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Via email: minister@cic.gc.ca

Ahmed D. Hussen, P.C., M.P.
Minister of Immigration, Refugees and Citizenship
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Minister Hussen:

Re: Artificial Intelligence and Machine Learning in Immigration Law

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to express concern about the potential human rights implications of Immigration, Refugees and Citizenship Canada's (IRCC) growing use of artificial intelligence, machine learning and similar technologies in decision-making processes (automated decision-making). While these technologies offer potential benefits such as improved efficiency and reduced backlogs, meaningful oversight and transparency is needed to manage the associated risks.

The CBA is a national association of 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 comprises lawyers with an in-depth knowledge of citizenship and immigration law issues, including legislative changes, administration and enforcement.

The federal government has experimented with using artificial intelligence and machine learning in the immigration context since at least 2014 to perform activities traditionally conducted by immigration officials and to support the evaluation of immigrant and visitor applications. The Directive on Automated Decision Making (Directive) seeks to reduce the risks associated with automated decision-making and to ensure "efficient, accurate, consistent, and interpretable decisions."¹ The government recently launched an Algorithmic Impact Assessment tool (AIA) to

¹ [Directive on Automated Decision-Making](#), Government of Canada (2019).

help federal departments understand the risks associated with automated decision-making.² While we view the Directive and AIA as positive developments, we have concerns about automated decision-making in the immigration context.

Appropriate Use of Emerging Technologies

We support IRCC's goal of leveraging technology to improve efficiency.³ If used appropriately, artificial intelligence and machine learning could help minimize case backlogs. By automating routine tasks, these technologies would allow officers to focus on more complex tasks such as detection of fraud or verification of identity. The technologies would also allow for early identification of complex and incomplete applications.

The CBA Section urges IRCC to ensure that thoughtful and specific criteria are built into all its technological tools. Those criteria need to be proactively updated to reflect changes in legislation and regulations, court decisions, ministerial instructions and evolving social values.

Privacy and Data Protection

The CBA Section is pleased that the Directive acknowledges the importance of privacy and data protection and references the Privacy Act.⁴ Privacy rights are particularly important in the immigration context as a higher standard of data protection is required for vulnerable groups such as migrants.⁵

We recommend that as part of the Directive's built-in review (every six months) include constant scrutiny of data breaches to ensure the continued protection of each applicant's information.

Dangers of Automated Decision-Making in the Immigration Context

The CBA Section is concerned that automated decision-making—particularly in refugee cases – threatens to create a “high-risk laboratory” for experiments on a marginalized population in an already highly discretionary system.⁶ Vulnerable and under-resourced communities, such as refugees and residents without valid immigration status, tend to have less access to human rights protections and legal expertise needed to defend their rights. Adopting automated decision-making without following best practices and building in human rights principles at the outset may exacerbate existing disparities and biases and lead to rights violations including unjust deportation. A cornerstone of immigration decision-making—discretion—could be lost if technological tools become proxy decision-makers. The risks of these tools making an incorrect decision are too great and could have life or death consequences. Technologies such as artificial intelligence and machine learning may inform a human decision-maker but should not fetter the decision-maker's discretion.

We recommend that IRCC provide guidance to supplement Appendix B of the Directive (outlining the four impact assessment levels) and the AIA (a questionnaire used to determine the impact assessment level). For example, Level IV decisions involve the most serious matters requiring the

² [Algorithmic Impact Assessment](#), Government of Canada (2019).

³ Canadian Bar Association, Letter on [Regulations Amending the Immigration and Refugee Protection Regulations \(Electronic Applications\)](#) (February 2019).

⁴ Supra note 1 at para 6 (Requirements).

⁵ United Nations General Assembly, [The right to privacy in the digital age](#) (16 November 2016).

⁶ Citizen Lab and the International Human Rights Program, [Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada's Immigration and Refugee System](#), at p. 4. (2018).

most careful analysis. Would automated decision-making on cases involving vulnerable persons always be classified as Level IV decisions? How would an open work permit be classified? We believe it should be considered a Level III or IV decision given its importance to the applicant. We recommend that IRCC give clear information to applicants of what impact levels apply to its various processes.

We fear that automated decision-making could rely on discriminatory and stereotypical markers, such as appearance, religion or travel patterns, as flawed proxies for more relevant and personalized data, thus entrenching bias into a seemingly neutral tool. Automated decision-makers may not grasp the nuanced and complex nature of many refugee and immigration applications, potentially leading to serious breaches of human rights such as privacy, due process, and equality.

The Directive recognizes that unintended biases may occur and outlines steps to avoid such situations.⁷ The AIA includes a question about the processes in place to test datasets against biases and unexpected outcomes. Neither the Directive nor the AIA define the form or type of bias. We urge the government to define “unintended biases” in more detail and to focus on addressing biases rooted in protected characteristics such as gender, religion, race and country of origin. Conducting an impact assessment is not enough; the government must also establish processes to address that impact going forward.

Oversight and Transparency

While section 6.2 of the Directive mentions transparency, the measures in the Directive are not robust enough to ensure transparency. The Directive details how Level III and IV decisions will automatically include an explanation, but for Level II decisions, an explanation will only be given if requested. For Level I decisions, explanations may be limited to directing the reader to a frequently asked questions section on a website discussing common decision results. We urge the government to set up clear and publicly reviewable mechanisms to review, challenge, appeal or refute any automated decision-making in the immigration context regardless of how a decision is classified. The government should also publish detailed reports on all uses of automated decision-making and share that information with human rights experts, academia, civil society, and the public.

We recommend that the government establish an independent body with the power and expertise to oversee and review all uses of automated decision-making by the federal government, including appropriate procurement practices and engagement with the private sector.

The CBA Section urges IRCC to exercise caution in its use of artificial intelligence, machine learning and similar emerging technologies and ensure that human rights principles are embedded in all its processes. We welcome the opportunity to participate in future consultations and would be pleased to discuss our recommendations in more detail.

Yours truly,

(original letter signed by Nadia Sayed for Marina Sedai)

Marina Sedai
Chair, CBA Immigration Law Section

⁷ Supra, note 1 at para 6.3 within the section entitled requirements.