

## Senate Working Group on Immigration

January 27, 2022

Established in 2021, the Canadian Immigration Lawyers Association (CILA) is an innovative and transformative association of immigration lawyers with the mission to promote justice and fairness in citizenship and immigration law and to advocate for improvements to immigration-related policies and departmental operations. CILA does this through stakeholder communication, public dialogue, submissions, coalition-building, court interventions, and test litigation. CILA collaborates and supports the initiatives of other organizations focused on Canadian immigration law and policy.

CILA thanks Senator Omidvar and the Senate Working Group on Immigration for this invitation to address you with an outline of some key issues for your Group to consider.

They are set out as follows:

### **Issue #1: Backlogs and Client Experience**

We appreciate the spirit of recent innovations, including Temporary Resident to Permanent Residence pathways, e-landings, online citizenship applications, ceremonies and tests. However, we are concerned about the ability of vulnerable applicants such as refugees and "low" skilled workers to navigate these systems, without up-to-date operating systems, software, scanners, some technological savvy and access to legal counsel. The lack of reliability of stable employer and representative portals is of significant concern and creating havoc for those trying to use them. A typical person raised in Canada would find many of the systems and processes difficult even with English or French as their first language.

The client experience is currently at an all-time low, primarily due to a backlog of cases, slow processing times, frustrations related to old and new technology, and generic responses to status inquiries that do not tell clients what they need to know. Applications are often rejected as incomplete due to a simple document not being included and could easily be rectified with a simple call or email to the applicant with a short deadline to submit the missing document. Adding to this poor client experience and compounding delays in processing of applications, is the fact that new portals exclude the ability of counsel to prepare and file applications in these new portals for applicants. Protecting access to justice is a pillar of our democracy and there has been a steady erosion of the right to counsel as IRCC modernized its digital platform and systems. Lawyers play an important role in serving the public, including some of the most vulnerable people in our communities, and at the same time help to minimize submissions of unnecessary



applications and reduce back and forth by filing complete applications, which in turn is a more effective use of department resources.

Delays negatively impact newcomer segments. Persons with approved Confirmation of Permanent Residence status and Federal Skilled Worker, Provincial Nominee, Self Employed and even Start Up Visa Applicants have been waiting in limbo for 2 years now. There are over 400,000 citizenship applications outstanding preventing future Canadians from voting and enjoying passport benefits. Delays in issuing initial Permanent Resident Cards and renewing Permanent Resident Cards are preventing people from travelling.

The issues related to backlogs and poor client experience are further compounded by the fact that individuals often lose their temporary status in Canada when an application is rejected for a minor missing document, which means they cannot work or study. This in turn means a loss of productivity for businesses and loss of income tax to Revenue Canada, and can have serious ramifications for a person's personal circumstances, including their immigration status. It also means that additional immigration applications will have to be filed, utilizing more IRCC resources and in turn contributing to the backlog. Delays in processing extension and restoration of status applications often result in applicants being unable to leave Canada without losing their ability to work or study on return to Canada. This also can have significant implications applicants and generate further unnecessary applications.

CILA have some recommendations for operational changes but also 3 legislative/policy changes that could significantly reduce the number of applications being filed, and in turn improve the client experience and reduce the strain on IRCC resources.

### **Recommendations:**

1. Require IRCC to provide meaningful response to web form inquiries that actually answer the question. Ex. A family receives a request for medical examinations for 3 of the 4 family members. Applicant's counsel sends a webform requesting instructions also be sent to the fourth member, and gets a generic response that does not explain or even acknowledge that IRCC understands that one member of the family did not receive the medical request and this is holding up the ability of the family to complete the medicals within the 30 day deadline. IRCC should clearly respond that they understand one medical instruction was missing, that the appropriate office has been notified and if the Applicant does not receive the missing instruction in 10 business days, they should contact IRCC again to elevate the matter.



2. Require IRCC in certain circumstances to call the applicant or authorized representative to rectify any deficiency in a short but reasonable timeframe so as not to unnecessarily delay processing before returning the application as incomplete. Example, Five days as of December 24<sup>th</sup> is not reasonable. CILA would be happy to develop a list of circumstances or guidelines for officers to use a telephone call to rectify the deficiency.
3. Require IRCC to test new initiatives and communications prior to launch and to consult with stakeholders for input and provide clear communications announcing changes.
4. Amend the regulations related to Maintained Status (“MS”) under Immigration and Refugee Protection Regulations (IRPR), s. 186(u) and 189 so that MS is not lost upon departure from Canada. The IRPR currently allows an applicant to benefit from MS after the expiry of a work or study permit if they have filed an extension before the expiry of their current permit and provided they stay in Canada. Departure from Canada currently results in loss of ability to work or study upon re-entry. A person under MS may need to leave Canada for business or personal family reasons. They may have no ability to apply for a new work permit on re-entry if they are a citizen of a country that requires a Temporary Resident Visa (TRV). This would eliminate the need for additional applications either at the port of entry or abroad, thereby reducing the amount of work IRCC and CBSA are required to do. It would eliminate significant hardship to the applicant and their employers and families.
5. Amend s.182 to state that if restoration of status is granted, the foreign national is deemed to have held valid status in Canada retroactive to the day after the expiry of the work permit. Applicants should not be penalized with the loss of the ability to work or study if they fail to submit an extension application by the expiry date of their work or study permit, or submit an extension application in good faith in advance of expiry but inadvertently omit a required document or fee payment and the application is subsequently denied for incompleteness. The amendment should state that an applicant can benefit from MS after a restoration application is filed to allow them to continue to work or study.
6. Amend s. 179 and 183 to provide that when an application for an extension of a work, study or visitors status is made by a citizen that requires a Temporary Resident Visa (“TRV”), that the



processing of a TRV be including in the application similar to when the applicant initially applied from outside of Canada for a new work or study permit, and upon approval of the extension, the applicant be invited to submit their passport to Ottawa for a visa issuance. This would save the unnecessary requirement to file an additional TRV application, and the time to wait for the TRV to be processed. Many individuals do not appreciate they need a new TRV and travel outside of Canada and then find themselves stranded and unable to return to Canada until a TRV application is made and processed weeks and recently months later.

## **Issue #2: Essential Workers**

There are several ways to make avenues to permanent residence available to those the system has labelled 'low skill' workers. These workers include truck drivers and those in the construction and manufacturing sectors. CILA would note that labour shortages in these industries are acute and have been well documented by industry associations.

First, IRCC could implement targeted draws via Express Entry using the Federal Skilled Trades Program and tweaking it as necessary to target those trades most in demand. Certain National Occupational Classification ("NOC") codes could be designated as is currently the case. While draws targeting the Federal Skills Trades Program have occurred in the past, they have not occurred in any regular or predictable manner.

Secondly, IRCC could introduce a "Temporary Resident to Permanent Resident" ("TR to PR") pathway as it did during the pandemic to target those workers who Canada suddenly realized were quite essential after all (besides health care workers, grocery clerks and other 'low skill' workers were targeted). A "TR to PR" pathway could be developed specifically for occupations in demand such as personal support workers (PSWs), truck drivers and construction workers, etc.

A third option is to provide for a program for undocumented workers who work in industries with a higher proportion of undocumented workers and who's skills are in demand. There are many undocumented workers in the construction sector, restaurant industry, in childcare, long-term care, home-based care, and we presume in the trucking industry as well. The Prime Minister's Mandate Letter to Immigration Minister Fraser refers to exploring ways to regularize status for undocumented workers. Giving undocumented workers a means of regularizing their status and obtaining proper working authorization could put them on a path towards achieving permanent resident status.



Finally, a fourth option is for the federal government to work with the provinces and provide allocations for personal support workers (PSWs), caregivers, truckers and construction workers, allowing the province to pick which NOC codes are needed the most through their Provincial Nominee Programs.



Suite 1120, Bankers Hall West  
888 - 3rd Street SW  
Calgary, AB T2P 5C5



866-406-2452



info@cila.co



www.cila.co

### Issue #3: Family Reunification

It's time that Immigration Refugee Citizenship Canada change policies and attitudes related to spouses of Canadian citizens and permanent residents. Canadian citizens and permanent residents that marry foreign nationals are often separated from their foreign national spouses for protracted periods of time. Foreign national spouses of Canadians or permanent residents are not only ineligible for the work permits that are available to spouses of many foreign workers in Canada, but they may not even be able to enter Canada until they themselves obtain permanent resident status. Compare this to immigration policy governing many foreign workers entering Canada on a work permit. Their spouses are permitted to travel with them and are eligible to work or study in Canada during the length of the principal applicant's authorized stay. Family reunification is an important concept in international law, and we are certainly supportive of immigration policy that makes this a priority. It is time to apply the same treatment to spouses of Canadian citizens and permanent residents.

The extent of this problem became very evident during the pandemic. When Canadians living abroad chose to return to Canada after the border closed in March 2020 they were told that their non-Canadian spouses could not come with them. It took until June 8, 2020 for the Canadian Government to change the rules and allow the spouses of Canadian citizens and permanent residents to enter Canada, so long as they intended to stay 15 days or more. There was no eligibility for the spouse to work. In contrast, foreign workers were still allowed to enter Canada and those coming for more than six months and employed in higher skilled occupations were entitled to have their foreign national spouses come to Canada with them, and work. This practice is highly discriminatory, but also, viewed from a financial perspective, deters rapid labour market integration for those destined to live in Canada. Why would the Canadian government not want to encourage the spouses of Canadians or permanent residents to work, possibly fill critical labour shortages and pay Canadian taxes?

Canadian immigration laws have always been interpreted with an underlying bias or presumption against spouses applying for residence as members of the Family Class – i.e. foreign nationals who are being sponsored for residency in Canada by their Canadian spouses. For example, when a spouse is asking for a temporary resident visa (TRV) to enter Canada so that they can be with their Canadian spouse while their sponsorship application is in process, they are often denied under the presumption that they wish to stay permanently in Canada, and are therefore not genuine visitors. Despite the fact that section 22 of IRPA was amended over two decades ago specifically to allow “dual intent”, allowing applicants to have both temporary and permanent intent, negative bias prevails throughout IRCC and augmented by the use of artificial intelligence to perpetuate negative determinations preventing the reunification of spouses. If IRCC is concerned that granting spouses of Canadians the right to work upon entry to Canada would



somehow encourage bogus marriages, why is this risk considered to be acceptable when granting work permits to spouses of foreign workers? If IRCC is not prepared to honour the concept of dual-intent for the spouses of Canadians, then IRCC needs to re-think their entire economic permanent residence program as it is largely built on the concept of individuals coming as temporary residents and becoming permanent residents. The majority of permanent residence applications are approved under the Canadian Experience Class (CEC), which is very much predicated on the applicant coming to Canada first as a student and or foreign worker, before being eligible for permanent residence and securing an invitation to apply. If IRCC are really concerned about dual intent they should be reassessing their study permit and work permit policies and messaging as well. The vast majority of these temporary residents have an intention to stay permanently in Canada and yet we readily facilitate their temporary status so that they can come to Canada to study or work.

It is time to ask the question, why do we treat the spouses of Canadian citizens and permanent residents worse than the spouses of foreign nationals? Time is ripe to change these discriminatory and severely outdated policies and introduce a new scheme that would permit equal treatment of spouses of Canadian citizens. They should be able to apply for a work permit immediately upon entry to Canada. This permit could be granted for a limited period of time. This is not a radical proposal. On the contrary, similar policies are in place for foreign nationals wishing to come to Canada on a work or study permit, with the ultimate intent of applying for permanent residence in due course. What we are proposing is simply a highly overdue leveling of the playing field and a more respectful treatment of Canadians and their spouses.

**Recommendation:**

1. Amend the policy under Regulation 205(a) to allow for spouses of Canadian citizens and permanent residents to apply for a work permit once a sponsorship application has been filed. Create a policy to ensure timely processing of the work permit in 4 to 6 weeks or at the port of entry when the applicant is exempt from requiring a temporary resident visa.



#### **Issue #4: International Students**

A levels plan announcement is expected in February (and then again in November). CILA calls for higher immigration targets so-as to best support the economy, families, refugees and international students. In regard to international students in particular, the Prime Minister’s Mandate Letter to Immigration Minister Fraser talked about expanding pathways to Permanent Residence (“PR”) for international students. CILA applauds this, as many students come to Canada with false promises made by certain underregulated representatives or education agents about the likelihood of gaining permanent residence. More room in the levels plan will help protect this \$22B industry which creates 170,000 jobs. A further measure to assist International students who have graduated with job offers, would be to allow them to extend their post-graduate open work permits. Employers of international graduates used to be able to get an LMIA on this basis and employers were exempt from recruiting domestically and to pay the prevailing wage for the occupation. This would protect those who are not able to obtain permanent residence simply due to the lack of space in the levels plan for them. Canada admits far more international students than there is room every year in our permanent residence levels plan. By allowing these international students to work longer under what would become a ‘closed’ work permit, they may gain more points for their Express Entry profiles for permanent residence.





## Issue #5: Permanent Resident Cards

For years the timely issuance of a Permanent Resident (PR) card after a person becomes a PR has been a source of frustration for applicants who have waited years to become a PR. What should be a celebration turns into a disappointment and often costs people more money or lost opportunities. Applicants wait weeks and often months to receive their initial PR card. What does it mean not to have a PR card? It means if you leave Canada you cannot return to Canada without first securing permission from a Consulate or Embassy to return. You are placed in the predicament of having to apply for a Permanent Resident Travel Document (PRTD) from outside of Canada or fly to the United States and travel into Canada via overland. The latter is not an option for all people. PRTD applications typically take 2-3 weeks to be processed by visa offices and require the individual to coordinate submitting their passport for visa issuance during this time.

Applications for extensions of PR cards are also taking months and in some cases over a year to process. This is outrageous. PRs are taxpayers they deserve better service than this. The majority of renewal cases do not involve substantive legal issues. Most people meet the residence requirements. Admittedly the PR card is a secure travel document and may take time to produce, but a passport is a secure travel document and are routinely issued in in 10 business days and in some limited circumstances in 72 hours if expedited criteria and fees are met.

### Recommendations:

1. Provide that the Confirmation of Permanent Residence (COPR) can be used as a travel document for up to 90 days from date of issuance – or until IRCC can reasonably issue a PR card inside Canada as processing times are always fluctuating.
2. Delegate the authority for processing PR card renewals to the Canadian Passport Offices. They can triage and flag any renewal applications that have a legal substantive issue, such as meeting section 28 residence requirements. These applicants can be notified that additional processing times may apply. For integrity purposes some applications could be randomly selected to review the residence issue.



## Issue #6 Business Experience Class

Promoting immigrant entrepreneurship and investment can support Canada's economic recovery. Current IRCC programs do not include an entrepreneur category and self-employed categories are limited to cultural activities and athletics. A Canadian Business Experience Class is needed to help transition a trillion dollars worth of small and medium sized businesses from retiring baby boomers to immigrants. This could be of particular benefit to smaller regions of the country such as Atlantic Canada. Immigrants are generally risk takers and as such make good entrepreneurs.

### Recommendations:

1. Create a Canadian Business Experience Class that involves a skills and experience matching program with assisting Canadian businesses. Create a national business bank, where companies looking to transition their businesses can advertise their business and outline the skills, experience and level of financial investment required. Quality could be defined and assessed with passive schemes continuing to be avoided. Prospective business immigrants could create a profile and be matched with businesses registered in the business bank. Exploratory visitor visas could be issued and once offers of intent to purchase have been entered into, work permits granted for up to three years. Upon completion of the sale of the business to the immigrant, permanent residence could be approved.

### The CILA Steering Committee

Barbara Jo Caruso

Ravi Jain

Betsy Kane

Vance Langford

Nathan Po

Nicolas Simard-Lafontaine

Chris Veeman

