a Canadian citizen, the RRQ's "Status in Canada" form must be completed⁵¹.

A child assistance payment recipient who is only eligible because of the status of their spouse or common-law partner will no longer be eligible in the case of separation, as is the case with CCTB. If the recipient continues to accept payments when they are no longer entitled they may become indebted to the government for these amounts.

⁵⁰ Information included in this Table may be found on the Ministère de la Famille et des Aînés' website: <<http://www2.mfa.gouv.qc.ca/famille/soutien-a-la-famille/aide-financiere/soutien-financier.asp>>. Benefits are indexed in January of each year. The reduction thresholds are the total family income, from which the maximum benefit is subtracted.

⁵¹ This form is available on the RRQ website: <http://www.rrq.gouv.qc.ca/en/services/formulaires/soutien_aux_enfants/>.

Disputing a Decision by the *Régie des Rentes*

It is possible to request a review of a decision rendered by the RRQ concerning the child assistance payment in the 90 days following the date of the RRQ's decision. This review can subsequently be appealed at the *Tribunal administratif du Québec* (TAQ) in the 60 days following the decision of the review. The TAQ's decision is final.

Quebec Residence

The person must show that they live in Quebec or, if they are temporarily living outside of the province, that they retain sufficient residential ties to Quebec to remain a Quebec resident and receive the child assistance payment. The person must also be in Quebec for at least 180 days each year.

Applicable laws:

Taxation Act, R.S.Q. c. I-3, Division II.11.2; *Regulation respecting the taxation Act*, R.Q. c. I-3, r.1.

For more information:

Régie des rentes du Québec

<http://www.rrq.gouv.qc.ca/en/enfants/>

Quebec Region: 418 643-3381

Montreal Region: 514 864-3873

Toll-free: 1 800 667-9625

5.3 Quebec Parental Insurance Plan (QPIP)⁵²

The Quebec Parental Insurance Plan (QPIP) allows the payment of benefits to all eligible workers taking maternity leave, paternity leave, parental leave or adoption leave.

Since the QPIP is an income replacement plan, one needs to have worked in order to be entitled to benefits. This program is specific to Quebec and replaces benefits previously provided under the federal employment insurance plan (see Section II.9.3).

Hence, the Quebec Parental Insurance Plan is in many respects similar to Employment Insurance (EI) parental benefits, but the coverage and amount of benefits under this program is greater. Under QPIP, benefits may reach up to 75% of one's average weekly income, and both salaried workers and self-employed workers are eligible.

Workers in Quebec either pay premiums deducted at the source by their employers or upon paying income tax. Workers outside of Quebec, but who have worked in other provinces and have therefore contributed to the EI program, are eligible if they meet the other criteria mentioned below.

For salaried workers to be eligible they need to reside in Quebec at the start of the benefit period, to have stopped working or reduced their income by at least 40% and to have at least \$2,000 in insurable income during the reference period (as with EI this is usually the 52 weeks prior to the application) regardless of the number of hours worked. The average income earned in the 26 weeks preceding the application for benefits is usually the income used to calculate benefits.

Self-employed workers must reside in Quebec at the start of the benefit period and must have resided in Quebec on December 31st of the year preceding the start of the benefit period. They must also have ceased their business activities or reduced the time spent on these activities by at least 40%, and have at least \$2,000 in insurable income during the reference period.

For families with an annual income inferior to \$25,921, an extra supplement is paid.

Four Categories of Benefits

There are four categories of benefits. The Basic and the Special Plans for each are presented in Table 6.

Maternity benefits are for the mother only. Payment of maternity benefits may begin no sooner than the 16th week before the expected delivery date. If there is an interruption of pregnancy after 19 weeks or more of pregnancy, the mother has the right to maternity benefits. If there is an interruption before 19 weeks of pregnancy, this interruption can be considered an illness and the person eligible for EI sickness benefits.

Paternity benefits are for the father only and payment may begin no sooner than the week the child or children are born.

⁵² The QPIP is established by the *Act respecting Parental insurance*, R.S.Q. c. A-29.011.

Parental benefits allow for a number of weeks that can be taken by either parent or shared by both, based on an agreement between the two. In addition, parents may take these weeks simultaneously or consecutively. Parental benefits may begin no sooner than the week the child or children are born.

Adoption benefits allow for a number of weeks that can also be taken by either parent or shared by both, simultaneously or consecutively. In the case of an adoption in Quebec, benefits may begin no sooner than the week the child or children come into the care of one of the parents for the adoption.

Maximum Number of Benefit Weeks and Percentage (%) of Average Weekly Earnings for Each Type of Benefit, Depending on the Plan Chosen⁵³:

Type of benefits	Basic Plan		Special Plan	
	Max. number of benefit weeks	% of average weekly income	Max. number of benefit weeks	% of average weekly income
Maternity (exclusively for the mother)	18	70%	15	75%
Paternity (exclusively for the father)	5	70%	3	75%
Parental (may be shared between the parents)	7 25 (7 + 25 = 32)	70% 55%	25	75%
Adoption (may be shared between the adoptive parents)	12 25 (12 + 25 = 37)	70% 55%	28	75%

The QPIP and Immigration Status

The requirement that a person be a resident of Quebec simply means that the person must be living in Quebec at the time they apply for the benefits, and does not require a person to have resided in Quebec for a specific length of time in order to be eligible. However, for people who are not Canadian citizens or permanent residents, they must show that they plan to establish themselves in Quebec, or at least in Canada, to be eligible.

Only people who are working legally are eligible for the QPIP. People who are not Canadian citizens or permanent residents must have a valid **work permit** for their work revenue to be considered insurable income. They must also possess a valid work permit at the time of application (see Section I.4.2).

Refugee claimants (who can apply for a work permit as soon as their Personal Information Form is submitted to the IRB), as well as **accepted refugees** and **protected persons** (who still require work permits until their applications for permanent residence are finalized) can establish their intention to reside in Canada and can

⁵³ Reference: QPIP <http://www.rqap.gouv.qc.ca/travailleur_salarie/choix_en.asp>.

therefore be eligible to the QPIP. **Failed refugee claimants** (who can apply for work permits, as long as they have not passed their deportation date) would likely be able to establish an intent to reside in Canada if they are exercising their recourses before the Federal Court, have submitted an application for a PRRA, or have submitted an application for permanent residence from within Canada.

Temporary resident permit holders can in most cases apply for work permits and could thus be eligible for the QPIP as they are permitted to apply for permanent residence from within Canada.

Temporary workers with valid work permits could also be eligible if they can meet the requirement regarding their intent to reside in Quebec or Canada on a permanent basis. This would most easily be met if the person had applied for permanent residence from within Canada, under one of the categories mentioned in Section I.3.

Students with valid study permits and CAQs who are working could be admissible but would also have to demonstrate an intent to permanently reside in Quebec or Canada following their studies. As foreign students can in certain circumstances make an application for permanent residence upon graduation, they could be eligible to the QPIP.

Visitors are not eligible for the QPIP unless they can obtain a work or study permit and demonstrate an intent to reside in Canada. This would likely only be possible if a person had submitted an application for permanent residence from within Canada, such as the “Spouse or Common-law partner in Canada” application or an application for residence on humanitarian grounds. Those applying for residence on humanitarian grounds, however, would not likely be eligible for a work permit until they had received a provisional acceptance from CIC as a humanitarian and compassionate case. Those with **no legal immigration status** would similarly only be eligible if either of the above applications for permanent residence were accepted in principle.

Applicable laws:

An Act respecting Parental insurance, R.S.Q. c. A-29.011; *Regulation respecting parental insurance plan premiums*, R.Q. c. A-29.011, r.1.01.

For more information:

Quebec Parental Insurance Plan

<http://www.rgap.gouv.qc.ca>

Throughout North America, toll-free: 1 888 610-7727

6 Housing

This section describes the rights, obligations and recourses of people who rent an apartment in Quebec. It does not address the specific situations that may be faced by home owners or landlords.

The Civil Code of Quebec (C.C.Q.) regulates the relationship between a tenant and their landlord. It states the rights and obligations of both parties, as well as the recourses open to them should these rights not be respected. Some rules are of public order which means that they must absolutely be respected and the parties do not have the liberty to enter into contracts (such as leases) that differ from the rules laid out by the C.C.Q.'s public order sections.

6.1 Tenant Rights and Recourses⁵⁴

If a tenant believes that their landlord is not respecting their rights, they can bring the matter before the *Régie du logement* (Rental Board). The *Régie du logement* is a specialized tribunal that has jurisdiction over most matters concerning residential leases and rental properties.

The *Régie du logement* resolves any case related to the lease of a residential dwelling where the amount of money claimed does not exceed \$70,000. For example, a landlord may make a claim against a tenant for unpaid rent; a tenant may submit an application concerning damages suffered due to actions of the landlord.

The *Régie du logement* also deals with cases, whatever the amount claimed, concerning the condition of a dwelling, necessary repairs, lease renewals, the determination of rent, the repossession of a dwelling, the subdivision of a dwelling, the substantial changes made to a dwelling, or leases in low-cost housing, among other matters.

The list below outlines some of the basic obligations a tenant has towards their landlord⁵⁵.

The tenant must:

- Pay the amount of rent agreed upon in the lease;
- Use the dwelling with prudence and diligence;
- Perform any minor necessary repairs;
- Not change the form or use of the dwelling (for example to a commercial space);
- Return the dwelling in the condition in which they found it minus normal wear and tear;
- Avoid disturbing the other tenants.

⁵⁴ These rights and recourses may be found in the *Civil Code of Quebec*, L.Q. 1991, c. 64, ss. 1851-2000 (especially ss. 1892-1978).

⁵⁵ The rights and obligations of tenants and landlords are too numerous to list here. Refer to the additional sources at the end of this section for more information.

Landlords have the following basic obligations to their tenants:

- Deliver the dwelling in a state of good repair;
- Ensure the peaceable enjoyment of the dwelling throughout the term of the lease;
- Guarantee that the dwelling may be used for the purpose for which it was leased and to maintain the dwelling for that purpose throughout the term of the lease;
- Make all necessary repairs to the dwelling other than minor maintenance repairs;
- Not change the form or use of the dwelling.

A person can file a claim at the *Régie du logement* in person at one of the *Régie* offices or by downloading the appropriate form from the *Régie* website, completing it and mailing it to the *Régie* with the correct payment⁵⁶. People must ensure that the other party receives a copy of the form once the claim has been filed at the *Régie du logement*.

If a person receives notice of a case against them at the *Régie du logement*, they should ensure that they are well prepared for the hearing, since the decisions of the *Régie du logement* can be extremely significant (e.g. cancelling a person's lease and having the tenant evicted, or determining that a tenant has a debt to pay to a landlord).

People can represent themselves before the *Régie du logement* or they can be represented by a lawyer, unless the matter is a small claim involving a debt of less than \$7,000 and no cancellation of the tenant's lease is requested. In this case, people cannot be represented by a lawyer. Furthermore, if a person is unable to attend the hearing for a serious reason, they may mandate someone else to represent them: their spouse, a relative, an in-law (e.g., brother-in-law, or sister-in-law) or a friend.

It is difficult to appeal a decision made by the *Régie du logement* as permission to appeal must first be granted by the Court of Quebec before the appeal can be heard. Certain decisions cannot be appealed, such as those concerning the recovery of debt under \$7,000, or an authorization to deposit the rent. In certain cases, a person can request a revocation (cancellation), review, or correction of a decision made by the *Régie du logement*. These requests are submitted to the *Régie du logement*.

Housing and Immigration Status

In order to bring a case before the *Régie du logement*, there must be a lease (whether verbal or in writing) between two people. Immigration status is irrelevant in determining whether a person can place a claim at the *Régie du logement*. A person is not required to prove their immigration status to file a claim at the *Régie du logement*, nor are they required to provide a Social Insurance Number.

56 The costs associated with filing a claim vary depending on the type of procedure. People receiving social assistance do not have to pay the costs associated with submitting a claim to the *Régie du logement*.

Applicable laws:

An Act respecting the Régie du logement, R.S.Q. c. R-8.1; *Rules of procedure of the Régie du logement*, R.Q. c. R-8.1, r.5; *Regulation respecting the criteria for the fixing of rent*, R.Q. c. R-8.1, r.1.01; *Civil Code of Quebec* (C.C.Q.), S.Q. 1991, c. 64, Book V (Obligations), Title II (Nominate contracts), Chapter IV (Lease).

For more information:

Régie du logement

<http://www.rdl.gouv.qc.ca>

Telephone: 514 873-2245

Front d'action populaire en réaménagement urbain (FRAPRU)

<http://www.frapru.qc.ca>

Telephone: 514 522-1010

Member groups of this umbrella organization work in specific areas. Consult its website for a list of housing committees, under the section "FRAPRU", then "Groupes membres".

Regroupement des Comités Logement et Associations de Locataires du Québec (RCLALQ)

<http://www.rclalq.qc.ca>

Telephone: 514 521-7114

Toll-free: 1 866 521-7114

Member groups of this umbrella organization work in specific areas. Consult its website for a list of housing committees and their contact information, organised according to region, under the section "Groupes logement".

6.2 Discrimination and Housing

The *Quebec Charter of Human Rights and Freedoms* (Quebec Charter⁵⁷) prohibits discrimination based on race, colour, sex, pregnancy, sexual orientation, civil status, age, religion, political convictions, language, ethnic or national origin, social condition, a handicap, or the use of any means to compensate for a handicap. The Quebec Charter applies to anyone who is within the borders of Quebec.

A landlord cannot refuse to rent an apartment for discriminatory reasons, based on any of the grounds of discrimination covered by the Quebec Charter. A landlord can only refuse to rent to a tenant if they have good reason to believe the person will not be able to pay the rent (e.g. a previous landlord given as a reference said that rent payments were missed). It is important to note that a landlord cannot refuse to rent to a person simply because they are unemployed.

If a person believes that a landlord has refused to rent to them for discriminatory reasons, they can have a friend call or visit the landlord to see if the apartment is still for rent. This may help determine whether the landlord had previously given false information about the apartment's availability as a way of rejecting the potential tenant. In other cases, discrimination may be more overt, such as a landlord who makes racist or homophobic comments, who states a preference to not have children in the building, or who insults people on welfare.

The *Régie du logement* has very limited jurisdiction in cases of discrimination. A claim can only be filed at the *Régie du logement* once a valid lease exists between a landlord and a tenant. In cases where a person has been discriminated against while attempting to rent an apartment, no such lease exists. In cases where a person does have a lease and is being discriminated against by their landlord, the *Régie du logement* has the power to determine whether the person can cancel their lease and move because of the discrimination, as well as award damages. It is usually more effective to submit complaints regarding discrimination to the *Commission des droits de la personne* and is necessary where no lease exists.

Making a complaint to the Commission des droits de la personne

The *Commission* has offices throughout Quebec, and the best way to submit a complaint is by calling one's local office to obtain information on how to proceed with their case⁵⁸. Normally, a person must file a formal complaint by obtaining, completing and returning the appropriate form to the *Commission*. The complaint must generally be made within two years of the discriminatory act, or two years from the time the person became aware of the discriminatory act.

Once the complaint has been filed, the *Commission* will carry out an investigation – gathering evidence (testimonies of witnesses, relevant documents) – and will determine whether discrimination occurred. Following the investigation, the *Commission* will issue

⁵⁷ *Quebec Charter of Human Rights and Freedoms*, R.S.Q. c. C-12.

⁵⁸ For the contact information of offices of investigation and regional representation:
<<http://www.cdpdj.qc.ca/en/commun/adresses.asp?noeud1=0&noeud2=0&cle=1>>.

recommendations and decide whether the complaint should be heard before the *Tribunal des droits de la personne*.

Applicable laws:

Charter of Human Rights and Freedoms, R.S.Q. c. C-12.

For more information:

Régie du logement

<http://www.rdl.gouv.qc.ca>

Telephone: 514 873-2245

Commission des droits de la personne et des droits de la jeunesse

<http://www.cdpdj.qc.ca>

Toll-free: 1 800 361-6477

Montreal: 514 873-5146

6.3 Social Housing⁵⁹

In all regions of Quebec, *Offices municipaux d'habitation* (OMH)⁶⁰ are non-profit organizations that offer **low-cost housing** (commonly known as HLMs - *Habitations à loyer modique*). For the Montreal area, this organization is called *Office municipal d'habitation de Montréal* (OMHM).

Tenants of HLMs pay rent that is equivalent to 25% of their income. The size of the dwelling depends on a family's composition. Rules that are specific to social housing are included in the Civil Code of Quebec.

Low-cost housing

Eligibility⁶¹

To rent a **low-cost housing** unit, a person must apply to their local OMH. For example, in Montreal a person qualifies if they meet all of the conditions listed below:

- If they live alone or are the head of their household, they must be at least 18 years old or an emancipated minor.
- They must be a Canadian citizen or permanent resident (proof must be supplied with the application).
- They must have lived in the Greater Montreal Area for 12 consecutive months in the 24 months preceding the application.
- They must have been a Quebec resident for at least two years preceding the application.
- They must own assets worth no more than \$25,000. This includes the assets of all those listed on the low-cost housing application form.
- They must be able to look after their own needs and the needs of the household, or have provided proof that they will seek out any assistance required to meet these needs.
- The combined gross income of the individuals listed on the application for the previous year must be equal to or less than these amounts⁶²:

⁵⁹ The rules regarding social housing are found in the Civil Code of Quebec, S.Q. 1991, c. 64, ss. 1984-1995, *Act respecting the Société d'habitation du Québec*, R.S.Q. c. S-8, *By-law respecting the allocation of dwellings in low rental housing*, R.Q. c. S-8, r.1.1.1, and *By-law respecting the conditions for the leasing of dwellings in low-rental housing*, R.Q. c. S-8, r.1.3.1.

⁶⁰ OMH's are created by the *Act respecting the Société d'habitation du Québec*, R.S.Q. c. S-8.

⁶¹ The eligibility criteria are found in the *By-law respecting the allocation of dwellings in low rental housing*.

⁶² These amounts were determined according to the Canada-Québec Global Agreement on Social Housing.

Family composition	Gross income
Person living alone	\$24,000
Spouses	\$24,000
2 adults (not spouses) or more including spouses	\$28,000
Person with 1 or more dependent children	\$28,000
At least 2 adults with dependent child	\$28,000
At least 2 adults and at least 2 dependent children (max. 5 people)	\$33,000
6 people or more	\$43,000

The following people are ineligible:

- Full-time students without a dependent child;
- Former tenants of public housing who had their lease cancelled by the *Régie du logement* or who abandoned their home or failed to pay a debt. They remain ineligible for five years after leaving public housing or until the debt is reimbursed.

For more information on how to apply, people should contact the OMH of their region or download an application form from their website.

Low-cost Housing and Immigration Status

A person must be a Canadian citizen or permanent resident and must have been a Quebec resident for at least two years preceding the application.

Applicable laws:

An Act respecting the Société d'habitation du Québec, R.S.Q. c. S-8; *By-law respecting the allocation of dwellings in low rental housing*, R.Q. c. S-8, r.1.1.1, *By-law respecting the conditions for the leasing of dwellings in low-rental housing*, R.Q. c. S-8, r.1.3.1; Civil Code of Quebec (C.C.Q.), S.Q. 1991, c. 64, ss. 1984-1995.

For more information:

To find the contact information of a specific OMH, do a search by administrative region, municipality or name of organization:

Société d'habitation du Québec (SHQ)

<http://www.habitation.gouv.qc.ca/formulaires/repertoires/?mode=office>

In Montreal:

Office municipal d'habitation de Montreal (OMHM)

<http://www.omhm.qc.ca>

Head office: 514 872-6442

Housing applications: 514 868-5588

Fédération des locataires d'habitations à loyer modique du Québec

<http://www.flhlmq.com/flhlmq/fr/index.html>

Housing committees are also very helpful (see Section II.6.1).

6.4 Subsidies

There are a variety of subsidy programs available in Quebec for low-income households. The most widely available subsidy program is the Shelter Allowance Program.

The Shelter Allowance Program⁶³

The *Société d'habitation du Québec* runs the **Shelter Allowance Program**, which is aimed at homeowners, tenants, rooming house occupants and anyone sharing a dwelling with one or more people. The program provides financial assistance of up to \$80 per month to eligible low-income households. Applications must be made to *Revenu Québec*.

The allowance takes into account the number of people in the household, the type of household, household income and monthly rent. To receive Shelter Allowance, a person must have filed a Quebec income tax return for the previous year and must complete an application for the program.

The following people may be eligible to receive this subsidy:

- Individuals aged 55 or over;
- Couples in which one partner is aged 55 or over;
- Low-income families (workers, students, welfare recipients) with at least one dependent child (including a child 18 years of age or over studying full-time).

People in the following situations do not qualify for the program:

- People who live in low-cost housing or a government-funded health and social services centre;
- People who receive a rent supplement or other direct housing subsidy;
- People who, together with their spouse or common-law partner, possess goods or cash valued at more than \$50,000 (excluding the value of their home, land, furniture and car).

The Shelter Allowance Program and Immigration Status

There are special eligibility conditions that apply to immigrants. People with the following immigration status are eligible for the allowance:

- Canadian citizens;
- Permanent residents;
- **Accepted refugees** who also have obtained a CSQ;
- **Temporary resident permit holders** who have these permits for protection reasons.

In addition, a person with at least one dependent child who receives social assistance (welfare) benefits, or a person or a person's spouse who is 55 years old or more, with the following immigration status is also eligible:

⁶³ The Shelter Allowance Program is set up by decree law favouring families and the elderly, R.Q. c. S-8, r.2.1.1).

- **Refugee claimant**;
- **Refused refugee** who is still legally in Canada;
- Person whose application for permanent residence on humanitarian grounds has been **accepted in principle** and who holds a CSQ.

Applicable laws:

Decree concerning the conditions and administrative framework of the Shelter Allowance program, in support of the elderly and the families, R.Q. c. S-8, r.2.1.1 (in French only)

For more information:

Société d'habitation du Québec

<http://www.habitation.gouv.qc.ca>

Telephone: 1 800 463-4315

Revenu Quebec should be contacted directly to confirm eligibility or obtain a copy of the Shelter Allowance Application Form:

Quebec City: 418 659-6299

Montreal: 514 864-6299

Elsewhere in Quebec: 1 800 267-6299

Housing committees are also very helpful (see Section II.6.1).

7 Retirement

Retirement and Revenue

In Quebec, there are two public retirement programs that guarantee a minimum income for those admissible. At the federal level, the **Old Age Security Program** (OAS) provides a minimal income source for those eligible regardless of whether they have ever entered the workforce. This program is administered by Human Resources and Development Canada and is financed through tax revenues. At the provincial level, the *Régie des rentes du Québec* administers the **Quebec Pension Plan**, a retirement plan similar to a kind of insurance plan for workers.

These public retirement programs provide modest and basic benefits only. They will not replace the income of those who were earning more than \$20,000 in gross yearly salary prior to retirement. People should seek to replace their revenue with other sources of income if they want to keep the same standard of living after retirement.

7.1 Old Age Security Program (Federal)⁶⁴

Benefits that can be paid under the **Old Age Security Program** include the basic **Old Age Security Pension**, the **Guaranteed Income Supplement** (GIS) and the **Allowance**. There are strict residency requirements in order to receive benefits under this program. An applicant's employment history is not a factor in determining eligibility, nor does the applicant need to be retired. To receive benefits under this program, the application should be submitted six months prior to the date a person wants to start receiving benefits, usually six months prior to their 65th birthday. The amount a person will receive varies depending on the length of their residence in Canada.

The following tables give an overview of benefits available and amounts of the benefits under this federal program. Some particular characteristics for each of them are then discussed, including how immigration status affects eligibility.

⁶⁴ The Old Age Security Program is created by the *Old Age Security Act*, R.S.C. 1985, c. O-9.

Federal Old Age Security Program

Retirement income programs	Benefit information	Eligibility requirements	Determining the benefit amount	Can the benefit be received outside of Canada?
Old Age Security (OAS)	Basic federal pension program. It is not necessary to have stopped working to be eligible for OAS.	<p>A person living in Canada:</p> <ul style="list-style-type: none"> -Who is 65 or older. -Who lives in Canada and is a Canadian citizen or a legal resident at the time their pension is approved. -Who has lived in Canada for at least 10 years after reaching age 18. 	<p>Based on age and the number of years the person lived in Canada</p> <p>Taxable</p>	<p>Yes. In this case, the person must be 65 or older; must have left the country and be a Canadian citizen or a legal resident at the time their pension is approved; the person must have lived in Canada for at least 20 years after the age of 18.</p> <p>But: If the applicant doesn't meet these criteria they can still receive their pension outside of Canada, but only for the month that they leave and for 6 months after that.</p>

Federal Old Age Security Program (continuation)

Retirement income programs	Benefit information	Eligibility requirements	Determining the benefit amount	Can the benefit be received outside of Canada?
Guaranteed Income Supplement (GIS)	The Guaranteed Income Supplement provides additional money, on top of the Old Age Security pension, to low-income seniors living in Canada.	-The person must be entitled to Old Age Security benefits; and -Their annual income, and that of their spouse or common-law partner, if they have one, is below the prescribed limit.	The amount is determined on a yearly basis according to the person's annual income and conjugal status. These benefits can be reduced if the individual or couple has other sources of income.	No. Benefit amounts are only payable to people living in Canada. But: If the person spends 6 consecutive months outside of Canada, they will receive benefits for the month that they leave and for 6 months after that. Subsequently, their payments will cease.
Allowance	Allowance benefits help low-income spouses or common-law partners between 60 and 64 years old, until they are eligible for OAS when they turn 65. Allowance benefits are for people whose spouse or common-law partner (same sex or opposite sex) receives or is entitled to receive the Old Age Security pension and the Guaranteed Income Supplement.	-The person is 60 to 64 years old; and -Has lived in Canada for at least 10 years since the age of 18 and is a Canadian citizen or legal resident; and -Their annual income, together with that of their spouse or common-law partner, if they have one, is below the prescribed limit.		
Allowance for survivor	Allowance for the survivor is for people whose spouse or common-law partner has died.			

Old Age Security Benefit Payment Rates - July to September 2009⁶⁵

Type of Benefit	Recipient	Average Monthly Benefit (March 2009)	Maximum Monthly Benefit	Maximum Annual Income
Old Age Security Pension Old Age Security	All recipients	\$489.54	\$516.96	\$66,335 to \$107,692 (decreases gradually)
Guaranteed Income Supplement	Single person	\$452.61	\$652.51	\$15,672
	Spouse of pensioner	\$283.04	\$430.90	\$20,688
	Spouse of non-pensioner	\$433.71	\$652.51	\$37,584
	Spouse of Allowance recipient	\$368.57	\$430.90	\$37,584
Allowance	All recipients	\$386.27	\$947.86	\$28,992
Allowance for the survivor	All recipients	\$593.84	\$1,050.68	\$21,120

Old Age Security Pension

People who do not meet the eligibility requirements may still qualify for a pension based on a social security agreement that Canada has with another country⁶⁶. A person who cannot meet the requirements for the full Old Age Security pension may qualify for a partial pension. Once approved, a partial pension may not be increased as a result of added years of residence in Canada.

“Legal resident” is defined in the *Old Age Security Regulations* as a person who “is or was lawfully in Canada pursuant to the immigration laws of Canada in force on that day”⁶⁷. A person is not required to be legally resident in Canada during the 10-year period of required residence as long as they have legal residence on the day their application for the pension is approved. According to information obtained from Service Canada, **permanent residents** and **accepted refugees** are considered legal residents of Canada. While most accepted refugees would have obtained permanent residency after 10 years of residence in Canada, in certain circumstances the refugee claim may not

⁶⁵ Reference: Service Canada <<http://www.servicecanada.gc.ca/eng/isp/oas/oasrates.shtml>>.

⁶⁶ For a list of countries who have signed social security agreements with Canada, see the “International Benefits” section of the Service Canada website at <<http://www1.servicecanada.gc.ca/eng/isp/ibfa/intlben.shtml>>.

⁶⁷ Old Age Security Regulations, C.R.C., c. 1246, s. 22.

have been filed until many years after the person first arrived in Canada or the person could have lost their permanent residency for reasons of criminality (amongst other reasons)⁶⁸ yet still be in Canada legally with the status of a Convention refugee. **Temporary resident permit holders** are also considered to be legal residents of Canada.

For other categories of immigration status, there appears to be no hard and fast rule despite numerous attempts to clarify the matter with Service Canada. It is rare, unless a person is from a country against which Canada has issued a moratorium against removals, that a person could meet the 10-year residency requirement while only holding a **student or work permit** (including a work permit under the live-in caregiver program), or still be a **refugee claimant** waiting for a hearing before the IRB. While there are some recourses for refugee claimants who receive a negative decision from the IRB, it would be very rare for a **failed refugee claimant** to be in Canada for 10 years without any other status unless they are from a country with a moratorium on removals and/or they waited many years in Canada before claiming refugee status.

Those with **no legal immigration status** are not eligible for the Old Age Security program.

For unique situations in which a person meets the residency requirements but it is unclear whether they meet the requirement of having “legal residence” in Canada based on their immigration status, it is strongly suggested that a well-prepared application, including proof of residence, circumstantial explanations and documents regarding the person’s status be submitted. A negative decision on an application for Old Age Security can always be challenged, see the section regarding the “Appeal Process” below.

Guaranteed Income Supplement

The same immigration status and residency requirements apply as with the Old Age Pension, with specific rules regarding **sponsored immigrants**. A person who has been sponsored either as a spouse/common-law partner or a family member of a citizen or permanent resident cannot receive the supplement during the “sponsorship period,” which means for the length of the sponsorship undertaking (see Section II, “A Special Case: the Sponsored Immigrant” for the various lengths of these sponsorship undertakings).

There are two types of exceptions to these rules regarding “sponsored immigrants”. The first exception is for sponsored immigrants who:

- Have 10 years of residence in Canada after the age of 18; **or**
- Had resided in Canada as a Canadian citizen or permanent resident on or prior to March 6, 1996 and will become eligible for benefits January 1, 2001 or earlier; **or**
- Was receiving benefits under the *Old Age Security Act* for the month of March 1996 or earlier.

Few, if any, sponsored immigrants would meet these criteria.

68 See the Introduction section of this guide for more information on this matter.

The second exception is for a sponsored immigrant who has faced one of the following events:

- The death of the sponsor;
- The sponsor's conviction of an offence under the *Criminal Code* relating to the sponsored individual;
- A determination that the sponsor is a bankrupt as defined in Section II of the *Bankruptcy and Insolvency Act*; **and**
- The sentencing of the sponsor to a term of imprisonment of more than six months.

Immigrants not under sponsorship agreements but who have less than 10 years of residence in Canada and who qualify for Old Age Security under a social security agreement will have their Guaranteed Income Supplement and Allowance grow gradually over 10 years - 1/10th of the benefit for each year of residence. This includes:

- People who have not resided in Canada for 10 years after the age of 18 and who are not receiving benefits for the month of March 1996 or earlier;
- Newcomers who did not reside in Canada as Canadian citizens or permanent residents before March 7, 1996;
- People who are already residing or had resided in Canada as Canadian citizens or permanent residents but who do not qualify for benefits until February 2001 or later.

The Allowance and Allowance for the Survivor

The Allowance for the Survivor stops if a survivor remarries or lives in a common-law partnership for more than 12 months.

The immigration status requirements are identical to those for the Old Age Security pension — an applicant must also have been a Canadian citizen or a “legal resident” of Canada at the time of the application's approval.

A sponsored spouse or common-law partner of an Old Age Security pensioner or a survivor between the ages of 60 and 64 with less than 10 years of residence in Canada after reaching age 18 is not eligible for the Allowance benefit for the period of the sponsorship undertaking unless they:

- Were receiving a pension in March 1996 or before; **or**
- Were residing in Canada or had resided in Canada as a Canadian citizen or permanent resident before March 7, 1996 and will receive a pension in January 2001 or before.

The Allowance benefit is prorated in the case of a non-sponsored immigrant who has not resided in Canada for 10 years after reaching age 18 **and** who:

- Was not residing or had not resided in Canada before March 7, 1996 as a Canadian citizen or permanent resident; **or**

- Was residing in Canada on that date or had resided in Canada prior to that date as a Canadian citizen or permanent resident but will not receive a pension in January 2001 or before.

Entitlement will be established at the rate of 1/10th of the benefit for each year of residence in Canada after reaching age 18 and will be increased by an additional 1/10th for each additional year of residence in Canada.

The Appeal Process

Old Age Security recipients may request an explanation or a reconsideration of any decision that affects their eligibility or the amount of their Old Age Security pension. This request must be made in writing to their Regional Director of Income Security Programs within 90 days of receiving a decision. If not satisfied with the decision of the Regional Director, the recipient may appeal, again within 90 days, to a Review Tribunal. If the grounds of appeal are income related, the appeal will be referred to the Tax Court of Canada for a decision.

Applicable laws:

Old Age Security Act, R.S.C. 1985, c. O-9; *Old Age Security Regulations*, C.R.C., c. 1246.

For more information:

Service Canada

<http://www1.servicecanada.gc.ca> under the heading "Seniors".

Telephone: 1 800 277-9914 (English); 1 800 277-9915 (French)

Human Resources and Skills Development Canada

<http://www.hrsdc.gc.ca>

7.2 The Quebec Pension Plan⁶⁹

This public retirement plan is administered by the *Régie des rentes du Québec* (RRQ). Under this program, a person may also be eligible for disability benefits and/or a survivor's pension.

Workers over 18 years old and who earn over \$3,500 annually are obliged to contribute to the plan. Contributions to this pension plan are normally deducted from a worker's paycheque. To be eligible to receive a pension under this plan, a person or their spouse must have contributed to it for at least one year, or they must be the child of someone who has contributed to the plan.

Quebec Pension Plan (QPP)

Retirement income program	Benefit information	Eligibility requirements	Determining the benefit amount
Québec Pension Plan (QPP)	The Quebec Pension Plan provides workers and their families with basic financial protection in the event of retirement, death or disability.	<p>The person has contributed to the Plan for at least one year; and</p> <p>They are at least 60 years old.</p> <p>Between 60 and 65 years old, the person must have stopped working or have reduced their work hours in preparation for retirement, resulting in a salary decrease of at least 20%.</p> <p>The person is considered to have stopped working if their work income does not exceed \$11,575 in a twelve-month period.</p> <p>After age 65, it is no longer necessary to have stopped working to be entitled to receive a retirement pension.</p>	<p>The recipient's retirement pension is calculated on the basis of the employment earnings and the age at which they take their retirement.</p> <p>As a rule, their retirement pension under the Québec Pension Plan is equal to 25% of the average monthly earnings on which they contributed to the Plan.</p> <p>Benefits are indexed each year on January 1st based on cost of living. Benefits are accorded on a monthly basis.</p> <p>Taxable.</p>

⁶⁹ The Quebec Pension Plan is created by the *Act respecting the Quebec Pension Plan*, R.S.Q. c. R-9.

Maximum retirement pension amounts payable for persons who begin receiving their pension in 2009⁷⁰

Recipient's age	Rate payable	Maximum monthly amount
60 years old	70%	\$636.13
61 years old	76%	\$690.65
62 years old	82%	\$745.18
63 years old	88%	\$799.70
64 years old	94%	\$854.23
65 years old	100%	\$908.75
66 years old	106%	\$963.28
67 years old	112%	\$1,017.80
68 years old	118%	\$1,072.33
69 years old	124%	\$1,126.85
70 years old or more	130%	\$1,181.38

Until they reach 65 years old, a person may be eligible for a **disability pension** if they had to stop their usual work because of their state of health and can no longer do that work on a regular basis.

A person is eligible for a **surviving spouse's pension** if they are the spouse or common-law spouse of a deceased person who contributed sufficiently to the Quebec Pension Plan. To be recognized as a common-law spouse, the person must have been living with the deceased for at least three years; if they had or adopted a child together, only one year of co-habitation is required.

People who have worked legally in provinces other than Quebec probably contributed to the **Canada Pension Plan**, which is normally deducted directly from a worker's paycheque. The RRQ will take into account contributions made to the Canada Pension Plan in calculating the amount of a person's retirement pension.

Quebec Pension Plan and Immigration Status

A person's immigration status has no effect on their eligibility to receive a pension under the Quebec Pension Plan. As long as the person contributed to the plan, as mentioned above, they are eligible to receive a pension. However, contributions to the plan would likely only be made by a person who was, at some point, legally employed in Canada.

A person who no longer lives in Quebec or even Canada can receive a pension under this plan.

⁷⁰ Reference: RRQ <http://www.rrq.gouv.qc.ca/en/programmes/regime_rentes/rente_retraite/montant_rr.htm>. Between 60 and 70 – the amount can vary according to the month in which payments begin.

Applicable laws:

An Act respecting the Québec Pension Plan, R.S.Q. c. R-9; *Supplemental Pension Plans Act*, R.S.Q. c. R-15.1.

For more information:

Régie des rentes du Québec

<http://www.rrq.gouv.qc.ca>

Quebec region: 418 643-5185

Montreal region: 514 873-2433

Toll-free: 1 800 463-5185

Toll-free service for the hearing impaired: 1 800 603-3540

Association québécoise pour la défense des droits des personnes retraitées et préretraitées (AQDR inc.)

<http://www.aqdr.org>

Telephone: 514 935-1551

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups, under the heading “Sections”.

Réseau FADOQ

<https://www.fadoq.ca>

Telephone: 514 252-3017

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups, under the section “Profil”, then “Affiliations”.

8

Health

8.1 Quebec Health Insurance and Prescription Drug Insurance Plans⁷¹

Through **Quebec public Medicare**, offered by the *Régie de l'assurance maladie du Québec* (RAMQ), eligible individuals have the right to free medical care and basic hospital services. The person receives a Medicare card that they can present at the doctor's office, the hospital, the local community service centre (known as a *Centre local de services communautaires* or CLSC) or the *Centre de santé et de services sociaux* (CSSS).

Some individuals eligible for Quebec public health care may also be eligible for the **Prescription Drug Insurance** program administered by RAMQ. The Prescription Drug Insurance plan is a government insurance program that offers basic coverage of prescription drugs. Most people covered by the plan are required to pay a premium, regardless of whether they actually purchase prescription drugs. The premium amount varies according to one's net family income.

A person who is insured through the public plan assumes a portion of the cost (referred to by RAMQ as their "contribution") of the drugs purchased. The remainder is paid by RAMQ. There is a maximum monthly contribution; a person who reaches their maximum monthly contribution can usually obtain subsequent insured drugs free of charge until the end of the month.

Everyone under age 65 who is eligible for a private plan is required to obtain at least the prescription drug coverage provided by that plan. A person may be eligible for a private plan either through their employment, through membership in a professional order or association to which they belong, or through their spouse or parents. Those covered by a private plan are required to obtain coverage under it for their spouse and children, unless their spouse and children are already covered by another private plan.

People who turn 65 and who are eligible for a private plan that offers basic prescription drug coverage may either retain their private plan coverage or join the public plan administered by the *Régie de l'assurance maladie du Québec*.

Eligibility for Medicare according to one's Immigration Status

Canadian citizens and **permanent residents** are eligible to access RAMQ's services after they have registered and once they have proven their Quebec residency.

⁷¹ Applicable laws are *An Act respecting the Régie de l'assurance maladie du Québec*, R.S.Q. chapter R-5; the *Health Insurance Act*, R.S.Q., chapter A-29; and *An Act respecting Prescription Drug Insurance*, R.S.Q., chapter A-29.01.

Three month waiting period (“*Délai de carence*”)

In general, a person who arrives in Quebec from outside of Canada (even if they are a Canadian citizen) only has the right to Medicare after a waiting period, known as the “*Délai de carence*”, which lasts three months after their registration with RAMQ. People who are new to Quebec must therefore register with RAMQ as soon as they arrive. RAMQ does not reimburse health care expenses for the duration of the three month waiting period.

The three-month waiting period does not apply to **Convention Refugees** or those with **protected person** status who have been selected overseas to come to Canada. The “*délai de carence*” does not apply to welfare recipients, nor to some seasonal workers.

Exception: There are certain types of medical care that can be received free of charge before the three month wait is up. They include:

- Medical assistance needed by victims of conjugal or domestic violence or sexual assault;
- Care related to pregnancy, child birth or termination of pregnancy;
- Treatment for certain infectious diseases (like tuberculosis) that have an impact on public health.

Individuals who have either been sponsored by a spouse or common-law partner while they are in Canada or have submitted an application for permanent residence on humanitarian and compassionate grounds may be eligible for Medicare once they have received a letter from Citizenship and Immigration Canada indicating that their application has been accepted in principle and that they are allowed to reside in Canada while their application is being finalized.

Convention refugees and **protected persons** are eligible for Medicare. The following documents will help to prove one’s eligibility to RAMQ: a copy of the Immigration and Refugee Board’s (IRB) decision; the Quebec Selection Certificate (CSQ); and CIC’s refugee claimant document (IMM 1442).

Refugee claimants and **refused refugees** are not eligible for Medicare. They should, however, be covered under the *Interim Federal Health Program* (see Section II.8.2).

Seasonal workers with a work permit under the federal Commonwealth Caribbean Seasonal Agricultural Workers Program or Mexican Seasonal Agricultural Workers Program are eligible for Medicare and do not have a three month waiting period.

Other **seasonal workers** are eligible for Medicare after the three month waiting period, as long as they have a valid work permit for six months or more detailing the name and location of their employer. **Temporary workers** and **live-in caregivers** are eligible for Medicare under the same conditions.

The Quebec government has entered into reciprocal social security agreements with certain countries providing for healthcare coverage. These countries are Denmark, Finland, France, Greece, Luxembourg, Norway, Portugal and Sweden⁷².

Temporary workers from these countries are eligible for Medicare and do not have a three month waiting period. However, workers from these countries are not eligible for the Prescription Drug Insurance plan.

The spouse or any dependant accompanying a worker referred to above are also eligible for Medicare. They are subject to the three month waiting period if the worker they are accompanying is also subject to the *délai de carence*.

Students from countries with whom Quebec has a reciprocal social security agreement providing for health care coverage are also eligible for Medicare, without a three month waiting period. The countries with this agreement are the same as those listed for Temporary workers, save Greece. Students from France are also eligible for the Prescription Drug Insurance plan.

Other **foreign students** are not eligible for Quebec Medicare.

Certain students or trainees who have been given a student visa and are under an official scholarship program of the Quebec *Ministère de l'Éducation* are, under certain conditions, eligible for Medicare without being subject to the three month waiting period.

Visitors (with or without visa) are not covered under Medicare.

Holders of a **temporary residence permit** who requested it to apply for the right of permanent residence have access to Medicare if they are considered a resident in Quebec.

People **without legal status** are not eligible for Medicare in Quebec, nor are they eligible for the Prescription Drug Insurance plan.

⁷² The list of countries with whom the government of Quebec has reciprocal social security agreements providing for healthcare coverage is available on RAMQ's website:
<http://www.ramq.gouv.qc.ca/en/citoyens/assurancemaladie/arriver/ententes_ss.shtml>.

The 183-day Rule

A new immigrant must not leave Quebec for 183 days or more (consecutive or not) in the 12 months following the date from which they were insured by the Medicare program. RAMQ considers a person who has left Quebec for 183 days or more not to have established residency and therefore not be eligible for coverage. If someone is outside Quebec for 183 days or more, RAMQ will cancel their coverage and demand reimbursement for the cost of all services rendered, if applicable. Absences of 21 consecutive days or less are not counted in this calculation.

Applicable laws:

An Act respecting the Régie de l'assurance maladie du Québec, R.S.Q. c. R-5; *Health Insurance Act*, R.S.Q. c. A-29; *An Act respecting Prescription drug insurance*, R.S.Q. c. A-29.01.

For more information:

Régie de l'assurance maladie du Québec

<http://www.ramq.gouv.qc.ca>

Telephone:

Quebec Region: 418 646-4636

Montreal Region: 514 864-3411

Elsewhere in Quebec: 1 800 561-9749

Coalition Solidarité Santé

<http://www.solidaritesante.qc.ca/francais/index.html>

Confédération des organismes de personnes handicapées du Québec (COPHAN)

<http://www.cophan.org>

Telephone: 514 284-0155

8.2 Interim Federal Health Program

The **Interim Federal Health Program** (IFHP) provides temporary health insurance to refugees, protected persons and refugee claimants in Canada, as well as to their dependants, who are not covered by a provincial or territorial health insurance plan. The program is administered by Citizenship and Immigration Canada.

The insurance covers the costs of emergency medical treatments and other essential medical services. Certain services are covered without preauthorisation. Others require a request for authorisation beforehand while others are simply not covered⁷³. The coverage of the IFHP is much less complete than provincial health insurance programs.

Applicants must meet the following criteria:

- Demonstrate that they are unable to pay for their own medical services;
- Not be covered by private insurance plans.

Interim Federal Health Program (IFH) according to one's Immigration Status

Refugee claimants are covered solely by the IFHP. At the first point of contact with Citizenship and Immigration Canada (CIC), or as soon as possible thereafter, refugees will be assessed to determine their need for health care coverage. If eligible, they will be issued a document for health coverage. For the most part, the documents will be valid for 12 months, although the coverage can be extended up to 24 months if necessary. In this case, one must submit the "Application for IFH coverage — Extension" form⁷⁴. Canadian-born children of refugee claimants are covered under RAMQ.

Following a positive decision by the Immigration and Refugee Board, a **Convention refugee** or a **protected person** is eligible for IFH until they are registered for Quebec Medicare.

Refused refugees are eligible for IFH (as long as they are not in a situation of irregularity with CIC).

⁷³ List of covered and uncovered services:
<http://www.fasadmin.com/> (and more precisely
<http://www.fasadmin.com/IFH%20Client%20Info%20english.asp?language=english&page=pdf>).

⁷⁴ This form is available online: CIC <<http://www.cic.gc.ca/english/information/applications/ifh.asp>>.

For more information:

Health and Pension Benefit Administrators

<http://www.fasadmin.com/>

General Information: 1 888 242-2100

9

Workplace Rights

Working Legally in Canada

Access to most of the services and benefits in this section requires that a person be working legally in Canada. To work legally in Canada a person who is not a Canadian citizen or permanent resident must have a valid work permit and a Social Insurance Number (see Section 1.4). Without these documents, unless a person is waiting for a work permit to be renewed, they are almost certainly working “illegally”. People working illegally or “under the table” are usually the most exploited and vulnerable as they have little or no access to any services or recourses when faced with poor working conditions, unfair wages or in the case of a workplace accident.

9.1 Normes du travail (Work Standards)⁷⁵

The *Act respecting Labour Standards* is a Quebec law providing minimum working conditions for most non-unionized employees in Quebec, although not all workers are protected equally⁷⁶.

The following people are not considered employees under the *Quebec Labour Code*: managers, superintendents, foremen, or the employer’s representative in their relations with their employees. In addition, people working for the federal government or businesses governed by federal laws are covered exclusively by the *Canada Labour Code*.

The *Act respecting Labour Standards* contains basic rules regarding, amongst other things, minimum wages, the length of the work week, breaks, sick days, paid holidays, parental leave and termination. It offers protection to workers against prohibited practices and dismissal without good and sufficient cause. The Act also contains specific rules regarding psychological harassment.

When workers are covered by the Act their employer cannot offer working conditions below the standards contained in the law. If their employer attempts to provide substandard working conditions, the worker can make a complaint to the *Commission des normes du travail* and the employer can be sued or fined. The *Commission des normes du travail* is the government agency in charge of applying the Act. The *Commission* receives and investigates complaints from employees. The *Commission* can also sue an employer to recover money that should have been paid to an employee. There are no charges to use the services of the *Commission*.

⁷⁵ Work standards are found in the *Act respecting Labour Standards*, R.S.Q. c. N-1.1.

⁷⁶ Unionized employees have the terms and conditions of their employment set out in their collective bargaining agreements and are subject to the provisions of the Quebec Labour Code, which regulates employer-union-worker relations.

Basic Protections

The information below provides an overview of the basic protections offered to most workers covered by the Act. However, there are certain exclusions or particularities that are not covered below. For specific cases, it is best to consult a lawyer or organizations specialized in the area of workplace rights.

Minimum wage

The Quebec government sets the minimum wage. As of May 1st, 2009, the general minimum wage is \$9 and \$8 for employees receiving tips. When an employee is first hired, the employer has one month to remit their first pay. Thereafter, the wages must be paid at regular intervals of not more than 16 days.

An employer cannot pay an employee less than minimum wage because the employee receives a benefit from the employer that may have a monetary value, such as an automobile, lodging, or transportation.

Furthermore, the employee must be remunerated when they are available on the work premises and are required to wait for work to be assigned, during breaks granted by the employer, and for the time taken by a trip or training period that is required by the employer.

Certain employees are excluded from minimum wage guarantees, including workers who handpick vegetables for processing (until January 1, 2010 when this provision will not longer apply) or who handpick fruit, as well as students employed in a non-profit organization with a social or community purpose (such as a recreational organization or a vacation camp).

Special clothing

When the employer requires that special clothing be worn, such as a uniform (without logo), it must be provided free of charge to a worker paid at the minimum wage. If an amount is required from the employee (for purchase, use or upkeep), it is not allowed to cause the worker to receive any less than the minimum wage.

However, when the employer requires that workers wear clothing that identifies them as employees of a particular business (shirt with logo), it must be provided free of charge in all cases. Furthermore, an employer cannot make it compulsory for their employees to purchase clothing or accessories that are in the employer's trade.

The standard work week and overtime

The standard work week is 40 hours, although there are some exceptions where the work week is permitted to be longer (e.g. for forestry workers the work week is 47 hours). After 40 hours, the hours worked are considered overtime hours. They must either be paid with a 50% premium (time and a half) or at the request of the employee the employer can replace the payment of overtime by a leave. This length of this leave must be equivalent to the hours of overtime worked, increased by 50%. It must be taken in the 12 months following the day when the hours of overtime were worked and at a date agreed upon by the employer and the employee.

The following workers are excluded from overtime pay:

- Students employed in a vacation camp or by a recreational organization (if non-profit);
- Employees assigned to canning, packing and freezing fruit and vegetables during the harvesting period;
- Employees in the fishing industry;
- Farm workers;
- Caregivers.

Periods for meals and rest

After a work period of five consecutive hours, the employee is entitled to a 30-minute rest period (without pay) for meals. This period must be paid if the employee is not authorized to leave their work. Each week the employee is entitled to a rest period of at least 32 consecutive hours. A coffee break is not obligatory. When it is granted by the employer, it must be paid and is included in the computation of the hours worked.

Paid statutory holidays

In order for an employee to be entitled to a paid statutory holiday, they must not have been absent from work, without their employer's authorization or without valid reason, on the working day preceding or the working day following that holiday.

An employee who works on a statutory holiday must obtain, in addition to regular wages, an indemnity or a compensatory holiday equivalent to one day. The compensatory holiday must be taken in the three weeks preceding or following this statutory holiday.

Annual leave/vacation

The length of the annual leave and the amount of the indemnity vary according to how long the employee has worked for the employer (called "uninterrupted service" under the Act). If the employee has less than one year of uninterrupted service, they are entitled to one day of leave per month of uninterrupted service and are paid a 4% indemnity (vacation pay) on wages paid during that time. For an employee with one year to four years of uninterrupted service, they are given two consecutive weeks of vacation annually and are paid a 4% indemnity. Employees with five or more years of uninterrupted service receive three consecutive weeks of vacation annually and are paid a 6% indemnity. In certain circumstances the employee may defer their annual leave to another year, but if they do not and do not take the leave, they must be paid the indemnity.

The employee has the right to know the date of their annual leave at least four weeks ahead of time, but the employer is responsible for setting the date of the annual leave, unless the parties agree otherwise.

Absences

The Act provides the employee with a certain number of paid and unpaid leaves, as the case may be, for events related to their family, including:

- The day of their marriage;
- At the death or for the funeral of certain members of their family;

- To benefit from a maternity leave or a paternity leave, a parental leave;
- At the birth of their child;
- To meet certain family or parental obligations.

The employee must advise the employer of their absence.

Notice of termination

The employer must give an employee notice before terminating their contract of employment or laying them off for six months or more. However, the employee must be credited with at least three months of uninterrupted service to be entitled to this notice.

In the case of an employment contract with a set duration, the employer is not required to give this notice. The duration of the notice varies according to the length of uninterrupted service:

Uninterrupted service	Duration of notice
3 months to 1 year	1 week
1 to 5 years	2 weeks
5 to 10 years	4 weeks
10 years or more	8 weeks

An employer who does not give notice of termination of employment must pay the employee a compensatory indemnity. This indemnity must be equivalent to the employee's regular wages for a period equal to that of the notice to which they were entitled.

Recourses

The *Act respecting Labour Standards* allows the employee to defend their rights by filing complaints to the *Commission des normes du travail*, which in turn can exercise, on behalf of the employee and free of charge, civil recourses following a monetary complaint.

The Act also allows the *Commission des normes du travail* to represent the employee before the *Commission des relations du travail*, which is the administrative tribunal body that hears complaints related to a prohibited practice, to a dismissal without good and sufficient cause and to psychological harassment.

Monetary complaints

An employee who believes that their employer is not respecting their rights pertaining to wages, annual leave indemnity, statutory holidays, etc., has one year to file a complaint.

Prohibited practices

An employee may file a complaint if they believe they were dismissed, suspended, transferred, the victim of discriminatory measures, reprisals or sanctions for reasons such as the following:

- Because they exercised a right ensuing from the Act respecting Labour Standards or one of its regulations;
- Because an inquiry has been made by the *Commission des normes du travail* in an establishment of this employer;
- Because they have provided the *Commission* with information concerning the application of labour standards;
- Because the employee is pregnant;
- Because the employer wants to avoid the application of the *Act respecting Labour Standards* or its regulations;
- Because the employee refused to work beyond usual work hours to meet family or parental obligations, even though all reasonable means at their disposal were taken to assume these obligations otherwise.

The time period to file a complaint is 45 days from the date of dismissal or of the measure taken against the employee.

Dismissal not made for good and sufficient cause

An employee credited with two years of uninterrupted service and who believes that they were dismissed without good and sufficient cause can file a complaint within 45 days of the date of their dismissal.

Psychological harassment

Psychological harassment is vexatious behaviour which may take the form of conduct, verbal comments, actions or gestures characterized by the following four criteria:

- They are repeated or serious in nature;
- They are hostile or unwanted;
- They affect the person's dignity or psychological integrity;
- They result in a harmful work environment.

Sexual harassment at work is also included in this definition. A complaint concerning psychological harassment must be filed within 90 days of the last incidence of harassment.

What Happens when a Complaint is Filed?

The *Commission des normes du travail* will study the complaint to ensure that it is admissible. If it is not, the complainant will be informed in writing of the refusal of their claim and the underlying reasons. One has 30 days to request, in writing, a review of this decision, by the *Directeur des affaires juridiques* of the *Commission des normes du travail*.

If the complaint is admissible, the *Commission des normes du travail* will inform the complainant in writing. The *Commission* will also notify the employer and the employer may respond in writing to the complaint.

If both parties agree, a mediation session will be scheduled. If mediation is unsuccessful, the *Commission des normes du travail* will send the complaint to the *Commission des relations de travail* and a hearing will be held. Decisions from the *Commission des relations de travail* are final and the only recourse for appeal is to apply for judicial review to the Superior Court of Quebec.

Workers Excluded by the Act

Regardless of immigration status, the Act excludes certain categories of workers, some of which affect immigrant and migrant workers disproportionately. The Act states that it applies to employees, defined as a person who works for an employer and who has the right to a salary.

However, the Act explicitly states that the following workers are completely excluded from its application:

- A self-employed worker;
- A health care professional (s. 19 of the Health Insurance Act);
- An inmate;
- A person who performs compensatory work (art. 340 of the Code of Penal Procedure);
- An employee who works both in Quebec and outside Quebec, or an employee who works solely outside Quebec but who normally resides in Quebec;
- A person who works for an employer who does not have a residence, domicile, enterprise, head office or office in Quebec;
- An employee of an embassy or consulate located in Quebec;
- An employee working in a business governed by federal laws. This is the case for federal government employees, banks (except caisses populaires), radio stations, television stations, inter-provincial transport businesses, ports, telecommunication businesses, etc. These federal workers are covered by the *Canada Labour Code*;
- A person who works within the context of an employment assistance measure or program run by the *Ministère de l'Emploi et de la Solidarité sociale*.

The following workers are also excluded from coverage except with respect to provisions pertaining to retirement, family obligations, and psychological harassment:

- Upper management employees;
- An employee subject to the Construction Decree.

The following workers are also excluded from coverage except with respect to provisions pertaining to retirement and psychological harassment:

- A person who cares for others and who performs their work⁷⁷:
 - a) In the dwelling of the person cared for;
 - b) On an occasional basis; **or**
 - c) Whose employment is based on a relationship of assistance to the family or community help;
 - d) And for whom the employer is not seeking to make a profit.
- A student who works during the school year in an enterprise chosen by the educational institution under a work induction program approved by the *Ministère de l'Éducation*;
- A worker who is a party of a contract, whose remuneration is set by regulation of the Government of Quebec.

Provisions affecting Live-in Caregivers, Caregivers and Domestic Workers

The Act describes a “**domestic**” as a paid employee, either live-in or live-out, who performs household work for the family and may take care of a child or an elderly or disabled person. Domestic workers are covered by the Act.

A live-in or live-out babysitter or **care provider** whose exclusive duties involve care for another person, whether a child, an elderly person or disabled person, and who only performs household duties that are directly related to the immediate needs of that person, is not considered a “domestic”. These workers are covered by the Act if the work is done on a full-time, and not occasional basis. However, under the Act, they are not eligible for paid overtime at the same rate as other workers. Regardless of the number of hours worked, the care provider is entitled to the regular wage only.

Specifically, as regards the minimum wage, the employer cannot require a sum of money for the room and meals of a “domestic” who lives or has meals at the residence of their employer. Working hours are all hours when an employee is not free to leave their employers’ home or to stay in their room. Specifically, the following are considered working hours under the Act:

- Each hour that a “domestic” is in the home of their employer, available upon their request;
- The travelling time at the employer’s request (picking up the kids at the kindergarten for example);
- The time for training (for example, a first aid course) if required by the employer.

People in Canada under the **live-in caregiver** program are required to have a work contract with their employer that explicitly states that the Act applies and that working conditions must be at least equivalent to that contained in the Act.

Specific rules for seasonal workers

Although they are covered by the Act respecting Labour Standards, there are specific rules that apply to those with **seasonal work**. Farm workers, forest workers, small fruit

⁷⁷ Home childcare providers and workers known as “family-type resources and immediate resources in health services,” such as those who offer home care to seniors with a loss of autonomy or to people with a disability or an intellectual impairment, are now covered by the Act due to recent judgments of the Quebec Superior Court: <<http://www.cnt.gouv.qc.ca/fileadmin/CPE/Summury-RSG.pdf>>. Babysitters are not covered.

pickers, students employed at a vacation camp, and fishermen are subject to exceptions or modifications of some of the provisions of the Act⁷⁸.

Detailed information on labour standards specific to **farm workers** (only in French) is available at:

http://www.cnt.gouv.qc.ca/fileadmin/pdf/publications/c_0107.pdf.

The main distinction for farm workers is that they do not get an increased hourly wage for overtime and small fruit pickers are paid according to the amount they pick rather than minimum wage, unless they are prevented by the state of the fields or the fruit from doing so.

The *Normes du travail* and Immigration Status

Neither the *Act respecting Labour Standards* nor the *Regulation respecting Labour Standards* contains any provisions relating to the immigration status of a worker. However, as with the EI program, access to benefits and recourses has historically been tied to the possession of a **valid work permit**. Despite this, judgements from administrative tribunals in similar areas of law such as EI or CSST have more recently allowed access to people who in “good faith” believed they were working legally and who otherwise had legal immigration status and the right to remain in Canada, such as a refugee claimant (see Footnote 80).

Citizens and **permanent residents** are, of course, covered if they meet the other eligibility requirements. **Accepted refugees, protected persons, refugee claimants, failed refugee claimants, temporary workers** and **temporary resident permit holders** with valid work permits are also covered by the Act and have access to all its benefits. **Foreign students** with valid study permits and CAQs working on campus are also covered by the Act.

Those without work permits, including **visitors**, would need to prove they meet the good faith criteria outlined above in order to be covered by the Act.

Those with **no legal immigration status** remain excluded from coverage and benefits.

The *Commission* will not at the outset refuse to take a complaint based on a person’s immigration status, but when the complaint is subsequently analyzed it may be found ineligible. People are encouraged to make complaints as there is no cost to do so and eligibility in certain situations can be very fact-specific. The law is also always changing and certain cases can push the laws and courts to change patterns.

78 For a complete list, see <<http://www.cnt.gouv.qc.ca/en/situations-de-vie-au-travail/travail-saisonnier/index.html>>.

Applicable laws:

An Act respecting Labour Standards, R.S.Q. c. N-1.1; *Regulation respecting labour standards*, R.Q. c. N-1.1, r.3.

For more information on labour standards or to file a complaint:

Commission des normes du travail

<http://www.cnt.gouv.qc.ca>

Montreal: 514 873-7061

Outside Montreal (Toll-free): 1 800 265-1414

For more information regarding the *Commission des relations du travail*:

<http://www.crt.gouv.qc.ca>

Montreal: 514 864-3646

Quebec: 418 643-3208

Toll-free: 1 866 864-3646

For more information related to the conditions of immigration and employment contracts of live-in caregivers:

<http://www.Immigration-Québec.gouv.qc.ca/en/forms/search-title/employment-contract.html>

Advocacy organizations:

Association des aides familiales du Québec (AAFQ)

<http://www.aafq.ca>

Telephone: 514 272-2670

Au bas de l'échelle

<http://www.aubasdelechelle.ca/accueil.html>

Telephone: 514 270-7878

Immigrant Worker's Center - Centre des travailleurs et travailleuses immigrants

<http://www.iwc-cti.ca/>

Telephone: 514 342-2111

PINAY - Filipino Women's Organization in Quebec / Organisation des femmes Philippines du Québec

<http://pinayquebec.blogspot.com/>

Telephone: 514 364-9833

9.2 Industrial Accidents and Other Compensation Programs (CSST)⁷⁹

The *Commission de la santé et de la sécurité du travail* (CSST) is the government organization that sees to the application of the following two laws:

- The *Act respecting Occupational Health and Safety*, the purpose of which is to eliminate dangers to the health, safety and physical well-being of workers at the source;
- The *Act respecting Industrial Accidents and Occupational Diseases*, the purpose of which is to compensate for work-related injuries and their consequences for workers, as well as the collection, from employers of the sums necessary to fund the plan.

To be eligible for CSST benefits and programs, a person must have suffered one of the following:

- Employment injury: an injury or disease arising out of or in the course of an industrial accident or an occupational disease, including a recurrence, relapse, or aggravation;
- Industrial accident: a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of their work and resulting in an employment injury to them;
- Occupational disease: contracted out of or in the course of work and characteristic of that work or directly related to the risks peculiar to that work.

Workers who have suffered a work-related injury or disease and cannot continue working because of this condition must see a doctor and provide their employer with a medical certificate. Workers absent from work for more than 14 days, or who have incurred medical expenses for which they would like a reimbursement, need to complete a Worker's Claim form. Such forms normally require that a health insurance card number and Social Insurance Number be provided.

Basic Rights

A general overview of the basic rights under these laws is offered below. Once again, there are exclusions or particularities regarding these rights that are not covered here. For specific cases, it is best to consult a lawyer or organizations specialized in the area of workplace rights, industrial accidents and occupational diseases.

The right to return to work

A worker who is injured at work or a victim of a work-related disease retains a priority as regards their position at the workplace. Upon returning to work, if this position no longer exists the worker may resume working for their employer in an equivalent position, with no loss of salary. If a worker is no longer able to perform the tasks related to their position because of permanent injury resulting from an accident or illness, the employer

⁷⁹ These compensation programs are created by the *Act respecting Occupational Health and Safety*, R.S.Q. c. S-2.1, and the *An Act respecting Industrial Accidents and Occupational Diseases*, R.S.Q. c. A-3.001.

can modify their tasks or adapt their workstation accordingly. If this is not possible, the worker must be offered the first available suitable position.

The right to rehabilitation

The right to rehabilitation applies to any worker who is injured or develops a work-related disease and who retains physical or mental injuries subsequent to the accident or disease in question.

The right to refuse work

A worker has a right to refuse to perform work that would expose them or another person to danger to their health, safety or physical well-being. The worker may not exercise this right, however, if their refusal to perform the work puts the life, health, safety or physical well-being of another person in immediate danger. The worker must immediately notify their superior and remain on the work premises to perform other tasks. The employer and the worker's representative (prevention representative, union representative or designated employee) are obligated to assess the situation, with the aim of proposing solutions and taking any necessary corrective measures. In the event of a disagreement between the employer and the worker's representative, they can ask that a CSST inspector intervene.

A worker may not be dismissed because they exercise their right to refuse to work. The worker will continue to be paid, and may in no way be penalized or punished. If an employer feels that a worker is abusing this right, the employer is responsible for proving that this is the case.

Income replacement benefit

If a worker can no longer hold their job because of an employment injury, they are entitled to financial support until they can again hold their job, an equivalent job, or a suitable job.

Compensation for bodily injuries

If a worker's physical or psychological integrity is permanently injured following an employment accident or occupational disease, the person is then entitled to a lump sum payment for bodily injuries.

Pregnancy, Reassignment and Preventive Leave

The prevention program for a “danger-free pregnancy” aims to ensure that workers who are pregnant or are breastfeeding can continue to work in a danger-free work environment.

Hence, a pregnant or breastfeeding woman has the right to be reassigned to other tasks if her usual duties represent a danger to her own health or to the health of her foetus or breastfeeding baby. If such a reassignment is not possible, the worker then has the right to stop working temporarily and receive CSST compensation. This program is not a “maternity leave”.

The following people are excluded from this prevention program:

- Self-employed individuals;
- The sole owner of a business that employs at least one worker, or the associate of a registered business (non-incorporated);
- Domestic workers working at a private employer's residence;
- Students completing internships;
- Volunteers;
- Women working from outside Quebec;
- Workers of businesses under federal jurisdiction;
- Workers protected under the *Act respecting industrial accidents and occupational diseases* in conformity with an agreement concluded between the CSST and ministries or public agencies.

Application for review

A person may apply in writing for a review of a decision rendered by the CSST within 30 days. A new decision will be made by the CSST, which may additionally be contested in writing within 45 days before the *Commission des lésions professionnelles*, which is the administrative tribunal that hears and decides cases under the Acts.

CSST and Immigration Status

The benefits and rights are again tied to whether a person who is neither a **Canadian citizen** nor **permanent resident** has a valid **work permit**. For many years, the *Commission des lésions professionnelles* (CLP) found that people without valid work permits were not considered as workers under the Act and could not benefit from any of the advantages. However, in 2006 the *Commission des lésions professionnelles* found that a **refugee claimant** who believed he was authorized to work because he had a SIN number, even though he did not possess a valid work permit, should be considered a worker under the Act and receive benefits⁸⁰. Central to this decision was the finding that the claimant had been in "good faith" in believing he was authorized to work and that the claimant had the legal right to remain in Canada at the time he sustained his work injury.

Anyone in Canada without a valid work permit would, for the time being, need to prove this "good faith" and that they were legally in Canada in order to have access to CSST benefits.

Foreign students with valid study permits and CAQs working on campus are sometimes covered by the Act.

The law specifically excludes domestics from its protection. **Domestic workers** and **caregivers**, including **live-in caregivers**, are not considered workers under the *Act respecting industrial accidents and occupational diseases*.

Article 2 of the Act defines a "domestic" as someone who is engaged by an individual for remuneration, whose main duty is, in the dwelling of the individual:

⁸⁰ Henriquez et Aliments Mello et Commission de la santé et de la sécurité du travail (March 9, 2006), Montréal, 221072-72-0311 (C.L.P.).

- To do housework; **or**
- To care for a child or a sick, handicapped or aged person and who lives in the dwelling.

The same Article 2 states that a “worker” is someone who does work for an employer for remuneration under a contract of employment or of apprenticeship, except:

- A domestic;
- A natural person engaged by an individual to care for a child or a sick, handicapped or aged person and who does not live in the dwelling of the individual;
- A person who plays sports as their main sources of income.

Applicable laws:

An Act respecting Occupational Health and Safety, R.S.Q. c. S-2.1; *An Act respecting Industrial Accidents and Occupational diseases*, R.S.Q. c. A-3.001.

For more information:

Commission de la Santé et de la Sécurité du Travail (CSST)

<http://www.csst.qc.ca>

Telephone: 1 866 302-CSST (2778)

Commission des lésions professionnelles (CLP)

<http://www.clp.gouv.qc.ca>

Assemblée des travailleurs et travailleuses accidenté-e-s du Québec (ATTAQ)

Telephone: 514 496-0147

Centre d'aide aux travailleurs et travailleuses accidentés de Montréal (CATTAM)

Telephone: 514 529-7942

Union des travailleur-se-s accidenté-e-s de Montréal

<http://perso.b2b2c.ca/uttam/index.html>

Telephone: 514 527-3661

9.3 Job Loss (Employment Insurance)⁸¹

Administered by Human Resources and Development Canada (HRDC), the Employment Insurance program (EI) is an insurance program complete with premiums (obligatory contributions deducted from each paycheque), a deductible (a 2-week unpaid waiting period before benefits can be paid), and benefits that can be denied or cancelled if the worker is found “at fault” for their unemployment. While a person’s immigration status is a factor that can determine eligibility for benefits, there are numerous other rules regarding eligibility. To evaluate a particular situation, one should consult a lawyer or organization specialized in the area of employment insurance.

There are four principal programs of Employment Insurance (EI):

- a) Regular benefits;
- b) Maternity or parental benefits;
- c) Sickness benefits;
- d) And compassionate care benefits if a person must be away from work temporarily to provide care or support to a family member who is “gravely ill with a significant risk of death”.

These will be discussed in greater detail below.

To receive all but compassionate care benefits the person must be in Canada during the period when the benefits are paid.

Regular benefits

Most beneficiaries can receive 55% of their gross average weekly income, and certain low-income families can receive a supplement equaling about 80% of their average weekly salary. The amount of benefits can never exceed \$447 per week.

In a nutshell, in order to be eligible to receive regular benefits a person must show that:

- They have been without work and without pay for at least seven consecutive days; **and**
- In the last 52 weeks or since their last claim for employment insurance (called the “qualifying period”) they have worked for the required number of insurable hours.

The employment in question must also have been “insurable employment” and the person must have either lost their job through no fault of their own or had “just cause” to quit their job. In addition, a person will have to show that they are available for and able to work but cannot find a job.

Being Out of Work

As stated, a person must have stopped working for an employer and have not received any pay for at least seven consecutive days in the 52 weeks preceding the application for

⁸¹ The EI program is created by the *Employment Insurance Act*, S.C. 1996, c. 23.

EI or since their last application for EI, which is usually the reference period for calculating benefits. This reference period can be extended up to 104 weeks in certain cases, such as when a person was not able to hold insurable employment for a number of weeks due to illness, injury, preventative retirement, or imprisonment, amongst other reasons. The reasons for having been without work can, for example, be due to shortage of work or seasonal or mass lay-off and in certain circumstances being fired from a job and “voluntarily leaving” or quitting a job.

If a person is fired for misconduct, it is up to the employer to initially prove that the misconduct occurred⁸². If a person voluntarily leaves their job they have to show they had “just cause” for leaving, meaning that quitting a job was the only reasonable alternative considering all the circumstances⁸³.

Insurable Employment

The employment in question must be considered “insurable employment”. As a general rule, people who pay premiums (deducted from their paycheques), are under the supervision of an employer or supervisor and do not determine their own working hours or salary have insurable employment. In certain cases, people who are considered self-employed can be eligible for benefits, but these are restrictive. Work that is considered “under the table” is not considered insurable employment.

Insurable Hours

These hours, which are between 420 and 700, differ based on where a person lives and the unemployment rate in their region at the time their claim for benefits is filed. In some instances, a person will need a minimum of 910 hours to qualify for EI, for example a person who is considered to be entering the Canadian work force for the first time or who is re-entering the work force after an absence of two years (if they have not received any maternity or parental benefits in the 208 weeks preceding the 52-week period). People who have been found to have violated EI rules in the past may also have an increase in the number of hours required to qualify for EI benefits.

Maternity and Parental Benefits

Since 2006, the Quebec government is responsible for providing maternity, paternity, parental and adoption benefits to residents of Quebec through a program called the Quebec Parental Insurance Plan (QPIP) (see Section II.5.3 for more information).

Sickness Benefits

This is a benefit that may be paid for up to 15 weeks to a person who is unable to work or whose regular weekly earnings have been decreased by more than 40% because of sickness or injury. In most cases, a person must have worked for 600 hours in the 52 weeks prior to making their claim or since their last EI claim, although these hours may be less if a person was already receiving regular benefits and became ill while on that claim. A medical certificate is required in order to confirm the duration of the person’s inability to work.

82 For more information on being fired for misconduct, consult:
<<http://www1.servicecanada.gc.ca/eng/ei/information/misconduct.shtml>>.

83 For more information on what has or has not been considered just cause for voluntarily leaving, consult:
<http://www1.servicecanada.gc.ca/eng/ei/information/voluntarily_leaving.shtml>.

All the other general conditions of admissibility to EI apply for these benefits. Therefore a person who makes a claim for sickness benefits is not only required to prove they are unable to work but that they would otherwise (were it not for the illness) be available for work.

Compassionate Care Benefits

“Compassionate care” benefits are temporarily paid to people who have to be away from work, or whose regular weekly earnings from work have decreased by more than 40%, to provide care or support to a family member who is gravely ill with a significant risk of death within the following 26 weeks. To be eligible for these benefits, a person must have over 600 hours of insurable work in the 52-week reference period and present a medical certificate indicating that a member of their family is ill and at risk of death in the next six months. These benefits are payable for six weeks. It is possible to obtain a second period of these benefits for six weeks if the situation of the ill person is prolonged over the initial six-month period.

Appealing a EI decision

The Employment Insurance Commission processes claims for EI benefits. If a claimant or employer disagrees with a EI Commission decision, they have the right to appeal within 30 days. There is no cost to file an appeal. The Board of Referees then examines the EI Commission decision and makes an independent decision. In certain circumstances, this second decision can in turn be appealed, this time to an Umpire.

Eligibility to EI benefits and Immigration Status

Canadian citizens and **permanent residents** are eligible for the EI program if they meet the other requirements. Others applying for EI must supply proof of their immigration status and **work permit**.

Students who would be eligible for EI benefits must convince Human Resources and Development Canada that they are available and ready for work despite the fact that they are studying full-time.

Those in Canada with **no legal status** cannot apply for EI, since they are not eligible for a work permit and have no proof of their immigration status.

Nonetheless, as mentioned previously, people who worked without having a valid work permit can be considered eligible for the EI program as long as they were eligible for a work permit during that time (but just did not have one) and are considered to be in “good faith” (see Footnote 80).

If a person’s work permit expires during the period where they are receiving EI benefits, their benefits may be cut off by Human Resources and Development Canada on the basis that the person is no longer “available” for work because they no longer have a work permit. The easiest way to avoid problems is to ensure the work permit is renewed. However, this can obviously be a problem in cases where the issuance of a work permit depends on the person being employed, such as for live-in caregivers.

It is strongly suggested that people apply for EI even if they believe they may not be admissible because there are many subtleties and exceptions to the general rules. One has the right to appeal if they disagree with an EI-related decision.

Applicable laws:

Employment Insurance Act, S.C. 1996, c. 23; *Employment Insurance Regulations*, SOR/96-332.

For more information:

Service Canada

<http://www.servicecanada.gc.ca/eng/ei/menu/eihome.shtml>

Human Resources and Skills Development Canada (HRSDC)

<http://www.hrsdc.gc.ca/eng/employment/ei/index.shtml>

Conseil national des chômeurs et chômeuses

<http://www.lecnc.com>

Telephone: 514 933-3764

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups.

Mouvement Autonome et Solidaire des Sans-Emploi (MASSE)

<http://www.lemasse.org/>

Telephone: 514 524-2226

Member groups of this umbrella organization work in specific areas. Consult its website for a list of member groups.

Ressources cited in the Guide

Assemblée des travailleurs et travailleuses accidenté-e-s du Québec (ATTAQ)
Telephone: 514 496-0147

Association des aides familiales du Québec (AAFQ)
<http://www.aafq.ca>
Telephone: 514 272-2670

Association pour une Solidarité Syndicale Étudiante (ASSE)
<http://www.asse-solidarite.qc.ca>
Telephone: 514 390-0110

Association québécoise pour la défense des droits des personnes retraitées et préretraitées (AQDR inc.)
<http://www.aqdr.org>
Telephone: 514 935-1551

Au bas de l'échelle
<http://www.aubasdelechele.ca/accueil.html>
Telephone: 514 270-7878

Canadian Revenue Agency
<http://www.cra-arc.gc.ca>
Telephone: 1 800 387-1193

Centre d'aide aux travailleurs et travailleuses accidentés de Montréal (CATTAM)
Telephone: 514 529-7942

Centre d'aide aux victimes d'actes criminels (CAVAC)
<http://www.cavac.qc.ca/>
Telephone: 1-866-532-2822

Centre communautaire juridique de Montréal (CCJM)
<http://www.ccjm.qc.ca>
Telephone: 514 864-2111

Coalition Solidarité Santé
<http://www.solidaritesante.qc.ca/francais/index.html>

Collectif pour un Québec sans pauvreté
<http://www.pauvrete.qc.ca>
Telephone: 418 525-0040

Commission des lésions professionnelles (CLP)
<http://www.clp.gouv.qc.ca>

Commission des services juridiques (CSJ)
<http://www.csj.qc.ca>
Telephone: 514 873-3562

Commission scolaire de Montreal

<http://www.csdm.qc.ca/>

Telephone: 514 596-6000

Commission des droits de la personne et des droits de la jeunesse

<http://www.cdpdj.qc.ca>

Montreal: 514 873-5146

Toll-free: 1 800 361-6477

Commission des normes du travail

<http://www.cnt.gouv.qc.ca>

Montreal: 514 873-7061

Toll-free: 1 800 265-1414

Commission de la Santé et de la Sécurité du Travail (CSST)

<http://www.csst.qc.ca>

Telephone: 1 866 302-CSST (2778)

Community Legal Services of Pointe St. Charles and Little Burgundy

<http://www.servicesjuridiques.org>

Telephone: 514 933-8432

Confédération des organismes de personnes handicapées du Québec (COPHAN)

<http://www.cophan.org>

Telephone: 514 284-0155

Conseil national des chômeurs et chômeuses

<http://www.lecnc.com>

Telephone: 514 933-3764

Direction de l'indemnisation des victimes d'actes criminels (IVAC)

<http://www.ivac.qc.ca>

Telephone: Toll-free, in Canada only: 1 800 561-4822

Montreal area: 514 906-3019

English Montreal School Board

<http://www.emsb.qc.ca/>

Telephone: 514 483-7200

Fédération étudiante collégiale du Québec (FECQ)

<http://www.fecq.org>

Telephone: 514 396-3320

Fédération des locataires d'habitations à loyer modique du Québec:

<http://www.flhlmq.com/flhlmq/fr/index.html>

Fédération étudiante universitaire du Québec (FEUQ)

<http://www.feuq.qc.ca>

Telephone: 514 396-3380

Front d'action populaire en réaménagement urbain (FRAPRU)

<http://www.frapru.qc.ca>

Telephone: 514 522-1010

Front commun des personnes assistées sociales du Québec (FCPASQ)

<http://www.fcpasq.qc.ca>

Telephone: 514 987-1989

Health and Pension Benefit Administrators

<http://www.fasadmin.com/>

General Information: 1 888 242-2100

Human Resources and Skills Development Canada

<http://www.hrsdc.gc.ca>

Immigration-Québec

<http://www.Immigration-Québec.gouv.qc.ca/en>

Immigrant Worker's Center - Centre des travailleurs et travailleuses immigrants

<http://www.iwc-cti.ca/>

Telephone: 514 342-2111

Ministère de l'Emploi et de la Solidarité sociale

<http://www.mess.gouv.qc.ca>

Ministère de l'Éducation, du Loisir et du Sport

<http://www.mels.gouv.qc.ca/>

Mouvement Autonome et Solidaire des Sans-Emploi (MASSE)

<http://www.lemasse.org/>

Telephone: 514 524-2226

ODAS (Organisation d'aide aux sans-emploi)

<http://www.cam.org/~odas/>

Telephone: 514 932-3926

Office municipal d'habitation de Montreal (OMHM)

<http://www.omhm.qc.ca>

Head office: 514 872-6442

Housing applications: 514 868-5588

Organisation populaire des droits sociaux de la région de Montréal (OPDS-RM)

<http://opdsrm.com>

Telephone: 514 524-6996

PINAY - Filipino Women's Organization in Quebec / Organisation des femmes Philippines du Québec

<http://pinayquebec.blogspot.com/>

Telephone: 514 364-9833

Quebec association of independent schools

<http://www.qais.qc.ca/>

Telephone: 514 483-6111

Quebec Parental Insurance Plan

<http://www.rqap.gouv.qc.ca>

Throughout North America, toll-free: 1 888 610-7727

Régie de l'assurance maladie du Québec

<http://www.ramq.gouv.qc.ca>

Telephone:

Quebec Region: 418 646-4636

Montreal Region: 514 864-3411

Elsewhere in Quebec: 1 800 561-9749

Régie du logement

<http://www.rdl.gouv.qc.ca>

Telephone: 514 873-2245

Régie des rentes du Québec

<http://www.rrq.gouv.qc.ca>

Quebec Region: 418 643-3381

Montreal Region: 514 864-3873

Toll-free: 1 800 667-9625

Réseau FADOQ

<https://www.fadoq.ca>

Telephone: 514 252-3017

Regroupement des Comités Logement et Associations de Locataires du Québec (RCLALQ)

<http://www.rclalq.qc.ca>

Telephone: 514 521-7114

Toll-free: 1 866 521-7114

Regroupement québécois des Centres d'aide et de lutte contre les agressions à caractère sexuel (RQCALACS)

<http://www.rqcalacs.qc.ca/public/news>

Telephone: 514 529-5252

Outside of Montreal: 1 877 717-5252

Service Canada

<http://www.servicecanada.gc.ca/eng>

Société de l'assurance automobile du Québec (SAAQ)

<http://www.saaq.qc.ca>

General information:

Toll-free: 1 800 361-7620 (Quebec, Canada, US)

Montreal: 514 873-7620

Quebec: 418 643-7620

Société d'habitation du Québec:

<http://www.habitation.gouv.qc.ca>

Telephone: 1 800 463-4315

Union des travailleur-se-s accidenté-e-s de Montréal

<http://perso.b2b2c.ca/uttam/index.html>

Telephone: 514 527-3661

Additional resources⁸⁴

Government Resources

Citizenship and Immigration (CIC)

<http://www.cic.gc.ca>

Immigration and Refugee Board (CISR)

<http://www.cisr-irb.gc.ca/Pages/index.htm>

Ministère de l'Immigration et des Communautés culturelles (MICC)

<http://www.micc.gouv.qc.ca/fr/index.asp>

Community Organizations Working Towards Greater Respect of Immigrants' and Refugees' Rights

Action Réfugiés Montréal

http://www.montreal.anglican.ca/z4mom/arm/arm_main.htm

Telephone: 514 935-7799

Carrefour d'aide aux nouveaux arrivants (CANA)

<http://www.cana-montreal.org>

Telephone: 514 382-0735

CEDA - Soutien aux personnes immigrantes

<http://www.ceda22.com/index.php>

Telephone: 514 596-4422

Conseil canadien pour les réfugiés (CCR) - Canadian Council for Refugees

<http://www.ccrweb.ca/eng/engfront/frontpage.htm>

Telephone: 514 277-7223

Ligue des droits et libertés

<http://www.liguedesdroits.ca>

Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)

<http://www.tcric.qc.ca>

Telephone: 514 272-6060

⁸⁴ Other resources and groups, working in more specific fields, are identified at the end of each section of Section II.