



THE CANADIAN
BAR ASSOCIATION
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June 15, 2020

Via email: iepu-upeli@cbsa-asfc.gc.ca

Heather Roberts
Integrity and Innovation Policy Unit
Immigration Enforcement, Customs, and External Review Policy Directorate
Canada Border Services Agency
100 Metcalfe St
Ottawa ON K1A 0L8

Dear Ms. Roberts:

Re: Proposed Changes to Recovery of Removal Cost Framework

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) in response to the Canada Border Services Agency's (CBSA) consultation notice, published on May 16, 2020, proposing to revise the framework governing the collection and recovery of removal costs from foreign nationals removed from Canada.¹

In our view, the proposed changes are punitive and not consistent with the original intent of section 243 of the Immigration and Refugee Protection Regulations (IRPR).

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.

We understand that section 243 of the IRPR, which has been unchanged in over 25 years, may need to be updated. That said, the high costs proposed would be an unreasonable burden for many vulnerable removed persons. The proposal would more than double the amount to be recovered from foreign nationals removed without an escort, and increase the amount for escorted detained

¹ Canada Border Services Agency, [Proposed regulatory amendments to modernize the existing framework governing the collection and recovery of removal costs from foreign nationals removed from Canada at Her Majesty's expense in accordance with section 243 of the the Immigration and Refugee Protection Regulations](#). (published May 16, 2020)

removals by more than eight times the current amount. The proposal would have a discriminatory effect, creating a permanent and insurmountable bar to return for persons from developing countries and individuals who lack financial resources even if they have meritorious claims for authorization to return to Canada.

CBSA often instructs foreign nationals deemed removal-ready to purchase their own air tickets to return to their country of reference to defray the cost associated with a future return to Canada. However, if they are pursuing a motion for a stay of the execution of a removal order before Federal Court, many lawyers will advise against voluntarily purchasing an air ticket as this could be used to portray the foreign national, incorrectly, as holding no fear of return. If they are subsequently deported, the air ticket costs, often at an inflated rate, will be added to the already prohibitive cost associated with a future return.

The consultation notice states that the proposed cost recovery structure is based on CBSA's actual average enforcement expenditures. However, the fees in R243 were not intended to provide full cost recovery to the government and were not based on average removal costs at the time.² We would appreciate more information about how these averages were calculated, including the breakdown of costs for each type of removal listed. It is unlikely that costs have increased eight-fold since the original fees were set.

Recovering costs from persons who were detained for removal is unjustifiable and punitive. It is not done in any other context including criminal detentions. The proposal would be analogous to requiring applicants to repay the cost of their incarceration prior to obtaining a pardon or record suspension. A decision to detain is a subjective decision made by a CBSA officer and is often overturned after an objective assessment by the Immigration Division. The proposed cost recovery framework would give CBSA an incentive to detain for removal.

We would be pleased to discuss our comments in more detail.

Yours truly,

(original letter signed by Nadia Sayed for Ravi Jain)

Ravi Jain
Chair, Immigration Law Section

² [Payment of removal costs](#) - R243, at Intent of Fee.