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Modernization of Client Service Delivery

**CANADIAN BAR ASSOCIATION
IMMIGRATION LAW SECTION**

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the Immigration Law Section, with assistance from the Legislation and Law Reform Directorate at the CBA office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the Immigration Law Section.

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Modernization of Client Service Delivery

I. INTRODUCTION

The Immigration Law Section of the Canadian Bar Association (CBA Section) appreciates the opportunity to participate in the study on the Modernization of Client Service Delivery by the Standing Committee on Citizenship and Immigration.

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,000 members practicing all areas of immigration law. Our members deliver professional advice and representation in the Canadian immigration system to thousands of clients in Canada and abroad. The CBA Section actively participates in the development of Canadian immigration law and policy, devoting thousands of volunteer hours.

We acknowledge the complexity of analyzing and improving client service delivery by Immigration, Refugees and Citizenship Canada (IRCC). IRCC administers several key programs, and shares responsibility for the administration and enforcement of the Immigration and Refugee Protection Act (IRPA). It is also accountable for the Passport Program, and collaborates with Service Canada and Global Affairs Canada for the delivery of passport services.¹

The 2016-17 Report on Plans and Priorities for IRCC identifies “enhancing service excellence” as an ongoing priority to improve Canada’s international competitiveness in attracting the best and brightest to Canada.² Planned priorities since 2011 have included delivering more services through electronic platforms, enabling more case information to be shared with clients during processing, as well as simplifying and automating processing through an integrated network that reduces inventories and processing times.

¹ See [Info Source: Institutional Functions, Programs and Activities](http://www.cic.gc.ca/english/department/atip/infosource/institutional.asp#temporaryEco) (www.cic.gc.ca/english/department/atip/infosource/institutional.asp#temporaryEco) (date modified: July 14, 2016).

² See [Minister’s Message](http://www.cic.gc.ca/english/resources/publications/rpp/2016-2017/#message) (www.cic.gc.ca/english/resources/publications/rpp/2016-2017/#message) (date modified: April 26, 2016).

Recently, IRCC has demonstrated its commitment to ongoing improvements to client service delivery – most notably through implementation of its Global Case Management System (GCMS) and Express Entry, as well as efforts to reduce processing times and simplify application materials and procedures. In this submission, the CBA Section makes observations and recommendations on several structural and program issues, which are viewed by the Section as priorities for improvement.

II. STRUCTURAL ISSUES

The CBA Section recommends that IRCC examine its relationships and client service delivery in key areas, including visa offices, ports of entry, labour market impact assessments (LMIA) and legal counsel.

A. Visa Offices

Client service delivery across a network of visa offices in 52 countries presents significant challenges, particularly with verification of identity, education, credentials, security and medical clearances³. We support IRCC's efforts to implement consistent application criteria, including forms and supporting documents, and consistent processing times across locations.

Most visa offices and Immigration Program Managers are reasonably responsive. However some are less responsive to communications from clients and their legal counsel. Clients may need to escalate matters to the Case Management Branch after weeks or months of delay. Clients may also involve Members of Parliament, Federal Court and media in effort to address their concerns. Giving Immigration Program Managers additional resources and accountability for client service delivery would reduce inefficiencies and enable IRCC to identify and resolve systemic issues proactively.

Our members have reported anomalous handling of immigration applications prepared and filed by immigration lawyers through Visa Application Centres (VACs), including reordering documents and removing the submissions of legal counsel. We encourage continued training and oversight by Immigration Program Managers at VACs to ensure quality control and program integrity. This is particularly so in compliance with section 91 of IRPA when it comes to filling out visa application forms and giving advice to clients.

³ See [Report on Plans and Priorities 2016–2017](http://www.cic.gc.ca/english/resources/publications/rpp/2016-2017/#a1.2.2) (www.cic.gc.ca/english/resources/publications/rpp/2016-2017/#a1.2.2) (date modified: April 26, 2016).

B. Ports of Entry

The Canadian Border Services Agency (CBSA) has a broad mandate, administering and enforcing more than 90 laws and regulations at 1,200 service points in Canada, and 39 locations abroad.⁴

As part of this mandate, CBSA Officers are responsible for processing a large number of applications for temporary residence to Canada by visitors. However, client service delivery has become progressively less facilitative and more enforcement-oriented in the past 20 years as legacy CIC Officers are replaced by CBSA Officers with the duty to enforce many laws including the IRPA. It is common knowledge among Canadian immigration lawyers to avoid certain ports of entry based on a history of lengthy delays, unwarranted scrutiny and bad decisions. Clients can experience processing times of two to four hours at ports of entry for work permit applications as CBSA Officers deal with other priorities.

Overall, client service delivery at Canadian ports of entry involves a great deal of uncertainty and inconsistency in outcomes based on the attitude and training of the particular CBSA Officer. The CBA Section has a number of recommendations to address these problems at Canadian ports of entry:

1. Applying clear and consistent guidelines at Canadian ports of entry;
2. Requiring IRCC Officers with extensive training in requirements for temporary admission, work permits, residency obligations and related immigration matters to be on duty at major ports of entry and available by telephone at all times as a resource for CBSA Officers at primary and secondary inspections;
3. Improving the quality of knowledge, service and facilitation at International Mobility Worker Units so that they become centres of specialization used by immigration lawyers to obtain advance opinion on LMIA exemptions.
4. Reducing processing times at International Mobility Worker Units from 30 days to 10 days and offering expedited service within 72 hours, perhaps for a reasonable fee, to facilitate business travellers.
5. Implementing a standard procedure for removal of “red flags” on GCMS through an Ombudsperson office or another procedure subject to objective criteria and processing times.

⁴ See [BSF5146 - What to Expect: Secondary Services and Inspections](http://www.cbsa-asfc.gc.ca/publications/pub/bsf5146-eng.html) (www.cbsa-asfc.gc.ca/publications/pub/bsf5146-eng.html) (date modified: January 18, 2012).

C. Labour Market Impact Assessments (LMIAs)

IRCC shares client service delivery for the Temporary Foreign Worker Program (TFWP) with Employment and Social Development Canada (ESDC) and Service Canada. LMIAs are a significant requirement of the TFWP. However, the requirements, procedures, costs and processing times are excessive in many situations, and adversely impact client service delivery across related functions, including work permits, provincial nominee programs and applications for permanent residence. The CBA Section recommends several ways to modernize client service delivery for LMIAs:

1. Coordinating ESDC's web service with IRCC's web service;
2. Applying the policy for concurrent processing of LMIAs and work permits consistently (i.e. holding work permit applications for up to two months enabling clients to maintain implied status during LMIA processing);
3. Publishing processing times by office;
4. Providing notice and transition periods for LMIA forms;
5. Implementing a trusted employer program with access to expedited LMIAs (with a processing time of 10 business days);
6. Removing the LMIA requirement (or at the very least, advertising requirements) for certain occupational codes (e.g. 00 NOC codes); and
7. Employing Service Canada TFWP Officers at International Mobility Worker Units.

D. Legal Counsel

A key issue in client service delivery is the positive and critical role that lawyers play in the immigration system, as educated and trained professionals. Canadian immigration lawyers (and Quebec notaries) are regulated by law societies and are required to meet and uphold specific professional standards so that clients and the public have full confidence in the professional competence of their lawyers.

Lawyers enhance client service delivery by reducing errors, eliminating meritless applications, reducing misrepresentation and responding quickly and clearly to document requests.

Developing policies and methods to enhance communication with immigration lawyers on applications to avoid unnecessary delays, errors and appeals will also improve efficiency and client satisfaction. In addition, continuing to consult regularly with immigration lawyers on law, policy and operational matters, including technical innovations helps to promote mutual understanding and efficiency within the immigration system.

Lawyers continue to be misrepresented on government websites. In 2010, the CBA Section made a submission to IRCC and CBSA which examined messaging about lawyers and other representatives from approximately one hundred government sites⁵. The submission noted that the representation of lawyers on these sites amounted to a public marginalization of lawyers, and fueled a perception that applicants might be better served by other representatives who are not subject to the same educational or professional standards. This was in stark contrast to other industry websites that presented a more balanced presentation of the role of lawyers.

To address these concerns, promote access to justice, and better protect the public from ghost representatives, the CBA Section recommends replacing current information about immigration lawyers on IRCC, CBSA and other websites with materials that distinguish lawyers from other types of representatives based on legal education, training and regulation by provincial and territorial law societies with high standards of ethics and competence. We would gladly provide such materials.

III. PROGRAM ISSUES

The CBA Section recommends that IRCC examine several key program issues.

A. Technical Issues

A number of technical issues could be avoided or addressed by testing changes with some immigration lawyers prior to implementation on GCMS. During the design stage of developing technology for client service delivery, it makes sense to take into account how immigration lawyers and law firms may use the system to file applications, monitor processing status and communicate with IRCC. CBA Section members would gladly collaborate on these technical matters.

Many users report the need for immediate technical support when preparing and filing electronic applications to avoid lost productivity and uncertainty about the status or contents of an application. Technical tickets submitted for Express Entry, for example, involve long delays and inefficiency in addressing the issue.

⁵ See, [CBA submission](#) on Depiction of Immigration Lawyers on Federal Government Websites (Ottawa: CBA, 2010). (www.cba.org/CMSPages/GetFile.aspx?guid=c8389183-54ba-4e90-b0cb-addb43beb1c4)

We understand that IRCC will be making improvements to GCMS to allow clients to view and print applications before filing and during processing. We consider this fundamental to fairness and client service.

In 2016, IRCC introduced the ability for applicants and their representatives to link paper applications with an online account. Unfortunately, this feature does not appear to function well, and requests to IRCC for technical support in this regard have gone unanswered.

The search functionality on the portal has been downgraded by removing the "new" search, so new messages must be searched either by using the application number or the applicant's number or by waiting for email notifications sent to representatives. This is very cumbersome.

To upload police clearances online following requests from IRCC, a user must enter the type of document, document name and expiry date. Some of this information is inapplicable and in order to validate the form, random data must be input. There is also uncertainty about police clearances sent directly to IRCC, and whether the online application should be updated at the end of the 30 or 60-day period.

B. Service Delivery Commitments for All Services

Establishing service delivery standards and publishing actual processing times would increase public confidence and accountability. Many service lines currently have no service delivery standard, published actual processing times, or accountability for processing times (e.g. restorations, inland Temporary Resident Permits, Permanent Resident Travel Documents, and reconsiderations after judicial review or consent).

C. Reduced Processing Times and Premium Processing

The CBA Section recommends introducing premium processing, a "trusted employer" system or blanket intra-company transfer system to facilitate work permit processing and promote Canada's global competitiveness, for example, by allowing companies to bring in senior leadership to provide important strategic guidance more quickly.

D. Client Updates on Delayed Applications

IRCC does not currently contact clients when it exceeds processing times. The CBA Section recommends that an automated email would be helpful to advise clients that the application is being processed and further time is required, as well as requesting an additional inquiry if a

decision is not made within a specified number of days. This would decrease inquiries and complaints. We also recommend implementing reasonable and consistent processing times for case specific inquiries.

E. Requesting Additional Information before Refusals

The CBA Section recommends implementing a system for routine requests for additional information on intake and triage, with reasonable deadlines to facilitate processing rather than unnecessary refusal of applications. This would assist in reducing inefficiencies.

F. Communication with Legal Counsel

The CBA Section recommends that IRCC have the ability to reconsider matters brought to their attention, notwithstanding an application for judicial review that may have been filed to preserve the client's legal rights. This could assist in avoiding litigation.

G. Improved Consistency in Application of Program Guidelines

The CBA Section recommends improved consistency in the interpretation and application of program guidelines and procedures at ports of entry and consular offices. This is particularly true for the International Mobility Program involving LMIA-exempt work permit applications. The CBA Section also recommends the inclusion of (or access to) program experts to improve the consistency of interpretation on technical matters.

H. Increased Transparency in Decision-Making

Application refusal letters can be very cursory on the reasons for refusal, and repeated inquiries (or an ATIP request) are necessary to discern the reasons, or lack thereof, for a negative decision. The CBA Section recommends more specific refusal letters, to help clients understand the outcome, and might also reduce ATIP requests and applications for judicial review.

I. Transparency on Changes to Application Forms and Procedures

IRCC frequently updates forms without notice and without publishing information about a transition period during which the old forms will still be accepted. This can be prejudicial and costly for applicants who may have to complete new forms several times in the course of preparing to file an application. It may also result in applicants who submit a paper application to IRCC having their application returned because a form has been updated.

We applaud IRCC's recent provision of notice and information about the transition period for new spousal sponsorship forms. The CBA Section recommends that notice of pending form changes and published transition periods be given through a single point of information on IRCC's website. Notices should also be published on social media to reach the widest audience.

J. Misrepresentation

One amendment in Bill C-43 (*Faster Removal of Foreign Criminals Act*) – which came into effect in December 2014 – increased the period of inadmissibility for misrepresentation under section 40 of IRPA from two to five years⁶. It also bars those found inadmissible for misrepresentation from applying for permanent residence during that five-year period. The CBA Section recommends that the previous two-year bar be reinstated.

A five-year bar is unnecessarily punitive, particularly for less serious misrepresentations, as there is no discretion for possible justifications for the misrepresentation. Misrepresentations are sometimes inadvertent due to a lack of sophistication, limited language proficiency, the advice of unscrupulous third parties, or fear of the consequences of telling the truth.

K. Voluntary Disclosure Program

The CBA Section recommends that IRCC consider implementing a Voluntary Disclosure Program similar to that of the Canada Revenue Agency or the Temporary Foreign Worker Program, whereby a person who has violated section 124 of IRPA can voluntarily disclose the violation and be subject to an appropriate penalty, rather than the harsh penalties currently in section 125.

The CBA Section appreciates the opportunity discuss our comments and recommendations on the modernization of client service delivery with the Committee, as well as to provide any clarifications the Committee requests.

⁶ See, [CBA submission](http://www.cba.org/Our-Work/Submissions-(1)/Submissions/2012/Bill-C-43-%e2%80%94-Faster-Removal-of-Foreign-Criminals) on Bill C-43, *Faster Removal of Foreign Criminals Act* (Ottawa: CBA, 2016). (www.cba.org/Our-Work/Submissions-(1)/Submissions/2012/Bill-C-43-%e2%80%94-Faster-Removal-of-Foreign-Criminals)