

## WHEN THE REGULAR ROUTES DON'T WORK: HUMANITARIAN AND COMPASSIONATE APPLICATIONS

**Course Summary:** This course delves into the world of permanent residence applications that are often required as a last resort, due to clients not being eligible under regular immigration programs or because of prohibitions to applying. Our instructor will discuss what types of application are appropriate for humanitarian and compassionate requests, the legal test and when such relief is not an option. Topics will also include what to consider before applying, what evidence to include as part of these applications, ethical considerations and common mistakes made by H&C applicants.

**Course Schedule:** October 28, 2019 12:00 pm – 3:00 pm EST (3 hours)

**Course Outline:**

1. Overview and course objectives
  - Purpose of the H&C provision
2. Statutory framework and policy directives
  - Section 25 of the *Immigration and Refugee Protection Act*
  - Appropriate use of Manuals, Program Delivery Instructions and Operational Bulletins
3. Who can apply and cannot apply
  - Foreign nationals inside Canada
  - Foreign nationals outside Canada
  - Prohibitions and temporal barriers to applications
4. What can be waived
  - Scope of H&C discretion
  - Exclusions from consideration
5. Legal test
  - Supreme Court case of *Kanthasamy*
6. Inside Canada requests
  - How to apply
  - What can be waived

- Applications for permanent residence
  - Processing times
7. Outside Canada requests
- How to apply
  - What can be waived
  - Processing times
8. Common Case Types
- Family separation
  - Best interests of the child
  - De facto family relationships
  - Country of origin conditions
  - Establishment in Canada
9. What to consider before applying
- Pros and cons of the process
  - Client priorities
  - Ethical considerations – merits of the case, counselling on chances of success, competency, seeking mentoring, setting fees, the retainer agreement, knowing the client, joint retainer where multiple family members are applying, confronting the client with inconsistencies and implausibilities
10. Evidence
- Admissible evidence
  - Use of Affidavits
  - Insufficiency of evidence
  - Ethical considerations – confronting the client when evidence seems suspicious, suggesting improvements vs. manufacturing evidence, verifying evidence
11. Things to think about before you start drafting
- What factors will be considered
  - What factors may be considered
  - Identify strengths
  - Identify weaknesses
  - Identify evidence

## 12. How to draft well

- Keeping the legal test in mind
- Structure of submissions
- Order of arguments
- Addressing weaknesses
- Simplicity/plain language
- Critical thinking
- Don't exaggerate
- Dealing with procrastination
- Ethical considerations – supervision of staff and students, duty of candour/honesty

## 13. Particular considerations related to best interests of the child

- How does case law define it
- How far does it extend

## 14. General ethical issues

- Dealing with the client through interpreters/translators
- Confidentiality and family members
- Ensuring your client is kept apprised
- Getting instructions from your client
- Optional and mandatory withdrawal of services

## 15. Common pitfalls

- Lack of evidence
- Presumptions
- Failure to connect evidence to facts
- Lack of persuasion

## 16. After approval

- Permanent resident cases
- Admissibility

## 17. After rejection

- Reconsideration
- Reapplication
- Judicial Review

## 18. Question and answer period