



August 3, 2021

Via email: David.Lametti@parl.gc.ca; mcu@justice.gc.ca; Minister@cic.gc.ca

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

The Honourable Marco Mendicino, P.C. M.P.
Minister of Immigration, Refugees and Citizenship
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Ministers Lametti and Mendicino:

Re: Exclusion of Counsel in Immigration Matters

I write on behalf of the Canadian Bar Association to again express concern that Immigration, Refugees and Citizenship Canada (IRCC) is preventing lawyers from effectively representing their clients as it tests and implements new technologies. The CBA Immigration Law Section initially wrote to IRCC in May 2021 to raise concerns about the exclusion of counsel.¹

The CBA is a national association of 36,000 lawyers, law students, notaries and academics, from every jurisdiction of Canada, with a mandate that includes seeking improvements in the law and administration of justice, and access to justice.

IRCC responded to our May 2021 letter that due to the pandemic, it has prioritized the rapid implementation of new digital intake tools that constitute “minimum viable products,” which will continue to evolve.²

A platform that does not integrate representatives and creates barriers to access to justice should not be considered a minimum viable product. We are pleased that IRCC plans to modernize its outdated systems with new technologies and virtual intake processes that will enable more efficient application processing.³ However, as it modernizes its processes, IRCC must not impede lawyers’ ability to represent clients at pivotal stages of their immigration applications. Lawyers ensure applications are complete, that current forms are used and processes duly followed. This reduces the return of applications and unnecessary back and forth between IRCC and applicants.

¹ Letter from CBA Immigration Law Section to ADM Operations of IRCC, [Exclusion of Counsel in Immigration Matters](#), May 7, 2021.

² IRCC’s response to the CBA Immigration Law Section, at page 1, para. 4.

³ Government of Canada, Budget 2021, [Creating Jobs and Growth](#).

Excluding counsel from new programs increases the likelihood that applicants will make mistakes that could have devastating consequences. For example, the Temporary Residence to Permanent Residence Pathway Programs introduced during the pandemic require a permanent residence application to be submitted by the applicant – not the representative – through an online portal. While we commend the IRCC for recognizing the contributions of healthcare workers, workers in other essential sectors, and recent international graduates, we are troubled by the exclusion of counsel.⁴ With the English-speaking international graduate stream reaching its quota of 40,000 applications in just over 24 hours, applicants needed to submit perfected applications under strict time pressures. Representatives were limited to counselling clients on the form and content of applications without the ability to submit applications themselves and ensure all was in order. If a client incorrectly uploaded a document or failed to upload a requisite form to the portal, IRCC could refuse their application. Mistakes like these could have been avoided if the technology enabled lawyers to fulfill their professional duties.

IRCC has excluded counsel from many other recent digital platforms and processes. For example, counsel cannot access the new Permanent Resident Digital Intake tool, which recently integrated many of IRCC's business lines.⁵ Similarly, individuals can apply for grant of citizenship applications through an online platform, but representatives are excluded from accessing this online platform with faster application processing times and instead must submit applications by paper format. Without access to online portals and an ability to submit applications, representatives cannot adequately assist their clients. Some may opt to self-represent, which will reduce their likelihood of success.⁶

We disagree with IRCC's response to the CBA Immigration Law Section that "representatives are still able to support and assist clients in the submission of digital applications or paper applications for all lines of business and programs".⁷ While IRCC mentions that representatives can advise clients before, during and after the submission, it admits they cannot create digital portal accounts, complete, upload and submit online applications. These are important elements of immigration lawyers' duties to their clients.

IRCC also suggests that screen-sharing technologies "make it possible to walk clients through these actions and provide assistance to them in real time",⁸ but this is insufficient. Some clients – such as essential workers who work around the clock—retain counsel because they do not have time to carefully upload application documents to an electronic portal. Others may have difficulty navigating the required technology.

Immigration applicants have a right to be represented by counsel in complex processes that will shape their future in Canada, and IRCC's technology should reflect that right. While we understand that IRCC intends to eventually build in a role for representatives in its new tools, applicants and their representatives are harmed when the initial version of a new tool excludes counsel. Immigration applicants left to navigate new platforms on their own are more likely to make mistakes. Excluding lawyers from new technologies puts them in a difficult position that

⁴ Immigration Refugees, and Citizenship Canada, [Temporary public policies: Temporary resident to permanent resident pathway – How to apply](#).

⁵ See Government of Canada, [Some immigration applicants can now apply online](#). The list includes PNP (non-Express Entry) to regional pilots, self-employed, Quebec-selected skilled workers, entrepreneurs and investors, outside Canada sponsorships, adoption immigration processes, refugee, H&C and TRP holders applying for permanent residence.

⁶ The Star, [Lawyer versus consultant? Immigration data shows visa applicants have best shot with former](#), December 9, 2018.

⁷ IRCC's response to the CBA Immigration Law Section, at page 2, para. 2.

⁸ *Ibid.*

undermines the solicitor-client relationship. They can advise their client on the “sidelines” and risk breaching law societies rules or fulfill their mandates to clients by submitting paper applications, which will be processed more slowly.

Lawyers play an integral role in defending the rule of law, which is a foundational pillar of our democracy. IRCC should not impose artificial constraints on lawyers– even temporarily –as it modernizes its processes. We urge IRCC to build in a role for counsel in all forthcoming platforms before they are launched and to immediately integrate representatives in existing technologies.

Sincerely,

(original letter signed by Bradley D. Regehr)

Bradley D. Regehr