



CAPIC's Input for Regulations Amending the Immigration and Refugee Protection Regulations (Provincial Nominee Program)

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The submission contains CAPIC’s input for the amendment to the Immigration and Refugee Protection Regulations (Provincial Nominee Program) published in Canada Gazette, Part I, Volume 159, Number 8 (hereinafter referred to as the [IRPR Amendment \(PNP\)](#)). It is based on CAPIC’s research and our members’ feedback.

Introduction

CAPIC appreciates and supports the objectives of the Amendment (PNP), namely, greater complementarity in federal, provincial, and territorial roles in immigration, and efficiency in Immigration, Refugees and Citizenship Canada (IRCC) and Canada Border Services Agency (CBSA), PNP application processing and removal of duplication in the roles of the two levels of government in PNP operations.

After having reviewed the legal authority for the PNP, the PNP operations, and the PNP evaluation done by the government,¹ to achieve the objectives of the IRPR Amendment (PNP), CAPIC proposes the following questions for further examination:

1. Could the Amendment (PNP) inadvertently overstep the provinces’ jurisdiction on immigration?
2. What would be the mechanism to tackle duplicated assessments when the eligibility and admissibility assessments are intertwined especially for the enhanced Express Entry streams?
3. Would there be unanticipated costs brought forth by the IRPR Amendment (PNP)?

Analysis and Recommendations

1. Analysis

(1) The shared responsibility on immigration

a. Legal authority

¹ IRCC, “Evaluation of the Provincial Nominee Program,” November 2017. [Online](#). This is the only publicly available PNP evaluation report produced by IRCC.



The *Constitution Act, 1867*² defines immigration as a joint responsibility shared by the federal and provincial governments. It allows provinces to make immigration laws. Some provinces participating in PNP have enacted immigration statutes to govern their PNPs, e.g., Ontario,³ British Columbia.⁴

Within the legal framework of the *Constitution*, the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) lays out legal authority for the PNP,⁵ which allows sole provincial responsibility.⁶ It requires regulations governing federal-provincial agreements to be consistent with the agreements.⁷ IRPA also stipulates the consultation mechanism to facilitate cooperation between the two levels of government and take into consideration the effect that the IRPA implementation may have on the provinces. It requires mandatory consultation with the provincial governments concerning permanent resident admission each year.⁸

b. The effect of the current legal framework and the proposed changes by the IRPR Amendment (PNP)

Under the current PNP legal authority, provinces set up their selection criteria based on the federal-provincial agreements. IRCC officers, while assessing the admissibility aspect,⁹ can conduct substitution evaluation to refuse permanent residence applications filed by PNP nominees.¹⁰

The IRPR Amendment (PNP) proposes to remove the substitution evaluation at the IRCC level on the condition that the provincial selection criteria have been approved in writing by the IRCC Minister. The “Background” section of the IRPR Amendment (PNP) states that it is to address the issue of duplicative federal assessments in PNP application processing raised at the July 2022 Forum of Ministers Responsible for Immigration (FMRI) meeting. In short, the rationale for such changes resides in processing efficiency.

The removal of duplicative assessments to improve efficiency is necessary. However, under the IRPR Amendment (PNP), the sole responsibility of provinces

² Section 95.

³ *Ontario Immigration Act*, SO 2015, c. 8.

⁴ *Provincial Immigration Programs Act*, SBC 2015, c. 37.

⁵ S 8(1) of IRPA.

⁶ S 9(1) of IRPA.

⁷ S 8(2) of IRPA.

⁸ S 10 of IRPA.

⁹ S 8(3) of IRPA.

¹⁰ Ss 87(3) and (4) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).



for nominee selection is based on the IRCC concurrence on the design of PNP selection criteria. In other words, IRCC will actively participate in setting out the PNP selection criteria in the form of Ministerial approval.

While IRPA requires regulations concerning PNP to be consistent with federal-provincial agreements, the proposed changes will add a layer to the agreements – Ministerial written approval. Provinces that have their provincial immigration statutes, e.g., British Columbia, Ontario, have immigration regulations that lay out their PNP stream selection criteria by authorization of their immigration statutes. This new approach proposed by the IRPR Amendment (PNP) means the Minister’s active role in the making and amending of the applicable provincial regulations. Furthermore, with the new approach, it appears that changes in the selection criteria and the introduction of new streams and pilots also involve the approval of the Minister. Could this unintentionally lead to the PNP losing its flexibility for provinces to cater to their local economic and labour demands? Flexibility is requested by provinces during the 2022 FMRI.¹¹

CAPIC’s concern is that this approval approach could overstep the provincial jurisdiction on immigration by changing the nature of shared responsibility to a top-down approach.

The following information in the PNP evaluation conducted by IRCC¹² indicates the current PNP regime seems to be well-balanced:

- The primary objective of the PNP is to enhance the economic benefits of immigration to provinces and territories.
- The provincial and territorial governments are well positioned to determine the eligibility of applicants, the specific economic needs of their jurisdictions and the capacity of the applicants to establish economically.
- Provinces and territories have concerns about duplication in processing PNP applications under Express Entry as their selection criteria are similar to that of the Express Entry’s Comprehensive Ranking System assessed by IRCC.
- The approval rates for PNP applications by IRCC ranged from 94% to 97% from 2010 to 2015.

The current federal-provincial agreements recognize that provinces are best positioned to determine their specific economic needs concerning immigration.

¹¹ FMRI, “Federal, provincial and territorial immigration Ministers meet to plan for the future of Canada’s immigration system,” July 28, 2022, [online](#).

¹² *Supra*, footnote 1.



These may also be indicators that it would be better to leave the PNP selection criteria formulating to the provinces.

In addition, the Ministerial approval approach in the IRPR Amendment (PNP) and the current substitution evaluation by officers are different in nature. The former is PNP design, and the latter is PNP administration. The concurrent design *per se* may not guarantee the best outcome in administration.

(2) Duplicated assessments

Immigration selection consists of two aspects: Eligibility assessment and admissibility assessment. The IRPR Amendment (PNP) intends to give sole responsibility to provinces concerning PNP membership assessment, including their ability to become economically established in Canada and their intention to reside in the nominating province, namely, nominees' eligibility assessment. As for the admissibility assessment, IRPA is clear that it rests on the federal immigration authorities.¹³

However, in certain circumstances, admissibility assessment, inevitably, will touch upon eligibility factors. Also, concerning enhanced Express Entry streams of PNPs, assessing whether applicants meet the selection criteria of one of the federal programs rests on IRCC.

a. In admissibility assessment concerning eligibility factors

IRPA prescribes 13 grounds of inadmissibility.¹⁴ When assessing admissibility on the grounds of misrepresentation, inevitably, IRCC and CBSA officers may touch upon aspects of eligibility from the lens of admissibility, for example, work experience, education credentials, intent to reside in the nominating province, etc. Below are three examples of the decisions made by the Federal Court that show how the two aspects are intertwined with each other.

*Mei*¹⁵ is an earlier example that shows how eligibility and admissibility, in certain circumstances, are inseparable. In *Mei*, the assessing officer suspected the veracity of the applicant's employment that qualified him for the Manitoba Provincial Nominee Program (MPNP). His permanent resident application under the PNP was refused on the grounds of misrepresentation.

¹³ S. 8(3) of IRPA.

¹⁴ Ss. 34 to 42 of IRPA.

¹⁵ *Mei v. Canada (Citizenship and Immigration)*, 2009 FC 1040.



Recently, the same court in *Antala*¹⁶ upheld an IRCC officer’s refusal decision based on a misrepresentation finding in the applicant’s work experience.

*Tran*¹⁷ is an example concerning the assessment of intent to reside in the nominating province. In *Tran*, the applicant was refused on the grounds of her no intention of residing in New Brunswick, the nominating province. However, this type, namely, intent to reside could also be an admissibility issue of misrepresentation if it is examined after nominees have obtained permanent residency,¹⁸ as it is a mandatory requirement for PNP nominees under both the current PNP regime and the IRPR Amendment (PNP).

The above scenarios bring forth the following questions:

- How would IRCC and CBSA officers conduct the admissibility assessment concerning misrepresentation if the presumption under the IRPR Amendment (PNP) is that the eligibility assessments done by provinces are conclusive?
- If they investigate eligibility factors from the admissibility perspective, what would be the boundary between the province’s sole responsibility in nominee selection and IRCC and CBSA’s admissibility assessment?
- If they do not consider eligibility factors when assessing admissibility as that would be the sole responsibility of the provinces after the implementation of the IRPR Amendment (PNP), could that cause integrity issues?

b. Enhanced Express Entry streams eligibility assessment

Nine provinces and two territories have enhanced Express Entry streams.¹⁹ They operate differently. To apply to these streams, applicants must meet both the PNP stream selection criteria and one of the federal programs administered through the Express Entry by IRCC.

¹⁶ *Antala v. Canada (Citizenship and Immigration)*, 2025 FC 420.

¹⁷ *Tran v. Canada (Citizenship and Immigration)*, 2021 FC 721.

¹⁸ Borderline Podcast, “#145 – Minister Miller Blackmails the Provinces on Immigration Levels, plus IRCC Refusals of Provincial Nominees,” posted January 31, 2025, [online](#).

¹⁹ IRCC, “Immigrate as a provincial nominee,” modified January 17, 2025, [online](#).



The selection criteria for the federal programs are set out by IRPR.²⁰ Applicants' eligibility for the federal programs is assessed by IRCC officers. Consequently, for the enhanced Express Entry streams, duplicative assessments of eligibility seem inevitable. This was reflected in the IRCC PNP evaluation report.²¹

The portion of such duplication can be anticipated based on the previous data and the PNP allocation in the Immigration Levels Plan. The following table shows the number of principal applicants admitted through the Express Entry from 2021 to 2023:²²

Table 48: Number of Express Entry (EE) applications received as principal applicants for permanent residence between 2021 and 2023; broken down by immigration category and gender (in cases)

Gender - Express Entry	2021	2022	2023	Grand Total
Female				
Canadian Experience Class (EE)	34,111	4,913	16,025	55,049
Federal Skilled Workers (EE)	4,327	2,533	11,644	18,504
Provincial/Territorial Nominees (EE)	5,401	7,174	7,946	20,521
Skilled Trades (EE)			1	1
Total	43,839	14,620	35,616	94,075

The “Benefits” section of the Regulatory Impact Analysis Statement of the Amendment (PNP) states that approximately 47,800 PNP permanent residence applications are processed by IRCC annually. Based on the data above, more than 10 percent of PNP nominees are admitted through enhanced Express Entry streams.

Compared to the 2024 PNP in the Immigration Levels Plan,²³ PNP allocations were reduced by 50% in 2025,²⁴ which was at a target of 55,000 and ranged from a low of 20,000 to a high of 65,000. If the low range applies, based on the previous admission of permanent residents through the enhanced Express Entry streams, more than one-third would incorporate the duplicative assessment; for the target and the high range, more than 10 percent.

²⁰ See ss 75 to 83 of IRPR for the Federal Skilled Worker program, [s. 87.1](#) of IRPR for the Canadian Experience Class program, and [s. 87.2](#) of IRPR for the Federal Skilled Trades program.

²¹ *Supra*, footnote 1.

²² IRCC, “Express Entry Year-End Report 2023,” modified August 9, 2024, [online](#).

²³ IRCC, “Notice – Supplementary Information for the 2024-2026 Immigration Levels Plan,” last modified November 1, 2023, [online](#).

²⁴ IRCC, “Notice – Supplementary Information for the 2025-2027 Immigration Levels Plan,” last modified October 24, 2024, [online](#).



IRPA allows the Minister to delegate powers to any person by Ministerial authorization.²⁵ It is unclear whether the enhanced Express Entry streams would be fully under the provinces' administration with the Minister's delegation to eliminate inevitable duplicative eligibility assessments.

(3) Potential costs

The IRPA Amendment (PNP) intends to replace the current substitution evaluation done by IRCC officers with the added Minister's approval; it moves the federal evaluation from the operational level to a policy-making level. CAPIC suggests examining if this proposed concurrence on the design of PNP selection criteria could be more costly to both IRCC and provinces than the individual substitution evaluation at the federal level. The rationale for the suggestion is that abstract factors must be thoroughly examined for the design of policies, which are costly.

The "Benefits and costs" section of the Regulatory Impact Analysis Statement of the IRPR Amendment (PNP) considered the cost savings to IRCC, benefits to CBSA, and applicants. However, it is unclear what would be the cost at both the federal and provincial levels concerning the process of the Minister's approval.

CAPIC has highlighted that duplication assessment under some circumstances is inevitable, which may cause confusion in operations, and in turn, incur unanticipated costs. On the other hand, if the Minister delegates the assessment of the federal programs under the Express Entry streams to provinces, personnel training has to be accounted for.

As for applicants, initially, this move could be beneficial. However, because permanent residents are subject to inadmissibility on some grounds, including misrepresentation, it could be a costly issue to some if their intention to reside in the nominating province is examined at a later stage from the lens of admissibility on the grounds of misrepresentation.

2. Recommendations

Based on the analysis, CAPIC recommends:

- (1) Further examination of the Minister's approval approach to ensure it is within the framework of the Constitution and IRPA.

²⁵ [S 6\(2\)](#) of IRPA.



- (2) Further examination of the inevitable duplicative eligibility assessments. If the IRPR Amendment (PNP) proceeds without modification, have clear guidance to officers in place when duplicative assessment is inevitable.
- (3) Explore the cost of the Minister's approval process at both the federal and provincial levels.

Conclusion

Generally, CAPIC supports the removal of duplicative assessments for efficiency. CAPIC raised the questions with the intent of making the IRPR Amendment (PNP) a well-balanced regulatory design that is within the legal framework and will facilitate the collaboration between the two levels of government in immigration administration.

About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is a non-profit professional organization representing the interests of Canadian Immigration Consultants.

The organization advocates for competency, ethical conduct, and consumer protection in the immigration consulting industry. CAPIC's mission is to lead, connect, protect, and develop the profession, serving the best interests of its 4,400 members. It is the only association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. CAPIC is a major stakeholder consulting with federal and provincial governments and their respective departments on legislation, policy, and program improvements and changes.

All CAPIC submissions are publicly available on the CAPIC [Advocacy](#) web page to facilitate communication between CAPIC and our 4,400-strong membership and the general public.

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