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April 21, 2020

Via email: julie.watkinson@justice.gc.ca

Julie Watkinson
Executive Director and Senior General Counsel
Canada Border Services Agency
191 Laurier Avenue West, 16th Floor
Ottawa, Ontario
K1A 0L8

Dear Ms. Watkinson:

Re: COVID-19 and Immigration Proceedings

I hope that you, your colleagues, and your families are safe and well. I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to suggest alternatives to the suspension of proceedings due to COVID-19. The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,100 members across Canada practising in all areas of immigration and refugee law.

Based on comments from public health officials, it appears that physical distancing requirements may remain in place for several months. Health and safety must be our top priority, but we are concerned about the access to justice implications of COVID-19. We have recommended that the Immigration Division (ID) and Immigration Appeal Division (IAD) consider resuming certain proceedings remotely on a voluntary opt-in basis. We hope you will agree and will work together on these initiatives.

The ID and IAD could consider allowing alternative dispute resolutions and conducting some hearings videoconference or teleconference. Other matters such as jurisdictional or legal questions could be addressed in writing. The CBSA could scan and file the record electronically and both parties could scan and file their disclosure electronically. Any new processes introduced in response to the COVID-19 restrictions should be voluntary, as some parties and their counsel may not be able to proceed remotely. The ID has successfully taken steps to adjust its operations in response to COVID-19, which other divisions could build on.

The CBA Section believes that we need to find new ways to resume our work. We fear crippling backlogs could develop if the current disruptions to proceedings continue. A prolonged suspension of activities could also compromise both the financial circumstances of applicants and the viability of law firms, making it more difficult for applicants to obtain legal representation when the ID and IAD's regular operations resume. This could have serious access to justice consequences including increased numbers of self-represented litigants, and exacerbated delays due to missed filing deadlines and extension of time motions. If some cases are resolved remotely instead of being delayed, all stakeholders will benefit from a reduced backlog when regular processes resume.

We have also written to the ID and IAD to request their feedback. We would be pleased to discuss practical solutions to mitigate the access to justice consequences of this pandemic, and to offer our assistance as we are able.

Yours truly,

(original letter signed by Nadia Sayed for Ravi Jain)

Ravi Jain
Chair, Immigration Law Section