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Via email: Brett.Bush@cbsa-asfc.gc.ca; Bronwyn.May@cic.gc.ca

Bronwyn May
Director General, Temporary Economic Migration
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa ON K1A 1L1

Brett Bush
A/Director General, Immigration and Asylum Policy Innovation Division
Canada Border Services Agency
Ottawa, ON K1A 0L8

Dear Bronwyn May and Brett Bush:

Re: Legal inconsistencies in Operational Bulletin 686: Ending Flagpoling for Work and Study Permits

I write on behalf of the Immigration Law Section (CBA Section) of the Canadian Bar Association to express our concerns about the inconsistency between IRCC Operational Bulletin 686¹, the recent news release by the Canada Border Services Agency² (CBSA) regarding ending flagpoling for most work and study permits, and section 198 of the Immigration and Refugee Protection Regulations (IRPR).

The Canadian Bar Association (CBA) is a national association of 40,000 members, including lawyers, judges, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section is comprised of over 1,200 members, practicing in all aspects of Canadian immigration law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

Background

On December 2024, the CBSA issued a news release stating that "flagpoling," the practice of applying for work and study permits at Canadian land border ports of entry by people who hold temporary

¹ Canada, Immigration, Refugees and Citizenship Canada, "Operational Bulletin 686" (Ottawa: Immigration, Refugees and Citizenship Canada, 2024), [online](#).

² Canada, Canada Border Services Agency, "Ending Flagpoling for Work and Study Permits at the Border" (Ottawa: Canada Border Services Agency, 2024), [online](#).

resident status, will no longer be permitted. Operational Bulletin 686, issued subsequently, purports to outline the operational guidelines for implementing this policy. However, section 198 of the IRPR expressly permits the issuance of work permits at ports of entry under specified conditions, creating a direct conflict between the operational bulletin, the legislative framework, and the announced policy.

Inconsistencies

1. **Section 198 of the IRPR** Section 198 of the IRPR states:

198 (1) Subject to subsection (2), a foreign national may apply for a work permit when entering Canada if the foreign national is exempt under Division 5 of Part 9 from the requirement to obtain a temporary resident visa.³

This regulatory provision explicitly grants certain foreign nationals the right to apply for a work permit upon entry to Canada at a port of entry. The CBSA's blanket prohibition against most port of entry applications disregards this regulatory entitlement and imposes an additional barrier to individuals who would otherwise qualify under s.198.

1. **CBSA's News Release** The CBSA's announcement broadly bans flagpoling but does not reference s.198 and appears limited to flagpoling situations, not port of entry applications more broadly. It does not appear intended to limit the class of applicants who can benefit from s.198.
2. **IRCC Operational Bulletin 686** Operational Bulletin 686 claims to operationalize the CBSA's announcement. However, the bulletin goes much further than the scope of the news release, effectively instructing border officials to refuse to process most work and study permit applications made at ports of entry, even in situations that are not flagpoling. This directive is inconsistent with both s.198 of the IRPR and with the apparent intention of the news release.

Flagpoling restrictions

The CBA Section recognizes that flagpoling, while addressing immediate service needs for work and study permits, may be open to reasonable restrictions. For instance, visitors relying on r.190(3)(f) to re-enter Canada primarily to seek a port of entry application for a work permit, without substantive entry into the U.S., could face restrictions such as a mandatory 24-hour U.S. stay or deletion of the provision. This measure would significantly reduce flagpoling traffic, particularly by foreign nationals who require but do not hold a U.S. visa. However, shutting down flagpoling without viable alternatives leaves applicants dependent on overseas or inland processing times of six months or more, creating undue delays for both applicants and Canadian businesses.

To address these challenges, IRCC and CBSA should enhance the "maintained status" provisions to provide greater flexibility, enabling individuals to work while their applications are being processed. This could be achieved by expanding the still active COVID-era provision⁴ that allowed individuals with approved LMIA's to begin working for their new employer immediately upon submitting their work permit application.⁵ Without such measures, the implications of flagpoling restrictions will exacerbate existing delays, discourage international talent, and undermine employer timelines critical to business operations.

³ Canada, Immigration and Refugee Protection Regulations, SOR/2002-227, s 198, [online](#).

⁴ Canada, Immigration, Refugees and Citizenship Canada, "Extend Your Work Permit: How to Apply" (Ottawa: Immigration, Refugees and Citizenship Canada, 2024), [online](#).

⁵ The expanded provision could apply to a broader category of applicants – not just those changing employers.

Recommendations

The CBA Section recommends the following steps to address these concerns:

1. **Withdraw or Amend Operational Bulletin 686** The bulletin should be withdrawn or amended immediately to clarify that it only applies to flagpoling situations, and not to port of entry applications more broadly.
2. **Clarify Legislative Intent** If the government intends to restrict port of entry applications beyond flagpoling, it must pursue amendments to s.198 of the IRPR, or publish a clear intent to limit its application according to the regulatory amendments of 7 December 2024.⁶

More generally, we urge IRCC and CBSA to consult with immigration practitioners, employers, and other stakeholders before making significant policy changes. This collaborative approach will ensure that any amendments reflect the needs of applicants and the operational realities of the immigration system.

Conclusion

The CBA Section urges IRCC and CBSA to withdraw Operational Bulletin 686 and reaffirm their commitment to adhering to Canada's established legal and regulatory framework. We are prepared to collaborate with the government to address the practical challenges associated with flagpoling while preserving the integrity of the immigration system.

We thank you for considering our submission and look forward to continued dialogue on this important issue.

Yours truly,

(original signed by Véronique Morissette on behalf of Kamaljit Kaur Lehal)

Kamaljit Kaur Lehal
Chair, Immigration Law Section

cc. Caroline Fobes, Senior General Counsel, Legal Services (email: caroline.fobes@cic.gc.ca)

⁶ Canada, *Regulations Amending the Immigration and Refugee Protection Regulations (SOR/2024-258)*, (2024) C Gaz II, [online](#).